

applied to the corporation, but not to the individual stockholders. There were also concerns expressed as to whether the business information provided to the local FSA offices would remain confidential. In other words, there were concerns about what safeguards and confidentiality measures would be implemented to ensure this information would remain private and not made public in some manner.

The statute requires that to comply with the average AGI limitation, an individual or entity shall provide either: (1) A certification from a “* * * certified public accountant or another third party that is acceptable to the Secretary;” or (2) information and documentation regarding the average adjusted gross income of the individual or entity through other procedures established by the Secretary. The proposed rule indicated that, in addition to a certification from a CPA, the only other acceptable certification from a third party would be from an attorney. Although others may have knowledge of the average adjusted gross income of an individual or entity, the Agency believes that limiting third party certifications to a CPA or an attorney is unlikely to create any hardship on participants and will provide a convenient and proper way of guaranteeing some expertise and training in the particular matter at issue. As to the comment about the application of the average AGI limitation to stockholders of a corporation, the statute requires a reduction in payments to an entity, general partnership or joint venture commensurate with the interest held by each individual who has an average adjusted gross income in excess of the limitation. There is no authority provided in the statute for any exemption to the requirement for a commensurate reduction when an individual who holds an interest in an entity has an average adjusted gross income in excess of the limitation. Therefore, the final rule makes no changes regarding the certification of compliance with this subpart.

With respect to confidentiality, the provisions of the final rule avoid conflict with existing regulations and procedures. All information submitted with respect to AGI matters will be treated with regard to confidentiality concerns in accordance with existing rules. Those rules take into account concerns like those expressed in the comments.

Section 1400.603 Commensurate Reduction

Comments were received from 4 respondents on this section of the proposed rule. It was commented that the number of levels should be lessened to 2 or 3 rather than 5 before a commensurate reduction is applied. However, it was also commented that no level of restriction for the commensurate reduction should be established.

Based upon the agency's experience in administering section 1001 relating to the maximum payments a “person” may receive, CCC has determined that business enterprises comprised of layered ownership are often established simply to maximize the receipt of government payments. The rule should allow sufficient layering to accomplish legitimate business need while affording what otherwise would be a dodge of a statutory test or endless tracing of corporate interests back to individuals. Accordingly, no changes were made in the final rule to this section on commensurate reduction.

Miscellaneous

Miscellaneous comments were received suggesting editorial and grammatical corrections and such. A few editorial changes are made from the text and structure of the proposed rule for clarity and for ease of administration. This rule also includes an addition to the “actively engaged in farming” provisions subpart C of part 1400 to address eligibility issues relating to reservist military personnel called to active duty.

Cost Benefit Assessment

The average adjusted gross income limitation not only applies to payments under the commodity and price support programs, but to all payments and benefits under the conservation and related programs. It includes, but is not limited to, direct and counter-cyclical payments, conservation reserve and environmental quality incentive program payments, loan deficiency payments and marketing loan gains.

For the 2003 through 2007 crop, program or fiscal years, individuals and entities are not eligible for payments or benefits from the above-mentioned programs if their average adjusted gross income exceeds \$2.5 million for the three tax years immediately preceding the applicable crop, program or fiscal year. This requirement applies unless 75 percent or more of that average adjusted gross income amount was derived from farming, ranching or forestry operations.

The determinations necessary for compliance with the average adjusted

gross income limitation will be generally based on Internal Revenue Service concepts and information included on final tax filings. Comparable measures for adjusted gross income have been developed for entities, partnerships and for organizations that do not have such a line item on tax filings, and that are non-profit, or are not required to file tax information.

By statute, under the average adjusted gross income provisions, there is a required commensurate reduction of program payments in the situations where an owner of an entity applying for benefits fails the test. Accordingly, any program payment or benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount commensurate with the direct or indirect interest held by that individual or entity that is determined to have an average adjusted gross income that exceeds the limitation.

Note that those ineligible for marketing loan gains and loan deficiency payments because of the adjusted gross income restriction may still be eligible to participate to a degree in the marketing assistance loan programs. Loans may be obtained and forfeited when commodity prices decrease. An individual or entity that fails the test will still be able to use commodity certificates to repay those loans at a rate lower than the original loan rate. Benefits they realize from the reduced payment rate, essentially the same as marketing loan gains, are not subject to payment limits or the adjusted gross income restrictions.

The 2002 Act mandates that the adjusted gross income limitation apply to the 2003 through 2007 crop years. In May 2002, the Congressional Budget Office estimated that savings from the average adjusted gross income limitation will total \$22 million in fiscal years 2002 through 2006.

The Cost/Benefit Assessment of the adjusted gross income limitation is available from James Baxa, Production, Emergencies, and Compliance Division, United States Department of Agriculture (USDA), 1400 Independence Ave, SW., Washington, DC 20250. Phone: (202) 720-4189. E-mail: James.Baxa@wdc.usda.gov.

List of Subjects in 7 CFR Part 1400

Agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 7 CFR part 1400 is amended as follows: