

subsidiary corporation. If the consolidated tax returns indicate the average adjusted gross income of the parent company exceeds the limitation, all subsidiaries of the parent company would also be ineligible according to this subpart.

For charitable or nonprofit organizations with income that is not subject to Federal income taxation, the comparable measure of adjusted gross income is defined in this rule to be the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service less any other income CCC determines to be from non-commercial activities. Currently, that amount is specified on line 34 of Internal Revenue Service Form 990-T. Generally, this excludes receipts that are gifts, grants and contributions that are tax deductible by the donor. Effectively, the adjusted gross income for these entities is the net income from only their commercial activities.

For a limited liability company, limited partnership, limited liability partnership or similar organization, the adjusted gross income is the sum of the income from trade or business activities plus the guaranteed payments to the members as reported for the applicable tax year. Charitable contributions will be dealt with in the same manner as with other entities.

For an estate or trust, the adjusted gross income is the sum of the adjusted total income plus the charitable deductions as reported for the applicable tax year.

As indicated, individuals and entities who have average adjusted gross income in excess of \$2.5 million may still be eligible for covered benefits where their average adjusted gross income from farming, ranching, and forestry is not less than 75 percent of the total. Generally, the average adjusted gross income (AGI) of the individual or entity derived from farming, ranching or forestry will be, under the rule, determined based on the amounts as reported to IRS. The amount reported on applicable forms, currently IRS form 4835 and Schedule F, represent the net income from the farming operation after deductions for the cost of production. Income derived from forestry operations, to the extent it is not reported on these forms, will be the subject of a separate certification by the individual or entity as will be the case with other special income allowed to be counted toward the 75 percent level by the provisions of this rule.

Several respondents were concerned whether income from certain sources would be considered income from farming, ranching and forestry

operations. Of particular concern was the consideration of gains from the sale of assets used in the enterprise; income from the leasing of farmland; income from commercial hunting operations on the farm; proceeds from the sale of water rights; income from contract operations; and, whether income from participation in the Conservation Reserve Program, Wetlands Reserve Program, Environmental Quality Incentives Program and similar programs would be considered farm income.

By denying program benefits to those individuals and entities who have exceeded the \$2.5 million threshold, Congress intended that those individuals and entities who are dependent upon farming, ranching and forestry should be accorded deferential treatment. However, taking that into account and in response to the concerns expressed by respondents, the following clarifications and revisions are made:

(1) Income of a landowner generated by selling the landowner's land (including the sale of easements and development rights) used by the landowner or others for farming, ranching, or forestry operations will be considered to be income derived from farming, ranching or forestry operations;

(2) Income generated by selling farm water rights will be considered to be income derived from farming, ranching or forestry operations;

(3) Income from sales by a retail dealership of implements used in farming, ranching or forestry will not be considered to be income derived from farming, ranching or forestry operations, but income derived from the sale of a farm's agricultural equipment otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F will be considered to be such income;

(4) Income from the rental of land used for farming, ranching or forestry operations will be considered to be income derived from farming, ranching or forestry operations, regardless of whether the rental arrangement is on a cash or crop share basis;

(5) Income from agricultural or conservation program payments will be considered to be income from farming, ranching or forestry operations;

(6) Income from commercial hunting operations on farmland will be considered to be income derived from farming, ranching, or forestry operations;

(7) Income from sales at a market will only be considered to be income derived from farming, ranching or forestry operations if the commodity being sold was produced by the individual or

entity or a joint operation in which the individual or entity had an interest;

(8) Income from sales as a commission broker, auctioneer or warehouse operator or similar enterprise will not be considered to be income derived from farming, ranching or forestry operations; and

(9) In integrated operations, undifferentiated income (for example, income from a forestry operation that could not be differentiated between income from the production of the tree and from the sale of a finished product) will not be considered to be income derived from farming, ranching or forestry operations.

The proposed rule provided that, for the purpose of applying the average adjusted gross income limitation and calculating the three-year average, the average shall be the adjusted gross income for the three tax years immediately preceding the applicable crop, program, or fiscal year, as determined by CCC, excluding any year in which the individual or entity did not have income or had adjusted gross income considered to be zero. Several respondents suggested the exclusion of any year an individual or entity is not required to file a tax return, rather than excluding any year the individual or entity did not have income or the adjusted gross income was zero. The proposed rule was drafted to provide that a producer would not be allowed to average a loss year with a profitable year. Based on the suggestions, the wording of the final rule has been revised to allow for averaging loss years and no-income years with others, but for ongoing operations only. In some cases, the income of new entities will be averaged with those they replace in order to assure proper application of the average. Relief can be provided from that combination to the extent it would work unfairly in a particular instance.

Section 1400.602 Compliance

A total of 18 respondents provided comments on this section of the proposed rule. Some comments suggested that in addition to allowing the certification of compliance by a CPA or an attorney as provided in the proposed rule, certification from other professionals, such as farm management firms, should be allowed. One respondent commented that it would be a burdensome task for an entity with a large number of stockholders to obtain certifications of compliance with the average AGI limitation from stockholders. It was suggested that an exemption be made for corporations with more than 500 stockholders, and that the average AGI limitation be