

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority section for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

Subpart A—General Provisions

■ 2. Section 1400.1 is revised to add a new paragraph (h), to read as follows:

§ 1400.1 Applicability.

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(h) As provided in Subpart G of this part, additional requirements are applicable to certain of the payments specified in paragraph (g) of this section.

Subpart C—Actively Engaged in Farming Determinations

■ 3. Section 1400.213 is added to read as follows:

§ 1400.213 Military personnel.

If an individual is called to active duty in the military because of Operation Iraqi Freedom, or any other similar military operation, before a determination is made that the individual is actively engaged in farming, the individual may be considered to be actively engaged in farming if the determining authority determines that such individual did make a conscious effort to, and would have been determined to be, actively engaged in farming if the individual would not have been called to active duty. If the individual is called to active duty after being determined to be actively engaged in farming, such determination shall remain in effect for the program year.

■ 4. Subpart G is added to read as follows:

Subpart G—Average Adjusted Gross Income Limitation

Sec.

1400.600 Applicability.

1400.601 Determination of average adjusted gross income.

1400.602 Compliance.

1400.603 Commensurate reduction.

Subpart G—Average Adjusted Gross Income Limitation

§ 1400.600 Applicability.

(a) For the 2003 through 2007 crop years, program years, or fiscal years, an individual or entity is not eligible for any payment or benefit identified in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income exceeds \$2.5 million for the three tax years immediately preceding the applicable

crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.

(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, is derived from farming, ranching, or forestry operations.

(c) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into for the 2003 through 2007 crop, program or fiscal years for the following programs:

(1) The program authorized by part 1466 of this chapter or its successor regulations;

(2) The program authorized by part 1467 of this chapter or its successor regulations;

(3) The program authorized by part 636 of this chapter or its successor regulations;

(4) Any other program authorized by Title XII of the 1985 Act, as amended, or Title II of the 2002 Act.

(5) Any other program to which this subpart is made applicable by statute or regulation.

(d) Determinations made under this subpart with regard to the programs described in paragraphs (c)(1) through (c)(5) of this section will be based on the year for which the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.

(e) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.

(f) Payments to an escrow agent or other of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(g) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes are not subject to this subpart.

§ 1400.601 Determination of average adjusted gross income.

(a) For purposes of this subpart, *income from farming, ranching or forestry operations* means income of an individual or entity derived from:

(1) Producing crops, livestock or unfinished raw forestry products;

(2) Selling (including the sale of easements and development rights) their own farm, ranch or forestry land or water rights;

(3) Selling, but not as a dealer, equipment purchased to conduct farm, ranch or forestry operations when the equipment is otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F;

(4) Renting land used for farming, ranching or forestry operations; and

(5) Payments made under any program authorized under chapters VI, VII or XIV of this title.

(b) For purposes of this subpart, except as otherwise provided in this subpart, *adjusted gross income* means:

(1) For an individual filing a separate tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the individual for the applicable tax year;

(2) For an individual filing a joint tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported "taxable income" as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt entity, the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions