

For: State and County Offices

Publication of Final Rule for Adjusted Gross Income (AGI)

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

The final rule to implement the average AGI limitation was published in the Federal Register on June 4, 2003. The average AGI provision is found at 7 CFR Part 1400-G, Average AGI Limitation.

B Purpose

This notice provides information on the following:

- the applicability of 7 CFR Part 1400-G
- determination of the average AGI
- guidance on implementing the average AGI provision pending revision of current procedure in 1-PL, Part 6.5.

See Exhibit 1 for a copy of the final rule.

Disposal Date January 1, 2004	Distribution State Offices; State Offices relay to County Offices
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2 Applicability - 7 CFR Section 1400.600

A Average AGI

The average AGI limitation applies to most FSA-administered programs, including price support and conservation programs, for the 2003 through 2007 crop, program, or fiscal years.

Note: The qualifying gross revenue limitation applies to the 2001 and 2002 Crop Disaster Program (CDP).

For program contracts or agreements that extend more than 1 crop, program, or fiscal year, the average AGI determination will:

- be based on the 3 tax years preceding the year for which the contract or agreement is approved
- the determination will apply for the entire terms of the contract or agreement.

B Multi-Year Agreements and Contracts

The average AGI limitation does not apply to multi-year contracts, such as a Conservation Reserve Program (CRP) contract, that were effective before October 1, 2002. The average AGI provision was not part of the original contract or agreement when executed.

If succession occurs to a multi-year contract or agreement that was effective:

- **before** FY 2003, the successor(s) **will not** be subject to the AGI provision on this contract or agreement
- for FY 2003 or subsequent years, the successor(s) **will be** subject to the AGI provisions on this contract or agreement.

3 Determination of the Average AGI - 7 CFR Section 1400.601

A 3-Year Average

The average AGI shall be the average of AGI for the 3 tax years immediately preceding the applicable crop, program, or fiscal years, as determined by CCC.

For an individual or entity that did not have taxable income in 1 or more tax years, the average shall be AGI, including losses, averaged for the 3 tax years immediately preceding the applicable crop, program, or fiscal year, as determined by CCC [Section 1400.601(c)].

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3 Determination of the Average AGI - 7 CFR Section 1400.601 (Continued)

B New Entities

A new entity will have its AGI averaged only for the years of the base period it was in business. However, a new entity shall not be considered “new” to the extent that it takes over an 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 a commonality, income of the “old” entity will be averaged with that of the “new” entity for the base period [Section 1400.601(c)].

C Sources of Income

For the purposes of determining the average AGI amount for program participants, income from farming, ranching, and forestry operations means income derived from:

- producing crops, livestock, or unfinished raw forestry products
- selling their own farm, ranch, and forestry land, and water rights
- selling, but not as a dealer, equipment purchased to conduct farm, ranch, or forestry operations when the equipment is otherwise subject to depreciation expense
- renting land used for farming, ranching, or forestry operations
- payments received under any Federally funded farm or conservation program [Section 1400.601(a)].

4 Implementing AGI Provision

A State and County Office Action

State and County Offices shall follow the contents of this notice and other instructions previously issued in implementing the average AGI limitation.

A forthcoming amendment to 1-PL, Part 6.5 will include these and other revisions to payment eligibility requirements.

7 CFR Part 1400 - Payment Limitation and Payment Eligibility

33346 Federal Register / Vol. 68, No. 107 / Wednesday, June 4, 2003 / Rules and Regulations

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority section for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

Subpart A—General Provisions

■ 2. Section 1400.1 is revised to add a new paragraph (h), to read as follows:

§ 1400.1 Applicability.

(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.

Subpart C—Actively Engaged in Farming Determinations

■ 3. Section 1400.213 is added to read as follows:

§ 1400.213 Military personnel.

If an individual 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 is actively engaged in farming, the individual may be considered to be actively engaged in farming if the determining authority determines that such individual did make a conscious effort to, and would have been determined to be, actively engaged in farming if the individual would not have been called to active duty. If the individual is called to active duty after being determined to be actively engaged in farming, such determination shall remain in effect for the program year.

■ 4. Subpart G is added to read as follows:

Subpart G—Average Adjusted Gross Income Limitation

- Sec.
- 1400.600 Applicability.
- 1400.601 Determination of average adjusted gross income.
- 1400.602 Compliance.
- 1400.603 Commensurate reduction.

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;
- (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

7 CFR Part 1400 - Payment Limitation and Payment Eligibility (Continued)

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 an 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.

Signed in Washington, DC, on May 28, 2003.

James R. Little,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03-13946 Filed 6-3-03; 8:45 am]

BILLING CODE 3410-05-P