

needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

#### Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The form that applicants will use to certify their income has been developed for on-line use. However, because of the nature of the other paperwork and documentation that may be needed to verify eligibility based on income, the use of electronic means of submission for those information collections is not feasible at this time.

#### Discussion of the Final Rule

##### Background

The 2002 Act authorized new programs and benefits, including direct payments and counter-cyclical payments for producers of certain covered commodities and for payments and other benefits under a number of new and revised conservation programs. Section 1604 of that Act amended the 1985 Act by adding a new section, 1001D, to provide that individuals or entities shall not be eligible to receive direct payments, counter-cyclical payments, marketing loan gains or a payment under any of the conservation programs authorized under title XII of the 1985 Act, nor a payment under the conservation programs of title II of the 2002 Act, if the three-year average of the adjusted gross income of the individual, or comparable measure for an entity, exceeds \$2.5 million. An exemption, though, is provided where not less than 75 percent of the average adjusted gross income is derived from farming, ranching, or forestry operations. Section 1001D also requires a commensurate reduction in the shares of payments to an entity proportional to the interest held in the entity by parties whose adjusted gross income is more than \$2.5 million.

CCC published a proposed rule as to its intentions for implementing income limits on October 28, 2002 at 67 FR 65738. The Agency received 72 timely filed letters containing 129 comments. Respondents included the following: 21 individuals, 15 corporations and similar entities, 8 commodity groups and

similar organizations, 7 State and Federal agencies, 4 churches, colleges and universities, 2 Certified Public Accountants, 1 financial institution, 10 farm management companies, and 4 research and environmental organizations. Comments were received from respondents in the following States: California, Colorado, Florida, Georgia, Hawaii, Iowa, Indiana, Kansas, Louisiana, Missouri, Minnesota, Mississippi, North Dakota, Nebraska, New York, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Washington, and the District of Columbia.

#### Discussion of Comments and Changes

Specific comments received, addressed in the same sequence as the final rule, are as follows:

##### Section 1400.600 Applicability

Comments were received from 32 respondents who were concerned about the programs to which the income limits are applied. Some respondents commented that the income limitation will adversely affect participation in conservation and environmental programs. These respondents suggested that conservation and environmental program participants be exempted from income limits. The respondents asserted an exemption was appropriate because the rule may preclude large landowners participation in these programs and thus defeat the purposes of environmental projects and initiatives, both State and Federal. It was also argued that under certain programs, such as the Wetland Reserve Program, easement payments are for reimbursing landowners for rights foregone. As such, in their opinion, these payments should not be classified as benefits and, therefore, not subject to the adjusted gross income limitation. It was also commented that the income limitation would adversely impact compliance with highly erodible land conservation and wetland conservation provisions. Several respondents commented that other programs, not referenced in the proposed rule, which have a gross revenue restriction should use the average adjusted gross income limitation instead. It was also commented that private colleges and educational institutions should be exempt from the rule altogether, as are public institutions, since the missions of the institutions are the same.

The statute provides that the average adjusted gross income limitation applies to any program authorized by title XII of the 1985 Act or titles I or II of the 2002 Act. There are no exceptions for conservation and environmental

programs and, in fact, they are specifically included. Section 1604 of the 2002 Act applies to all payments and covered benefits of the programs under the titles specified. Therefore, no exceptions are made in the final rule for payments and benefits authorized by these titles.

As to the comments concerning the application of this rule to other programs not referenced in the 2002 Act, it is true that a gross revenue restriction has been applied as a requirement for eligibility for other programs not included in the proposed rule. Although the gross revenue restriction and the average adjusted gross income limitation share a similar purpose, there are significant differences, different statutory schemes, and this rule is limited to application of the test provided for in the 2002 Act. For example, although the desire for one rule for all programs is understandable, the application of a qualifying gross revenue restriction per "person" to payments under the Noninsured Crop Disaster Assistance Program (NAP) is required by the statute authorizing NAP. However, for flexibility, provision is made to apply this subpart to other programs if so provided by statute or regulation in the future.

As to the program participants to be covered by these income limits, section 1001D(a)(1) of the 2002 Act provides that " \* \* \* the term 'average adjusted gross income,' with respect to an individual or entity (for purposes of this section as defined in section 1001(e)(2)(A)(ii)), means the three-year average of the adjusted gross income or comparable measure of the individual or entity over the preceding tax years, as determined by the Secretary." Section 1001 of the 1985 Act sets forth the statutory payment limitations applicable to certain commodity and conservation program benefits. Generally, these provisions have been the same since the enactment in 1987, and provide that the total amount of specified payments that a "person" may receive is limited to specified amounts per year.

Section 1001(e)(2)(A) defines the term "person" as follows:

\* \* \* the term "person" means—

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);

(ii) A corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint