

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

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

Subpart A General Provisions

§ 1400.1 Applicability.

(a) ~~Together with any additional coverage as may apply with respect to Subpart G of this part or other subpart of this part as provided in such subpart, this part is applicable to the following programs (together with any other programs which adopt this part by reference):~~ This part, except as otherwise noted, is applicable to all of the following programs and any other programs as provided in individual program regulations in this chapter (including, but not limited to, all price support programs in parts 1421 and 1434 of this chapter):

(1) ~~The program governed by part 1413 of this chapter;~~ The Direct and Counter-cyclical Program (DCP), including the Average Crop Revenue Election (ACRE), part 1412 of this chapter;

(2) ~~All programs governed by parts 1421 and 1427 of this chapter under which a producer realizes a gain from repaying a marketing assistance loan at a lower rate than the commodity's original loan rate, and any program that authorizes a loan deficiency payment for a commodity;~~

~~(3) (2)~~ The Conservation Reserve Program (CRP), as governed by part 1410 of this chapter;

(3) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;

(4) The Supplemental Revenue Assistance Program (SURE), part 1480 of this chapter;

(5) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance Program for Livestock, Honey Bees and Farm-Raised Fish (ELAP), part 1439 of this chapter;

(6) The Tree Assistance Program (TAP), part 783 of this title; and

(7) The Natural Resource Conservation Service (NRCS) conservation programs of this title including Agricultural Management Assistance (AMA), Agricultural Water Enhancement Program (AWEP), Chesapeake Bay Watershed Program (CBWP), Conservation Stewardship Program (CSTP), Cooperative Conservation Partnership initiative (CCPI), Environmental Quality Incentives Program (EQIP), Farm and Ranchland Protection Program (FRPP), Grasslands Reserve Program (GRP), Wetlands Reserve Program (WRP), and Wildlife Habitat Incentive Program (WHIP).

(b) This part ~~does~~ will not apply to the program specified in:

(1) ~~CRP rental payments if they are made to a State, including a political subdivision or agency thereof, under a special conservation reserve enhancement program the Secretary approves.~~ Paragraphs (a)(1),(3),(4), and (6) of this section on a crop year basis;

~~(2) CRP rental payments made to an individual heir who succeeded to a contract on inherited land, if the land was subject to the CRP contract at the time it was inherited. To the program in paragraph (a)(2) of this section on a fiscal year basis;~~

~~(e) This part applies to the programs specified in paragraph (a)(1) and (2) of this section on a crop year basis, and those in paragraph (a)(3) of this section based on each fiscal year.~~

~~(3) To the program in paragraph (a)(5) of this section on a calendar year basis; and~~

~~(d) This part is used to determine whether individuals and entities are to be treated as one person or as separate persons regarding the application of statutory provisions that limit the amount of payments a specific person may receive.~~

~~(4) To the program in paragraph (a)(7) of this section based on available funding.~~

~~(c) This part will be used to determine the manner in which payments will be attributed to persons and legal entities for the payment limitations provided in this section and to other programs as provided in individual program regulations in this chapter.~~

~~(d) Where more than one provision of this part may apply, the provision which is most restrictive on the program participant will be applied.~~

~~(e) Where more than one provision of this part may apply, the provision most restrictive on the program participant shall apply. The payment limitations of this part are not applicable to:~~

~~(1) Payments made under State conservation reserve enhancement program agreements approved by the Secretary and~~

~~(2) Payments made subject to this part if ownership interest in land or a commodity is transferred as the result of the death of a program participant and the new owner of the land or commodity has succeeded to the contract of the prior owner. If the successor is otherwise eligible, payments cannot exceed the amount the previous owner was entitled to receive at the time of death.~~

~~(f) Payments made to the following are not subject to payment limitations under this part:~~

~~(1) Public schools for land a public school district owns; and~~

~~(2) A State for land a State owns that is used to maintain a public school.~~

~~(g) (f) Unless otherwise noted, The following amounts are the payment limitations on payments per person or legal entity for the per applicable period for each payment or benefit:~~

Payment or benefit	Limitation per Person or Legal Entity , per Crop, Program year or fiscal year
1. Direct Payments for covered commodities	\$ 40,000
2. Direct Payment for peanuts	40,000
3. Counter-Cyclical Payments for covered Commodities-CRP annual rental payments Fn2	65,000-50,000
4. Counter-Cyclical Payment for peanuts- GRP	65,000-50,000
5. Loan Deficiency Payments and Marketing Loan Gains for loan	75,000-50,000

~~commodities-WHIP~~

6. Total Loan Deficiency Payments and Marketing Loan Gains for peanuts, wool, mohair and honey-WRP	75,000-50,000
7. Conservation Reserve Program-Counter-Cyclical Payments for Covered commodities Fn3	50,000-65,000
8. Non-Insured Crop Disaster Assistance Program (NAP) payments Counter-cyclical Payments for peanuts Fn3	100,000-65,000
9. Environmental Quality Incentives Program (EQIP) payments NAP payments	fn1-450,000-100,000
10. Agricultural Management Assistance Program-Supplemental Agricultural Disaster Assistance Fn4	50,000-100,000
11. Conservation Security Program (CSP)-TAP	100,000
Tier 1-12. CSTP Fn5	fn2-20,000-200,000
Tier 2-13. EQIP	fn2-35,000-300,000
Tier 3	fn2-45,000

~~fn1 This statutory limit is applied on a "direct attribution" method with respect to the individual or entity.~~

~~fn2 This limitation is attributed to an individual or entity covered by a Conservation Security Program contract.~~

~~Fn1 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.~~

~~Fn2 Limitation applicable only to CRP contracts approved prior to October 1, 2008~~

~~Fn3 Under ACRE, this amount will be 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.~~

~~Fn4 Total payments received under Supplemental Agricultural Disaster Assistance through SURE, LIP, LFP, and ELAP may not exceed \$100,000.~~

~~Fn5 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 than an amount by participant.~~

~~(h) As provided in Subpart G of this part, additional requirements are applicable to certain of the payments specified in paragraph (g) of this section.~~

~~(g) With respect to contracts for conservation programs approved prior to October 1, 2008, the payment limitation rules in 7 CFR part 1400 in effect on September 30, 2008 will be applicable (see 7 CFR part 1400, revised as of January 1, 2008).~~

§ 1400.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county

committees (~~herein~~ referred to as "State committee" and "county committees," respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

(f) The initial ~~"actively engaged in farming" and "person"~~ payment eligibility determinations shall be made within 60 days after the ~~producer files the~~ required forms and any other supporting documentation needed in making such determinations are received in the county FSA office. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.

(g) Initial determinations concerning the provisions of this part shall not be made by a county FSA office with respect to any farm operating plan that is for a joint operation with ~~more than five~~ six or more members.

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted to determine compliance with applicable statutes and regulations. The completion of such reviews is not subject to the time constraints specified in paragraph (f) of this section.

§ 1400.3 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall also be applicable to this part:

~~Active personal labor.~~ Active personal labor is means personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops on conserving use and CRP acreages and those physical activities necessary in livestock operations.

