

§ 1400.105

legal entities are not eligible for program payment identified in §1400.1 otherwise resulting from the farming operation.

§ 1400.105 Attribution of payments.

(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 and 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 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.

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(4) Fourth-tier ownership—if the fourth-tier of 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 the 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 Payment limits.

(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 partnership.

(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 by any person or legal entity that has otherwise reached the applicable maximum payment limitation.

§ 1400.107 Notification of interests.

(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.

Subpart C—Payment Eligibility

§ 1400.201 General provisions for determining whether a person or legal entity is actively engaged in farming.

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

(b) Actively engaged in farming means, except as otherwise provided in this part, that the person or legal entity:

(1) Independently and separately makes a significant contribution to a farming operation 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;

(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 in determining if the person or legal entity is independently and separately contributing a significant amount of capital, equipment, or land, or a combination 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.

(d) In determining if the person or legal entity is independently and separately contributing a significant amount of active personal labor or active personal management, all of the following factors will 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;

(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.

§ 1400.202 Persons.

(a) A person will be considered to be actively engaged in farming with respect to a farming operation if:

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

(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