

**§ 1400.402**

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 a person or legal entity will be determined by the Deputy Administrator on the basis of market quotations. If market quotations are unavailable or so infrequent that they do not represent fair market value, such percentage share will 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 a person or legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 19189, Apr. 14, 2010]

**§ 1400.402 Notification.**

(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 legal entity conducts its farming operation if:

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

(2) Such person, group of persons, legal entity, or group of legal entities, in accordance with §1400.401, are ineligible to receive a payment, loan, or benefit.

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

(c) The failure of the legal entity to provide this information will result in

**7 CFR Ch. XIV (1–1–14 Edition)**

the ineligibility of the legal entity to receive any payment, loan, or benefit.

**Subpart F—Average Adjusted Gross Income Limitation**

**§ 1400.500 Applicability.**

(a) For the 2009 through 2012 crop, program, or fiscal years, a person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in §1400.1 if the average adjusted gross income of the person or legal entity exceeds the amounts in paragraphs (b) through (d) of this section for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) 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.

(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) 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 provided in conjunction with programs 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.

(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.

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

**§1400.501 Determination of average adjusted gross income.**

(a) 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, and unfinished raw forestry products;

(2) 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) The production of farm-based renewable energy;

(4) The sale, including the sale of easements and development rights, of farm, ranch, forestry land, water or hunting rights, or environmental benefits;

(5) 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 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) The sale of equipment to conduct farm, ranch, or forestry operations and

(2) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

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

**§ 1400.502**

**7 CFR Ch. XIV (1-1-14 Edition)**

(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.

**§1400.502 Compliance and enforcement.**

(a) To comply with the average adjusted gross income limitation, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must provide annually 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 person or legal entity does not exceed the applicable limitation;

(2) A certification from the person or legal entity that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(3) 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 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.

## Commodity Credit Corporation, USDA

## § 1401.2

(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) 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.

### § 1400.503 Commensurate reduction.

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

(b) Ownership interest in a legal entity will be reviewed to the 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 a person in the fourth level of ownership in a legal entity, no payment or benefit will be made with respect to such interest.

## PART 1401—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.

1401.1 Applicability.

1401.2 Payments in lieu of cash payments.

1401.3 Payments to persons with outstanding CCC loans.

1401.4 Commodity certificates.

1401.5 In kind payments.

1401.6 Assignments.

1401.7 Miscellaneous provisions.

1401.8 Subsequent holders.

AUTHORITY: 15 U.S.C. 714b and 714c; 7 U.S.C. 1445d.

SOURCE: 51 FR 36921, Oct. 16, 1986, unless otherwise noted. Redesignated at 53 FR 20290, June 3, 1988, and further redesignated at 61 FR 37575, July 18, 1996.

### § 1401.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Farm Service Agency (FSA) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR part 713 set forth at §713.3 also shall be applicable to this part, except that the term "commodity" shall mean any agricultural commodity.

### § 1401.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or FSA, CCC may: at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the