~~Active personal management.~~ Active personal management means is personally providing and participating in:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation, including:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops on conserving use and CRP acreage and activities required in livestock operations;

ii) Business-related actions, which include discretionary decision making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; and

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Administrator means the Administrator of the Farm Service Agency including a designee of the Administrator.

Alien means any person not a citizen or national of the United States.

Attribution means the combination of any payment made directly to a person or legal entity with the person's or legal entity's pro rata direct and indirect interest in payments received by a legal entity, joint venture, or general partnership.

Average Adjusted Gross Farm Income means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry for the 3 taxable years preceding the most immediately preceding complete taxable year.

Average Adjusted Gross Income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year.

Average Adjusted Gross Nonfarm Income means the difference between the average adjusted gross income for the person or legal entity and the average adjusted gross farm income for the person or legal entity.

~~Lawful Alien. Any person who is not a citizen or national of the United States but who is admitted into~~

~~the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I-551 or I-151).~~

~~(2) [Reserved]~~

~~Capital consists of means the funding provided by an individual or entity a person or legal entity to the farming operation, independent and separate from all other farming operations, in order for such operation to conduct farming activities. In determining whether an individual or entity a person or legal entity has contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity person or legal entity involved in such operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity person or legal entity and does not include advance program payments.~~

~~(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation or an entity, such capital contributed to meet the requirements of:~~

~~(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:~~

~~(A) Any other individual, joint operation, or entity that has an interest in such farming operation;~~

~~(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or~~

~~(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest; and~~

~~(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and~~

~~(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation, such capital contributed to meet the requirements of:~~

~~(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:~~

~~(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;~~

~~(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or~~

~~(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.~~

~~(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as~~

~~a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations listed in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.~~

Chief means the Chief of the Natural Resource Conservation Service including any designee of the Chief (also referred to in this part as NRCS Chief).

Contribution means providing land, capital, or equipment assets, and the actions of providing active personal labor or active personal management to a farming operation in exchange for, or with the expectation of, deriving benefit based solely on the success of the farming operation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency including any designee.

~~Entity. An entity is a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.~~

Equipment. Equipment is means the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on conserving use and CRP acreages and those needed to conduct livestock operations. Such equipment may be leased from any source. If such equipment is leased from another person or legal entity with an interest in the farming operation, such equipment must be leased at fair market value.

~~(1) With respect to a farming operation conducted by an individual, entity or joint operation in which the equipment is contributed by a member of the joint operation, such equipment contributed to meet the requirements of:~~

~~(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:~~

~~(A) Any other individual, joint operation, or entity that has an interest in such farming operation.~~

~~(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or~~

~~(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.~~

~~(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.~~

~~(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation, such equipment contributed to meet the requirements of:~~

~~(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a~~

~~result of a loan made to, guaranteed, or secured by:~~

~~(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;~~

~~(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or~~

~~(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest; and~~

~~(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if listed as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.~~

~~(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, such equipment must be leased at a fair market value.~~

~~Family member. The term Family member means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those individuals who do not make a significant contribution to the farming operation themselves, or otherwise by marriage.~~

~~Farming operation. A farming operation is means a business enterprise engaged in the production of agricultural products, commodities, or livestock that is operated by an individual person, legal entity, or joint operation and is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1400.1. An entity or individual A person or legal entity may have more than one farming operation if such individual or entity person or legal entity is a member of one or more joint operations.~~

~~Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.~~

~~Interest in a Farming Operation. An individual, entity or joint operation has an interest in a farming operation if the individual, entity or joint operation means one of the following:~~

~~(1) Owns or rents Owner or renter of the land in the farming operation;~~

~~(2) Has An interest in the agricultural commodities produced products, commodities, or livestock produced by the farming operation; or~~

~~(3) Is a member of a joint operation that either owns or rents the land or has an interest in the agricultural commodities produced.~~

~~Irrevocable trust. All trusts shall be considered to be revocable trusts, except a trust may be considered to be an irrevocable trust if it is a trust means a trust as specified in this definition. Any trust not meeting this definition will be considered a revocable trust. A trust may be considered to be an irrevocable trust only if:~~

(1) ~~That~~ The trust may not be modified or terminated by the grantor;

(2) ~~In the corpus of which~~ The grantor ~~does not have any~~ has no future, contingent or remainder interest in the corpus of the trust; and

(3) ~~If established after January 1, 1987, that~~ The trust does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the remainder beneficiary achieving at least the age of majority or the death of the grantor or income beneficiary.

Joint operation. ~~A joint operation is~~ means a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Land. ~~Land is~~ means farmland that meets the specific requirements of the applicable program. Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.

~~(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation, or an entity, such land contributed to meet the requirements of:~~

~~(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:~~

~~(A) Any other individual, joint operation, or entity that has an interest in such farming operation;~~

~~(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or~~

~~(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest; and~~

~~(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and~~

~~(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation, such land contributed to meet the requirements of:~~

~~(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:~~

~~(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;~~

~~(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or~~

~~(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest; and~~

~~(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.~~

~~(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.~~

Lawful Alien means any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card ~~(Form I-551 or I-151).~~ issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Legal Entity means an entity created under Federal or State law and that:

- (1) Owns land or an agricultural commodity, product, or livestock, or
- (2) Produces an agricultural commodity, product, or livestock.

~~Loan commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, extra long staple cotton, rice, soybeans, other oilseeds, dry peas, lentil, small chickpeas, wool, mohair, peanuts and honey.~~

Payment means:

~~(1) Payments made in accordance with part 1412 of this chapter~~ or successor regulation of this chapter;

~~(2) Loan gains and loan deficiency payments made in accordance with parts 1421 and 1427 of this chapter;~~

~~(3) (2)CRP annual rental payments made in accordance with part 1410 of this chapter~~ or successor regulation of this chapter;

~~(4) (3) Non-Insured Crop Disaster Assistance Program NAP payments made in accordance with part 1437 of this chapter~~ or successor regulation of this chapter; and

~~(5) (4) For other programs, any payments designated in individual program regulations~~ or elsewhere in this part in this chapter.

~~Permitted entity. A permitted entity is an entity designated annually by an individual that is to receive a payment, loan, or benefit under a program specified in § 1400.1(a).~~

~~Person. (1) A person is:~~ means an individual, natural person and does not include a legal entity.

~~(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;~~

~~(ii) A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust combined with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation~~

~~as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and~~

~~(iii) A State, political subdivision, or agency thereof.~~

~~(2) In order for an individual or entity, other than an individual or entity that is a member of a joint operation, to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:~~

~~(i) Have a separate and distinct interest in the land or the crop involved;~~

~~(ii) Exercise separate responsibility for such interest; and~~

~~(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.~~

~~(3) With respect to an individual or entity that is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.~~

~~(4) Any cooperative association of producers that markets commodities for producers shall not be considered a person with respect to the commodities so marketed for producers.~~

Public school. ~~A public school is~~ means a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

Secretary means the Secretary of the United States Department of Agriculture.

Sharecropper. ~~An individual~~ means a person who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Significant contribution. ~~A significant contribution is~~ means the provision of the following to a farming operation ~~by an individual or entity:~~

(1)(i) ~~With respect to For~~ land, capital, or equipment contributed by an individual or entity, a contribution that has a value at least equal to 50 percent of the ~~individual's person's~~ or legal entity's commensurate share of the total:

(A) ~~The total~~ Value of the capital necessary to conduct the farming operation;

(B) ~~The total~~ Rental value of the land necessary to conduct the farming operation;

(C) ~~The total~~ Rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by ~~an individual a person~~ or legal entity consists of any combination of land, capital, and equipment, such combined contribution must have a value at least equal to 30 percent of the ~~individual's person's~~ or legal entity's commensurate share of the total value of the farming operation;

(2) ~~With respect to For~~ active personal labor, an amount ~~which is the smaller of~~ contributed by a person to the farming operation that is described by the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such ~~individual's or entity's~~ person's or legal entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution ~~individually by itself~~ meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when ~~viewed~~ made together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as provided in paragraphs (2) and (3) of this definition.

~~Substantial amount of active personal labor.~~ Substantial amount of active personal labor means the provision of active personal labor to a farming operation in an amount that is the smaller of:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation.

~~Substantial beneficial interest. A substantial beneficial interest in an entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity that are owned by an individual or entity directly or indirectly through such means as ownership of a corporation that owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.~~

Total value of the farming operation. ~~The total value of the farming operation is~~ means the total ~~of the costs, excluding the~~ value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1400.4 Indian tribal ventures.

~~—An individual American Indian who receives payments through other than an Indian tribal venture is required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1400.1.~~

~~Provisions of this part do not apply to Indian tribes as defined in § 1400.3.~~

§ 1400.5 ~~Scheme or device~~ Denial of Program Benefits.

(a) All or any part of the payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity ~~adopts or participates in adopting a scheme or device designed to evade this part or that has the effect of~~

~~evading fails to comply with the provisions of~~ this part. ~~Such acts shall include, but are not limited to:~~

~~(b) All or any part of the payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity adopts or participates in adopting a scheme or device designed to evade this part or that has the effect of evading this part. Such acts shall include, but are not limited to:~~

~~(1) Concealing information that affects the application of this part;~~

~~(2) Submitting false or erroneous information; or~~

~~(3) Creating fictitious entities for the purpose of a business arrangement using rental agreements and other arrangements to conceal the interest of a person or a 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. Indicators of such business arrangement include, but are not limited to the following:~~

~~(i) No crops are grown or agricultural commodities produced by the represented operation;~~

~~(ii) The represented operation has no appreciable assets;~~

~~(iii) The only source of capital for the operation is the program payments; or~~

~~(iv) The represented operation exists only for the receipt of program payments.~~

~~(b) (c) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of sections 1001, 1001A, or 1001C of the Food Security Act of 1985, as amended (7 U.S.C. 1281 note) 7 U.S.C. 1308, 1308-1, or 1308-3, as amended, such person shall be ineligible to receive payments under the programs specified in § 1400.1 with respect to in the year for which such scheme or device was adopted and the succeeding year.~~

~~(d) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, to exceed the applicable limit on payments or the requirements of this part will be subject to a five-year denial of all program benefits. Such other equally serious actions may include, but are not limited to:~~

~~(1) Knowingly engaged in, or aided in the creation of a fraudulent document;~~

~~(2) Failed to disclose material information relevant to the administration of the provisions of this part, or~~

~~(3) Any other actions of a person or legal entity determined by the Deputy Administrator as designed or intended to circumvent the provisions of this subpart.~~

~~(e) Program payments and benefits will be denied on a pro-rata basis:~~

~~(1) In accordance to the interest held by the person or legal entity in any other legal entity or joint operations and~~

~~(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.~~

§ 1400.6 ~~Commensurate contributions~~ Joint and Several Liability.

~~In order to be considered eligible to receive payments under the programs specified in § 1400.1 an individual or entity specified in §§ 1400.202 through 1400.210 must have:~~

~~(a) A share of the profits or losses from the farming operation that is commensurate with the individual's or entity's contribution to the operation; and~~

~~(b) Contributions to the farming operation that are at risk.~~

(a) Any legal entity, including joint ventures and general partnerships, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade the payment limitation provisions, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the payment limitation and payment eligibility provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute.

§ 1400.7 ~~Joint and several liability~~ Commensurate contributions and risk.

~~—If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability that arises therefrom. The provisions of this section shall be applicable in addition to any liability that arises under a criminal or civil statute.~~

(a) In order to be considered eligible to receive payments under the programs specified in § 1400.1 a person or legal entity specified in §§ 1400.202 through 1400.210 must have:

(1) A share of the profits or losses from the farming operation commensurate with the person's or legal entity's contribution to the operation;

(2) Contributions to the farming operation that are at risk for a loss. And

(3) Risk that is commensurate with the person's or legal entity's claimed share of the farming operation.

(b) [Reserved]

§ 1400.8 Equitable ~~adjustments~~ treatment.

(a) Actions taken by ~~an individual~~ a person or an legal entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary to provide fair and equitable treatment to such individual person or legal entity.

(b) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the NRCS Chief may be accepted as meeting the requirements of this part to the extent the NRCS Chief deems necessary to provide fair and equitable treatment to such person or legal entity.

§ 1400.9 Appeals.

(a) Any person or legal entity may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title. With respect to such appeals, the applicable reviewing authority ~~shall~~ will:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan initially presented to the county committee for the year that is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

~~§ 1400.10 Paperwork Reduction Act assigned number.~~

~~—The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0096.~~

Subpart B – Payment Limitations

§ 1400.100 ~~Timing for determining status of persons~~ Revocable Trust.

~~—(a) Except as otherwise set forth in this part, for the 1996 program or fiscal year, the status of an individual or entity on July 12, 1996, shall be the basis on which determinations are made in accordance with this part. Except as otherwise set forth in this part, for 1997 and subsequent years, the status of an individual or entity on April 1 of the applicable program or fiscal year, shall be the basis on which determinations are made in accordance with this part.~~

~~(b) Actions taken by an individual or entity after the applicable status date set forth in paragraph (a) of this section, but on or before the final harvest date of the last contract commodity in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the applicable program or fiscal year. Actions taken by a person after the status date set forth in paragraph (a) of this section, but on or before the harvest of the last contract commodity in the area, shall be used to determine whether there has been a decrease in the number of persons for the applicable program or fiscal year.~~

A revocable trust and the grantor of the trust will be considered to be the same person.

§ 1400.101 ~~Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities~~ Minor Children.

~~—(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.~~

~~(b) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, limited liability partnership, limited liability company, corporations, or other similar entities shall be considered to be one person.~~

~~(c) The percentage share of the interest in a limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity that is owned by an individual or other entity shall be determined as of the status date set forth in paragraph (a) of this section. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last contract commodity in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.~~

~~(d) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.~~

(a) Except as provided in paragraph (b) of this section, payments received by a child under 18 years of age as of April 1 of the applicable crop, program, or fiscal year, including such a person who is the beneficiary of a trust or who is an heir of an estate, will be attributed for the entire crop, program, or fiscal

year to the parent receiving the greater amount of program payments subject to this part or to any court-appointed person such as a guardian or conservator who is responsible for the minor.

(b) Payments received by a minor will not be attributed to the minor's parent or to any court-appointed person such as a guardian or conservator who is responsible for the minor if all the following apply:

(1) The minor is a producer on a farm and minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor, does not have any interest in the farm:

(2) The minor has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor, and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is separate accounting; and

(3) The minor does not live in the same household as such minor's parents and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor and

(ii) Ownership of the farm vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1400.102 ~~Joint operations~~ States, political subdivisions, and agencies thereof.

~~Members of joint operations may be separately treated as a person in accordance with the requirements of this part. However, members of a joint operation may request to be jointly treated as one person for the purposes of this part.~~

(a) A State, political subdivision, and agency thereof, is not eligible for payments or benefits under programs specified in § 1400.1, unless the exception provided in paragraph (b) of this section applies.

(b) Subject to the limitation in paragraph (c) of this section, a State, political subdivision, and any agency thereof, may receive payments or benefits under programs specified in § 1400.1 if both apply:

(1) The land for which payments are received is owned by the State, political subdivision, or agency thereof and

(2) The payments are used solely for the support of public schools;

(c) The total payments described in paragraph (b) of this section cannot exceed \$500,000 annually except with respect to payments made with respect to the following States: Alaska, Delaware, Hawaii, Idaho, Maine, Montana, North Dakota, New Hampshire, Rhode Island, South Dakota, Vermont, and Wyoming. The list of States that meet the criteria in paragraph (c) of this section may change due to changes in population of any State.

§ 1400.103 ~~Trusts~~ Charitable Organizations.

~~(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust that has a sole income beneficiary shall not be considered to be a separate person from~~

~~such income beneficiary.~~

~~(b) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.~~

~~(c) A revocable trust and the grantor of such revocable trust shall be considered to be one person.~~

(a) A charitable organization, including a club, society, fraternal or religious organization, will be considered to be a separate legal entity for payment limitation purposes to the extent that such an entity is independently engaged in the production of crops, agricultural commodities, or livestock, except where the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over such organization.

(b) If the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over the charitable organization, payments to the charitable organization will be attributed to the parent organization.

§ 1400.104 Estates Changes in farming operations.

~~If the deceased individual had lived and would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.~~

(a) Any change in a farming operation that would increase the number of persons or legal entities to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(1) The addition of a family member to a farming operation in accordance with § 1400.208, except that such an addition will not affect the status of any other individual or entity that is added to the farming operation;

(2) With respect to a landowner only, a change from a cash rent to a share rent;

(3) An increase through the acquisition of base acres not previously involved in the farming operation of at least 20 percent or more in the total base acres involved in the farming operation.

(i) For the purpose of payment limitations, such as increase in base acres will be considered in applicable bona fide and substantive change for the increase of only one person or legal entity to the farming operation, unless;

(ii) A representative of the State FSA office determines, based on the magnitude and complexity of the change represented, the increase in base acres supports additional persons or legal entities to the farming operation.

(4) A change in ownership by sale or gift of equipment from a person or legal entity previously engaged in a farming operation to a person or legal entity that has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if:

(i) The transferred amount of such equipment is commensurate with the new person's or legal entity's share of the farming operation,

(ii) The sale or gift of the equipment was based on the equipment's fair market value,

(iii) The former owner of the equipment has no control over the equipment,

(iv) The transaction was not financed by the former owner, and

(v) Preference was not given to the former owner to re-purchase the equipment at a later date.

(5) A change in ownership by sale or gift of land from a person or legal entity who previously engaged in a farming operation to a person or legal entity that has not been involved in such operation. The sale or gift of land will be considered to be substantive only if:

(i) The transferred amount of such land is commensurate with the new person's or legal entity's share of the farming operation,

(ii) The sale or gift of land was based on the land's fair market value

(iii) The former owner of the land has no control over such land,

(iv) The transaction was not financed by the former owner, and

(v) Preference was not given to the former owner to re-purchase the land at a later date.

(b) Unless the requirements in paragraph (a) of this section are met, the increase in person or legal entities in the farming operation will not be recognized for payment limitation purposes and the additional persons or legal entities are not eligible for program payment identified in § 1400.1 otherwise resulting from the farming operation.

§ 1400.105 ~~Husband and wife~~ Attribution of Payments.

~~—(a) With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:~~

~~(1) Prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse; or~~

~~(2) Except as provided in paragraph (b), do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive payments as a separate person from either spouse, the spouses may be considered as separate persons if each spouse otherwise meets the requirements under this part to be considered a separate person and is otherwise eligible to receive payment.~~

~~(b) With respect to any interest in an estate, for 2 program years after the program year in which the individual died, a husband and wife shall not be considered as having an interest in an entity to the extent resulting from such interest in an estate for purposes of determining persons.~~

(a) A payment made directly to a person or legal entity will be combined with the pro rata interest of the person or legal entity in payments received by a legal entity in which the person or legal entity has a direct or indirect ownership interest, unless the payments of the legal entity have been reduced by the pro rata share of the person or legal entity.

(b) A payment made to a legal entity will be attributed to those persons who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the pro rata share of the person.

(c) Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership – any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-tier or payment legal entity.

(2)(i) Second level of ownership – any payment made to a first tier-tier legal entity that is owned in whole or in part by another legal entity (referred to as a second-tier legal entity) will be attributed to the second-tier legal entity in proportion to the ownership of the second-tier legal entity in the first-tier legal entity;

(ii) If the second-tier legal entity is owned in whole or in part by a person, the amount of the payment made to the first-tier legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-tier legal entity by the person.

(3) Third and fourth levels – except as provided in paragraph (2)(ii) of this section, any payments made to a legal entity at the third and fourth tiers of ownership will be attributed in the same manner as specified in paragraph (2)(i) of this section.

(4) Fourth-tier ownership – if the fourth-tier ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-tier or payment legal entity in that amount that represents the indirect ownership in the first-tier or payment legal entity by the fourth-tier legal entity.

(d) For purposes of administering direct attribution, and to determine a person's or legal entity's ownership interest in a legal entity that receives a payment subject to limitation; the ownership interest on June 1 of each year will be used.

(e) Direct attribution of payments is not applicable to a cooperative association of producers with respect to commodities produced by the members of the association that are marketed by the association on behalf of the members of the association. The payments will instead be attributed to the producers as persons.

§ 1400.106 ~~Minor children~~ Payment Limits.

~~—(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.~~

~~(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor, if the minor is a producer on a farm and the minor's parent or any court appointed person such as guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition the minor must:~~

~~(1) Have established and maintain a separate household from the minor's parents or any court appointed person such as a guardian or conservator who is responsible for the minor and such minor personally~~

~~carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or~~

~~(2) Not live in the same household as such minor's parent and:~~

~~(i) Be represented by a court-appointed guardian or conservator who is responsible for the minor; and~~

~~(ii) Have ownership of the farm vested in the minor.~~

~~(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.~~

~~(a) Payments made to a person or legal entity will not exceed the amounts specified in subpart A of this part.~~

~~(b) Payments made to a joint venture or general partnership cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified in subpart A of this part by the number of persons and legal entities, other than joint ventures and general partnerships, that comprise the ownership of the joint venture or general partnerships~~

~~(c) Payments made to a legal entity will be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity that has otherwise reached the applicable maximum payment limitations.~~

~~§ 1400.107 States, political subdivisions, and agencies thereof~~ Notification of Interests.

~~—A State, political subdivision and agencies thereof shall be considered to be one person.~~

~~(a) In order to be eligible to receive any payment specified in subpart A of this part, or any other program as provided in individual program regulations in this chapter, a person or legal entity must, provide information in the manner as prescribed by the Deputy Administrator.~~

~~(b) The information required to be submitted under paragraph (a) of this section must include:~~

~~(1) The name and social security number of each person, or the name and taxpayer identification number of each legal entity, that holds or acquires an ownership interest in the legal entity and~~

~~(2) The name and taxpayer identification number of each legal entity in which the person or legal entity holds an ownership interest.~~

~~§ 1400.108 Charitable organizations:~~

~~—A charitable organization, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may transfer to an entity that exercises control or authority over such organization.~~

~~§ 1400.109 Changes in farming operations:~~

~~—Any change in a farming operation that would increase the number of persons to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following shall be considered to be~~

~~substantive changes in the farming operation:~~

~~(a) The addition of a family member to a farming operation in accordance with § 1400.208, except that such an addition will not affect the status of any other individual or entity that is added to the farming operation;~~

~~(b) With respect to a landowner only, a change from a cash rent to a share rent;~~

~~(c) An increase through the acquisition of cropland not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation, if such cropland has planting history of an amount at least normal for the area;~~

~~(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation;~~

~~(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.~~

Subpart C – Payment Eligibility

§ 1400.201 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered ~~a person who is~~ eligible to receive payments with respect to a particular farming operation, a person or legal entity must be ~~an individual or entity~~ actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the ~~individual person~~ or legal entity ~~independently makes a significant contribution to a farming operation, of:~~

(1) Independently makes a significant contribution to a farming operation, of:

~~(+)(i)~~ (i) Capital, equipment, or land, or a combination of capital, equipment, or land and

~~(+)(ii)~~ (ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(c) All of the following factors will be taken into consideration determining if the person or legal entity is independently and separately contributing a significant amount of capital, equipment, or land, to the farming operation:

(1) A separate and distinct interest in the land, crop, and livestock involved in the farming operation;

(2) The demonstration of separate and total responsibility for the interest in the land, crop, and livestock in the farming operation; and

(3) All funds and business accounts of the farming operation are separate from that of any other person and legal entity.

~~(e)~~ (d) In determining if the ~~individual person~~ or Legal entity is independently and separately actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area; ~~and~~

(3) The total amount of labor and management necessary for such a farming operation in the area; and

(4) Whether the person or legal entity receives compensation for the labor and management activities.

~~(d) In order to be considered to be actively engaged in farming an individual or entity specified in §§ 1400.202 through 1400.210 must have:~~

~~(1) A share of the profits or losses from the farming operation commensurate with the individual's or entity's contribution to the operation; and~~

~~(2) Contributions to the farming operation that are at risk.~~

§ 1400.202 Individuals Persons.

~~(a) An individual shall~~ A person will be considered to be actively engaged in farming with respect to a farming operation if ~~the individual makes a significant contribution of:~~

(1) The person independently and separately makes a significant contribution to a farming operation;

~~(a)~~ (i) Capital, equipment, or land, or a combination of capital, equipment, or land; and

~~(b)~~ (ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(b) If one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming as specified in paragraph (a) of this section, the other spouse is considered to have made a significant contribution, as specified in paragraph (a)(1)(ii) of this section, only to the same farming operation.

(c) If a farming operation is conducted by a person, and the capital, land, or equipment is contributed by the person, such capital, land, or equipment:

(1) Must be contributed directly by the person and must not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by:

(i) Any other person, joint operation, or legal entity that has an interest in such farming operation;

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

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

(2) If acquired as a loan made to, guaranteed, co-signed, or secured by the persons, joint operations, or legal entities, the loan must:

(i) Bear the prevailing interest rate and

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

§ 1400.203 Joint operations.

(a) A member of a joint operation shall be considered to be actively engaged in farming with respect to a farming operation if the member ~~makes a significant contribution of:~~

(1) makes a significant contribution of:

~~(+)~~ (i) Capital, equipment, or land or a combination of capital, equipment, or land; and

~~(=)~~ (ii) Active personal labor or active personal management or a combination of active personal labor and active personal management and that are:

(A) Performed on a regular basis,

(B) Identifiable and documentable, and

(C) Separate and distinct from such contributions of any other member of the farming operation;

(2) Has a share of the profits or losses from the farming operation commensurate with the member's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the member's claimed share of the farming operation.

~~(b) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1400.201(d), the members of the joint operation who make a significant contribution of active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation. For a farming~~

operation conducted by a joint operation in which the capital, land, or equipment is contributed by such joint operation, such capital, land, or equipment:

(1) Must be contributed directly by the joint operation and must not be acquired as a loan made to, guaranteed, co-signed, or secure by:

(i) any person, legal entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;

(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 other joint operation in whose farming operation such joint operation has an interest, and

(2) If acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations with an interest in the operation as defined, the loan must:

(i) Bear the prevailing interest rate and

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

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1400.201 ~~(d)~~ ~~(b)(2) and (b)(3)~~, the members of the joint operation who make a significant contribution of active personal labor, personal management, or a combination of active personal labor and active personal management to the farming operation as specified in paragraph (a)(1)(ii) of this section will shall be considered to be actively engaged in farming with respect to such farming operation.

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

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar legal entity shall be considered to be actively engaged in farming with respect to a farming operation if:

~~(a) (1) The legal entity independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and~~

~~(b) (2) The Each partner, stockholder, or member collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent. Fails to meet the requirements in paragraph (a)(2) of this section, any program payment and benefit subject to this subpart provided to the legal entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder, or member in the legal entity.~~

(i) Performed on a regular basis;

(ii) Identifiable and documentable; and

(iii) Separate and distinct from such contributions of any other partner, stockholder or member of the farming operation;

(3) The contribution of the partners, stockholders and members is significant and commensurate;

(4) The legal entity has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation; and

(5) The legal entity makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation.

(b) If any partner, stockholder, or member fails to meet the requirements in paragraph (a)(2) of this section, any program payment and benefit subject to this subpart provided to the legal entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder, or member in the legal entity.

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

(1) Must be contributed directly by the legal entity 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 legal entity's members;

(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 legal entity has an interest, and

(2) If 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.

§ 1400.205 Trusts.

A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The ~~entity~~ trust independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent;

(c) The trust has a share of profits or losses from the farming operation commensurate with the legal entity's contributions to the operation.

(d) The trust makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation;

~~(e)~~ (e) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

~~(f)~~ (f) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

§ 1400.206 Estates.

(a) For 2 program years after the program year in which ~~an individual a person~~ dies the ~~individual's person's~~ estate shall be considered to be actively engaged in farming if:

(1) The estate, or a legal entity, makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management; and

(3) The estate has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(4) The estate makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation; and

(5) The representative of the estate has provided a taxpayer identification number for the estate and a copy of a court order, will, or other legal document that identifies the heir(s) and tax identification number(s) of the heir(s).

(b) After the period set forth in paragraph (a) of this section, the deceased ~~individual's person's~~ estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines ~~that the estate has not been settled primarily~~ for the purpose of obtaining program payments, that the estate has not been settled.

§ 1400.207 Landowners.

(a) A person or legal entity who is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner:

(1) Receives rent or income for such use of the land based on the land's production or the operation's operating results;

(2) Has a share of profits or losses from the farming operation commensurate with the landowner's contribution to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the landowner's claimed share of the farming operation.

(b) A landowner also includes a member of a joint operation if the joint operation holds title to land in the name of the joint operation and if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such member of such joint operation.

§ 1400.208 Family members.

(a) Notwithstanding the provisions of §§ 1400.201 through 1400.206, with respect to a farming operation conducted by persons, a majority of whom ~~are individuals who are~~ family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming if the adult family member meets the provisions of paragraph (b) of this section.

(b) An adult family member who elects to be considered actively engaged in farming under this section must:

(1) Have a share of the profits or losses from the farming operation commensurate with such person's contributions to the operations and

(2) Make contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with such person's claimed share of the farming operation.

§ 1400.209 Sharecroppers.

(a) Notwithstanding the provisions of §§ 1400.201 through 1400.206 of this part, with respect to a person who is a sharecropper, such person will be considered to be actively engaged in farming if the sharecropper meets the provision of paragraph (b) of this section.

(b) A sharecropper who elects to be considered actively engaged in farming under this section must:

(1) Makes a significant contribution of active personal labor to the farming operation; ~~shall be considered to be actively engaged in farming.~~

(2) Have a share of the profits and losses from the farming operation commensurate with such person's contribution to the operation; and

(3) Make a contribution to the farming operation that is at risk for a loss, with the level of risk being commensurate with such person's claimed share of the farming operation.

§ 1400.210 Deceased and incapacitated ~~individuals~~ persons.

~~The determining authority shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year or fiscal year, as applicable.~~ If the ~~individual person~~ dies or is incapacitated before a determination is made that the ~~individual person~~ is "actively engaged in farming," the representative of the deceased ~~individual's person's~~ estate or the incapacitated ~~individual person~~, or other person if necessary, must provide the determining authority information to verify that such ~~individual person~~ did make a conscious effort to and would have been determined to be

actively engaged in farming if not for the ~~individual's person's~~ death or incapacitation. If the ~~individual person~~ dies or is incapacitated after being determined to be "actively engaged in farming," the determining authority shall allow such determination to be in effect for that program year or fiscal year, as applicable. However, the following year such ~~individual person~~ or the ~~individual's person's~~ estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

§ 1400.211 Persons and legal entities not considered to be actively engaged in farming.

An ~~individual person~~ or legal entity who does not satisfy all of the provisions of §§ 1400.202 1 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming. With respect to the farming operation

§ 1400.212 Hybrid seed producers.

The existence of a hybrid seed contract for a ~~producer shall~~ person or legal entity will not be taken into account when making an actively engaged in farming determination with respect to such ~~producer person or legal entity~~. However, such ~~producer person or legal entity~~ must satisfy all other applicable provisions of this part.

§ 1400.213 Military personnel.

If ~~an individual a person~~ is called to active duty in the military ~~because of Operation Iraqi Freedom, or any other similar military operation,~~ before a determination is made that the ~~individual person~~ is actively engaged in farming, ~~the individual may be considered to be actively engaged in farming~~ if the determining authority determines that such ~~individual person~~ did make a conscious effort to, and would have been determined to be, actively engaged in farming if the ~~individual person~~ would not have been called to active duty. If the ~~individual person~~ is called to active duty after being determined to be actively engaged in farming, such determination shall remain in effect for the program year.

Subpart D – Cash Rent Tenants

~~§ 1400.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification:~~

~~—(a) An individual may receive a payment under a program specified in § 1400.1(a) either directly or indirectly from no more than three permitted entities. An individual who receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual may only receive such payments as a result of a farming operation conducted by:~~

~~(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or~~

~~(2) No more than three entities in which the individual holds a substantial beneficial interest.~~

~~(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under a program specified in § 1400.1(a) shall, by the date the contract or agreement is submitted to the county committee, notify in writing:~~

~~(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and~~

~~(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.~~

~~(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:~~

~~(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and~~

~~(2) Such provisions would cause undue financial hardship on such entity.~~

~~(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section for which a contract or agreement has been submitted to the county committee shall notify the county committee in writing, in each county in which they conduct a farming operation, of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.~~

~~(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.~~

~~(e) If an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (d)(2).~~

§ 1400.301 Eligibility

(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in § 1400.1(a) ~~(1) and (2) shall be ineligible~~ will not be eligible to receive any payment with respect to such cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

(1) Active personal labor; or

(2) Significant contributions of both active personal management and equipment.

(b) If such equipment is leased by the tenant from:

(+) (1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area or; ~~and~~

~~(ii) (2) The same individual person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts. that reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.~~

~~(b) [Reserved]~~

~~(c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop year. Complete control is defined as exclusive access and use by tenant.~~

~~(d) If the cash rent tenant is a joint operation, then each member must make a significant contribution of active personal labor or active personal management as specified in § 1400.203(a)(1)(ii) to be considered eligible for the member's share of the program payments received by the joint operation on the cash rented land.~~

~~(e) If the cash rent tenant is a legal entity, then a significant contribution of active personal labor or active personal management must be made to the legal entity as specified in § 1400.204(a)(2) for the legal entity to be considered eligible for the program payments on the cash rented land.~~

Subpart E – Foreign Persons

§ 1400.401 Eligibility.

~~—(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in § 1400.1(a) shall be ineligible to receive any payment with respect to such cash-rented land unless the tenant makes a significant contribution to the farming operation of:~~

~~(1) Active personal labor; or~~

~~(2) Active personal management and equipment. If such equipment is leased by the tenant from:~~

~~(i) The landlord, the lease must reflect the fair market value of the equipment leased; and~~

~~(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts that reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.~~

~~(b) [Reserved]~~

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is ~~an individual who is~~ providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other legal entity shall be ineligible to receive payments, loan, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign individual who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by such legal entity.

(2) In determining whether more than 10 percent of the ~~beneficial~~ ownership of ~~an a~~ legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ~~beneficial~~ ownership interest shall be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the legal entity; or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other legal entity shall inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, or benefit has been made, the legal entity shall refund such payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, an ~~individual's~~ person's or legal entity's percentage share of the limited partnership, corporation or other similar legal entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the ~~individual person~~ or legal entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar legal entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar legal entity owned by ~~an individual a person~~ or legal entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are ~~lacking or are too scarce to be recognized unavailable or so infrequent that they do not represent fair market value~~, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

(c) A citizen of the United States, lawful alien, or legal entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by ~~an individual a person~~ or legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

§ 1400.~~502~~ 402Notification.

(a) Any legal entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:

(1) Any ~~individual, group of individuals, entity, or group of entities~~ person, group of persons, legal entity, or group of legal entities holds more than a 10 percent ~~beneficial~~ interest in such legal entity;

and

(2) Such ~~individual, group of individuals, entity, or group of entities~~ person, group of persons, legal entity, or group of legal entities, in accordance with § 1400.501, are ineligible to receive a payment, loan and benefit.

