

§ 1400.105

7 CFR Ch. XIV (1–1–24 Edition)

bona fide and substantive change for the increase of only one person or legal entity to the farming operation, unless;

(ii) A representative of the State FSA office determines, based on the magnitude and complexity of the change represented, the increase in agricultural land supports additional persons or legal entities to the farming operation; or

(4) A change in ownership by sale or gift of equipment from a person or legal entity previously engaged in a farming operation to a person or legal entity that has not been involved in the operation. The sale or gift of equipment will be considered to be bona fide and substantive only if:

(i) The transferred amount of the equipment is commensurate with the new person's or legal entity's share of the farming operation;

(ii) The sale or gift of the equipment was based on the equipment's fair market value;

(iii) The former owner of the equipment has no direct or indirect control over the equipment;

(iv) The transaction was not financed by the former owner; and

(v) Preference was not given to the former owner to re-purchase the equipment at a later date; or

(5) A change in ownership by sale or gift of land or livestock from a person or legal entity who previously has been engaged in a farming operation to a person or legal entity that has not been involved in the operation. The sale or gift of land or livestock will be considered to be bona fide and substantive only if:

(i) The transferred amount of the land or livestock is commensurate with the new person's or legal entity's share of the farming operation;

(ii) The sale or gift of land or livestock was based on land's or livestock's fair market value;

(iii) The former owner of the land or livestock has no direct or indirect control over the land or livestock;

(iv) The transaction was not financed by the former owner; and

(v) Preference was not given to the former owner to re-purchase the land or livestock at a later date.

(b) Unless the requirements in paragraph (a) of this section are met, the increase in persons in the farming operation will not be recognized for payment limitation purposes and the additional persons or legal entities are not eligible for program payment identified in §1400.1 otherwise resulting from the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 85 FR 52038, Aug. 24, 2020]

§ 1400.105 Attribution of payments.

(a) A payment made directly to a person or legal entity will be combined with the pro rata interest of the person or legal entity in payments received by a legal entity in which the person or legal entity has a direct or indirect ownership interest, unless the payments of the legal entity have been reduced by the pro rata share of the person or legal entity.

(b) A payment made to a legal entity will be attributed to those persons who have a direct and indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the pro rata share of the person.

(c) Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership—any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-tier or payment legal entity;

(2)(i) Second level of ownership—any payment made to a first-tier legal entity that is owned in whole or in part by another legal entity (referred to as a second-tier legal entity) will be attributed to the second-tier legal entity in proportion to the ownership of the second-tier legal entity in the first-tier legal entity;

(ii) If the second-tier legal entity is owned in whole or in part by a person, the amount of the payment made to the first-tier legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-tier legal entity by the person.

(3) Third and fourth levels—except as provided in paragraph (2)(ii) of this section, any payments made to a legal entity at the third and fourth tiers of ownership will be attributed in the same manner as specified in paragraph (2)(i) of this section.

(4) Fourth-tier ownership—if the fourth-tier of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-tier or payment legal entity in the amount that represents the indirect ownership in the first-tier or payment legal entity by the fourth-tier legal entity.

(d) For purposes of administering direct attribution, and to determine a person's ownership interest in a legal entity that receives a payment subject to limitation; the ownership interest on June 1 of each year will be used.

(1) If the change in ownership interest is due to the death of an interest holder in the legal entity or the legal entity did not exist on June 1 of the applicable year, the Deputy Administrator may determine that a change after June 1 is considered relevant or effective for the current year.

(2) Changes that occur after June 1 cannot be used to increase the amount of program payments a legal entity, or its members, is eligible to receive directly or indirectly for the applicable year.

(e) Direct attribution of payments is not applicable to a cooperative association of producers with respect to commodities produced by the members of the association that are marketed by the association on behalf of the members of the association. The payments will instead be attributed to the producers as persons.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.106 Payment limits.

(a) Direct or indirect payments made to a person or legal entity will not exceed the amounts specified in subpart A of this part and will be determined in accordance with § 1400.105.

(b) Payments made to a joint operation cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified

in subpart A of this part by the number of persons and legal entities, other than joint operations, that comprise the ownership of the joint operation.

(c) Payments made to a legal entity will be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has otherwise reached the applicable maximum payment limitation.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

Subpart C—Payment Eligibility

§ 1400.201 General provisions for determining whether a person or legal entity is actively engaged in farming.

(a) To be considered eligible to receive payments with respect to a particular farming operation, a person or legal entity must be actively engaged in farming with respect to the operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the person or legal entity:

(1) Independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(c) All of the following factors will be taken into consideration in determining if the person or legal entity is independently and separately contributing a significant amount of capital, equipment, or land, or a combination of capital, equipment, or land, to the farming operation: