

the hired labor must be two separate contracts.

(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 the 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 person who is not a citizen of the United States or a lawful alien will 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 providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other legal entity will be ineligible to receive payments, loans, and benefits if more than 10 percent of the ownership of the legal entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign person 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 a legal entity. However, upon the written request of the legal entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest

of the legal 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 ownership of a legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ownership interest will 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 must 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 will refund such payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, a person's or legal entity's percentage share of the limited partnership, corporation, or other similar legal entity will be based upon the outstanding shares of stock or other similar unit of ownership held by the person or legal entity as 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 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

Commodity Credit Corporation, USDA

§ 1400.500

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.

§ 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 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 com-

plete 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