(b) Such written notification must, if known, include the name and social security number or taxpayer identification number of such ~~individual~~ person or legal entity and of all ~~individuals~~ persons and legal entities that hold a ~~beneficial~~ interest in the legal entity.

(c) The failure of the legal entity to provide this information will result in the ineligibility of the legal entity to receive any payment, loan, or benefit.

Subpart F – Average Adjusted Gross Income Limitation

~~§ 1400.501 Eligibility:~~

~~—(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.~~

~~(b)(1) A corporation or other entity shall be ineligible to receive payments, loan, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign individual who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by such entity.~~

~~(2) In determining whether more than 10 percent of the beneficial ownership of an entity is held by persons who are not citizens of the United States or by lawful aliens, the beneficial ownership interest shall be the higher of the amount of such interest on:~~

~~(i) The date the applicable program contract or agreement is executed by the entity; or~~

~~(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.~~

~~(3) A corporation or other entity shall inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.~~

~~(4) In the event of an increase in such ownership after a payment, loan, or benefit has been made, the entity shall refund such payment, loan, or benefit.~~

~~(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited~~

~~partnership, corporation or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.~~

~~(c) A citizen of the United States, lawful alien, or entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by an individual or entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.~~

~~§ 1400.502 Notification.~~

~~—(a) Any entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:~~

~~(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and~~

~~(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1400.501, are ineligible to receive a payment, loan and benefit.~~

~~(b) Such written notification must, if known, include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.~~

~~(c) The failure of the entity to provide this information will result in the ineligibility of the entity to receive any payment, loan, or benefit.~~

§ 1400.600 500 Applicability.

~~(a) For the 2003 through 2007-2009 through 2012 crop years, program years, or fiscal years, an individual a person or legal entity, other than a joint venture or general partnership, is not will not be eligible to receive, directly or indirectly, certain program for any payments or benefits identified described in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income of the person or legal entity exceeds \$2.5 million the amounts in paragraphs (b) through (d) of this section for the three tax years immediately preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator. the applicable crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.~~

~~(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, is derived from farming, ranching, or forestry operations. For 2009 through 2012 commodity programs set forth in § 1400.1, a person or legal entity with an average adjusted gross nonfarm income as defined in §1400.3 that exceeds \$500,000 will not be eligible to receive program payments or benefits as identified in §1400.1.~~

~~(e) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into for the 2003 through 2007 crop, program or fiscal years for the following programs:~~

~~(1) The program authorized by part 1466 of this chapter or its successor regulations;~~

~~(2) The program authorized by part 1467 of this chapter or its successor regulations;~~

~~(3) The program authorized by part 636 of this chapter or its successor regulations;~~

~~(4) Any other program authorized by Title XII of the 1985 Act, as amended, or Title II of the 2002 Act.~~

~~(5) Any other program to which this subpart is made applicable by statute or regulation.~~

(c) For 2009 through 2012 commodity programs set forth in § 1400.1, a person or legal entity that has an average adjusted gross farm income as defined in §1400.3 that exceeds \$750,000 will not be eligible to receive a direct payment and other payments made applicable by statute or regulation.

~~(d) Determinations made under this subpart with regard to the programs described in paragraphs (c)(1) through (c)(5) of this section will be based on the year for which the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.~~

For 2009 through 2012 conservation programs set forth in § 1400.1, a person or legal entity that has an average adjusted gross nonfarm income as defined in §1400.3 that exceeds \$1,000,000 will not be eligible to receive payments or benefits under conservation and related programs, and other programs made applicable by statute or regulation, unless:

(1) Not less than 66.66 percent of the of the average adjusted gross income of the person or legal entity is average adjusted gross farm income or

(2) This limitation may be waived on a case-by-case basis by the Administrator or NRCS Chief for the protection of environmentally sensitive land of special significance. Such a written waiver request must document that land within or adjacent to the producer's agricultural operation contains critical resources such as, but not limited to, threatened, endangered, or at-risk species; historical or cultural resources; unique wetlands; or critical groundwater recharge areas. In addition, the waiver request must either:

(i) Show that use of conservation program funding by an individual producer is critical to the success of a project that benefits multiple producers in a community, watershed, or other geographic area or

(ii) Achieve enduring conservation treatment through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land.

(e) Determinations made under this subpart with regard to conservation programs will be based on the year for which the conservation program contract or agreement is approved and the determination will apply for the entire term of the subject agreement or contract.

~~(f) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act made subject to this subpart by regulation or statute, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.~~

~~(f)~~ (g) Payments to an escrow agent or other legal entity of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant, are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

~~(g)~~ (h) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes as defined in § 1400.3 are not subject to this subpart.

§ 1400.~~601~~501 Determination of average adjusted gross income.

~~(a) For purposes of this subpart, income from farming, ranching or forestry operations means income of an individual or entity derived from: Except as otherwise provided in this subpart, average adjusted gross farm income of a person or legal entity includes income or benefits derived from or related to the following:~~

- ~~(1) Production of crops, specialty crops, livestock or and unfinished raw forestry products;~~
- ~~(2) Selling (including the sale of easements and development rights) their own farm, ranch or forestry land or water rights; The production of livestock, including but not limited to, cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry, fish and other aquaculture products used for food, honeybees, and products produced by, or derived from, livestock;~~
- ~~(3) Selling, but not as a dealer, equipment purchased to conduct farm, ranch or forestry operations when the equipment is otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F; The production of farm-based renewable energy;~~
- ~~(4) Renting land used for farming, ranching or forestry operations; and The sale, including the sale of easements and development rights, of farm, ranch, forestry land, water or hunting rights, or environmental benefits;~~
- ~~(5) Payments made under any program authorized under chapters VI, VII or XIV of this title. The rental or lease of land or equipment, used for farming, ranching, or forestry operations, including water or hunting rights;~~
- ~~(6) The processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities, including renewable energy;~~
- ~~(7) The feeding, rearing, or finishing of livestock;~~
- ~~(8) The sale of land that has been used for agriculture;~~
- ~~(9) Any payment or benefit, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;~~
- ~~(10) Payments and benefits authorized under any program made applicable to this subpart by statute or regulation;~~
- ~~(11) Any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator; and,~~
- ~~(12) Any income reported on the Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to the Internal Revenue Service.~~

~~(b) For purposes of this subpart, except as otherwise provided in this subpart, adjusted gross income means: For the specific purpose of determining the average adjusted gross farm income under §1400.500(d)(1), and in addition to §1400.501(a), the average adjusted gross farm income of a person or legal entity includes income or benefits derived from the following:~~

~~(1) For an individual filing a separate tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the individual for the applicable tax year; The sale of equipment to conduct farm, ranch, and forestry operations and~~

~~(2) For an individual filing a joint tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return; The provisions of production inputs and services to farmers, ranchers, foresters, and farm operations.~~

~~(3) For a corporation, including a subchapter S corporation, the total reported "taxable income" as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;~~

~~(4) For a tax exempt entity, the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;~~

