

§ 795.16

be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(b) *Share lease.* If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced or the proceeds derived from the crop, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

[51 FR 8454, Mar. 11, 1986]

§ 795.16 Custom farming.

(a) Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for hire with remuneration on a unit of work basis, except that, for the purpose of applying the provisions of this section, the harvesting of crops and the application of agricultural chemicals by firms regularly engaged in such businesses shall not be regarded as custom farming. A person performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person performing the custom farming (and any other entity in which such person has more than a 20-percent interest) has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or any other similar capacity.

(b) A person having more than a 20-percent interest in any legal entity performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming service is paid at a unit of

7 CFR Ch. VII (1-1-12 Edition)

work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person having such interest in the legal entity performing the custom farming has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or in any other similar capacity.

§ 795.17 Scheme or device.

All or any part of the payments otherwise due a person under the upland cotton, wheat, feed grain and rice programs on all farms in which the person has an interest may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part or submitting false information to the county committee (for example, a set-aside agreement which is entered into that differs from information furnished to the county committee concerning the manner in which program payments are actually shared, concerning the actual facts of a sale, or concerning the transfer of property) or creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

§ 795.20 Joint and several liability.

Where two or more individuals or legal entities, who are treated as one person hereunder, receive payments which in the aggregate exceed the limitation, such individuals or legal entities shall be liable, jointly and severally, for any liability arising therefrom. The provisions of this part requiring the refund of payments shall be applicable in addition to any liability under criminal and civil fraud statutes.