

Commodity Credit Corporation, USDA

§ 1400.501

(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).

Subpart E—Cash Rent Tenants

§ 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 exer-

cise complete control over the use of a significant amount of the equipment during the current crop year.

(b) [Reserved]

Subpart F—Foreign Persons

§ 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.

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(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.

Subpart G—Average Adjusted Gross Income Limitation

§ 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;