~~(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and~~

~~(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.~~

~~(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. For an entity that is not required to file a federal income tax return, or an individual or entity that did not have taxable income in one or more tax years, the average shall be the adjusted gross income, including losses, averaged for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. However, a new entity will have its adjusted gross income averaged only for those years of the base period for which it was in business, but a new entity shall not be considered "new" to the extent it takes over a existing operation and has any elements of common ownership or interests with the preceding entity, or with individuals or entities with an interest in the "old" entity. When there is such commonality, income of the "old" entity will be averaged with that of the "new" entity for the base period.~~

Except as otherwise provided in this subpart, adjusted gross income means:

(1) For a person filing a separate tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the person for the applicable tax year;

(2) For a person filing a joint tax return, the amount reported as “adjusted gross income” on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the persons had filed two separate returns and that this calculation is consistent with the information supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported “taxable income” as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt legal entity, the “unrelated business taxable income” of the legal entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership, or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(d) For purposes of applying this subpart and calculating the 3-year average referenced in §1400.500, that average will be for the adjusted gross income for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. For a legal entity that is not required to file a federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years, the average will be the adjusted gross income, including losses, averaged for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. A new legal entity will have its adjusted gross income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered “new” to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or with persons or legal entities with an interest in the “old” legal entity. When there is such commonality, income of the “old” legal entity will be averaged with that of the “new” legal entity for the base period.

§ 1400.602 502 Compliance and Enforcement.

(a) To comply with the average adjusted gross income limitation, ~~an individual~~ a person or legal entity, including all interest holders in a legal entity, general partnership or joint venture, must provide the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the individual or entity does not exceed the applicable limitation;

(2) A certification ~~in the manner prescribed by CCC~~ from the ~~individual~~ person or legal entity that the average adjusted gross income of the ~~individual~~ person or legal entity does not exceed the applicable adjusted gross income limitations; ~~or~~

(3) ~~Submission to CCC of~~ The relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency,

information prepared for a private lender, and other credible information relating to the amount and source of the ~~individual's person's~~ or legal entity's income; or

(4) Authorization for CCC to obtain tax data from the Internal Revenue Service for purposes of verification of compliance with this subpart.

~~(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit income tax returns may be requested and if requested must be supplied. Relevant income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested. If an individual or entity has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such individual or entity shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.~~

(b)(1) All persons and legal entities are subject to an audit by FSA of any information submitted in accordance with this subpart. As a part of this audit, income tax returns may be requested, and if requested, must be supplied by all related persons and legal entities.

(2) In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested.

~~(c) The individual or entity shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.~~

~~(d) All information provided to CCC for the purposes of determining compliance with this subpart will remain confidential and not be subject to any request submitted under the Freedom of Information Act.~~

§ 1400.~~603-503~~ Commensurate Reduction.

(a) Any program payment or benefit subject to this subpart provided to a legal entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the legal entity, general partnership, or joint venture of each ~~individual person or legal~~ entity determined to have an average adjusted gross income in excess of the limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.

(b) Ownership interest in a legal entity shall be reviewed to the ~~fifth~~ fourth level of ownership, as specified in §1400.105, to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by ~~an individual a person~~ in the ~~fifth~~ fourth level of ownership in a legal entity, no payment or benefit will be made with respect to such interest.

~~Subpart G—~~

~~§ 1400.600 Applicability.~~

~~—(a) For the 2003 through 2007 crop years, program years, or fiscal years, an individual or entity is not eligible for any payment or benefit identified in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income exceeds \$ 2.5 million for the three tax years immediately preceding the applicable crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.~~

~~(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, is derived from farming, ranching, or forestry operations.~~

~~(c) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into for the 2003 through 2007 crop, program or fiscal years for the following programs:~~

~~(1) The program authorized by part 1466 of this chapter or its successor regulations;~~

~~(2) The program authorized by part 1467 of this chapter or its successor regulations;~~

~~(3) The program authorized by part 636 of this chapter or its successor regulations;~~

~~(4) Any other program authorized by Title XII of the 1985 Act, as amended, or Title II of the 2002 Act.~~

~~(5) Any other program to which this subpart is made applicable by statute or regulation.~~

~~(d) Determinations made under this subpart with regard to the programs described in paragraphs (c)(1) through (c)(5) of this section will be based on the year for which the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.~~

~~(e) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.~~

~~(f) Payments to an escrow agent or other of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.~~

~~(g) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes are not subject to this subpart.~~

~~§ 1400.601 Determination of average adjusted gross income.~~

~~—(a) For purposes of this subpart, income from farming, ranching or forestry operations means income of an individual or entity derived from:~~

~~(1) Producing crops, livestock or unfinished raw forestry products;~~

~~(2) Selling (including the sale of easements and development rights) their own farm, ranch or forestry land or water rights;~~

~~(3) Selling, but not as a dealer, equipment purchased to conduct farm, ranch or forestry operations when the equipment is otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F;~~

~~(4) Renting land used for farming, ranching or forestry operations; and~~

~~(5) Payments made under any program authorized under chapters VI, VII or XIV of this title.~~

~~(b) For purposes of this subpart, except as otherwise provided in this subpart, adjusted gross income means:~~

~~(1) For an individual filing a separate tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the individual for the applicable tax year;~~

~~(2) For an individual filing a joint tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return;~~

~~(3) For a corporation, including a subchapter S corporation, the total reported "taxable income" as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;~~

~~(4) For a tax-exempt entity, the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;~~

~~(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and~~

~~(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.~~

~~(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. For an entity that is not required to file a federal income tax return, or an individual or entity that did not have taxable income in one or more tax years, the average shall be the adjusted gross income, including losses, averaged for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. However, a new entity will have its adjusted gross income averaged only for those years of the base period for which it was in business, but a new entity shall not be considered "new" to the extent it takes over a existing operation and has any elements of common ownership or interests with the preceding entity, or with individuals or entities with an interest in the "old" entity. When there is such commonality, income of the "old" entity will be averaged with that of the "new" entity for the base period.~~

~~§ 1400.602 Compliance.~~

~~—(a) To comply with the average adjusted gross income limitation, an individual or entity, including all interest holders in an entity, general partnership or joint venture, shall provide the following as required by CCC:~~

~~(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the individual or entity does not exceed this limitation;~~

~~(2) A certification in the manner prescribed by CCC from the individual or entity that the average adjusted gross income of the individual or entity does not exceed this limitation; or~~

~~(3) Submission to CCC of the relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the individual's or entity's income.~~

~~(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit income tax returns may be requested and if requested must be supplied. Relevant income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested. If an individual or entity has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such individual or entity shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.~~

~~(c) The individual or entity shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.~~

~~(d) All information provided to CCC for the purposes of determining compliance with this subpart will remain confidential and not be subject to any request submitted under the Freedom of Information Act.~~

~~§ 1400.603 Commensurate reduction.~~

~~—(a) Any program payment or benefit subject to this subpart provided to an entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each individual or entity determined to have an average adjusted gross income in excess of the limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.~~

~~(b) Ownership interest in an entity shall be reviewed to the fifth level of ownership to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by an individual in the fifth level of ownership in an entity, no payment or benefit shall be made with respect to such interest.~~