

## Commodity Credit Corporation, USDA

## § 1400.3

county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by the county committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by the county committee that is not in accordance with this part or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this part to a State or county committee precludes the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

(f) The initial payment eligibility determinations will be made within 60 days after the required forms and any other supporting documentation needed in making the determinations are received in the county FSA office. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for the applicable year.

(g) Initial determinations concerning the provisions of this part will be made by the FSA State office with respect to any farm operating plan that is for a joint operation with six or more members.

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted at any time to determine compliance with applicable statutes and regulations. The completion of the reviews is not subject to the time con-

straints specified in paragraph (f) of this section.

(i) The Deputy Administrator will periodically monitor the status of completion of assigned compliance reviews and take any actions deemed appropriate to ensure timely completion of reviews for payment eligibility and payment limitation compliance purposes.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 80 FR 78128, Dec. 16, 2015; 85 FR 52036, Aug. 24, 2020]

### § 1400.3 Definitions.

(a) The terms defined in part 718 of this title are applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions are also applicable to this part:

*Active personal management* means personally providing and participating in activities considered critical to the profitability of the farming operation and performed under one or more of the following categories:

(1) Capital, which includes:

(i) Arranging financing and managing capital;

(ii) Acquiring equipment;

(iii) Acquiring land or negotiating leases;

(iv) Managing insurance; and

(v) Managing participation in USDA programs;

(2) Labor, which includes hiring and managing of hired labor; and

(3) Agronomics and marketing, which includes:

(i) Selecting crops and making planting decisions;

(ii) Acquiring and purchasing crop inputs;

(iii) Managing crops (that is, whatever managerial decisions are needed with respect to keeping the growing crops living and healthy—soil fertility and fertilization, weed control, insect control, irrigation if applicable) and making harvest decisions; and

(iv) Pricing and marketing of crop production.

*Administrator* means the Administrator of the Farm Service Agency including any designee of the Administrator.

*Alien* means any person not a citizen or national of the United States.

*Attribution* means the combination of any payment made directly to a person or legal entity with the person's or legal entity's pro rata direct and indirect interest in payments received by a legal entity, joint venture, or general partnership.

*Average Adjusted Gross Income* means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year.

*Capital* means the funding provided by a person or legal entity to the farming operation for the operation to conduct farming activities. In determining whether a person or legal entity has independently contributed capital, in the form of funding, to the farming operation, the capital must have been derived from a fund or account separate and distinct from that of any other person or legal entity with an interest in the farming operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution must be a direct out-of-pocket input of a specified sum or an amount borrowed by the person or legal entity and does not include advance program payments.

*Chief* means the Chief of the Natural Resources Conservation Service including any designee of the Chief (also referred to in this part as NRCS Chief).

*Contribution* means providing land, capital, or equipment assets, and the actions of providing active personal labor or active personal management to a farming operation in exchange for, or with the expectation of, deriving benefit based solely on the success of the farming operation.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency including any designee.

*Environmentally sensitive land of special significance* means land offered for enrollment or adjacent to the land offered for enrollment that contains, or through enrollment will address, critical

resources including, but not limited to:

- (1) Habitat for threatened, endangered, or at-risk species;
- (2) Historical or cultural resources;
- (3) Native grasslands;
- (4) Unique wetlands;
- (5) Rare, unique, or related soils; and
- (6) Critical groundwater recharge areas.

*Equipment* means the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on CRP acreages and those needed to conduct livestock operations. The equipment may be leased from any source. If the equipment is leased from another person or legal entity with an interest in the farming operation, the equipment must be leased at a fair market value.

*Family member* means a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, first cousin, niece, nephew, spouse, or otherwise by marriage.

*Farming operation* means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation that is eligible to receive payments, directly or indirectly, under one or more of the programs specified in §1400.1. A person or legal entity may have more than one farming operation if the person or legal entity is a member of one or more joint operations.

*Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601-1629h), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

*Interest in the farming operation* means any of the following:

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(1) Owner, lessor, or lessee of the land in the farming operation;

(2) An interest in the agricultural products, commodities, or livestock produced by the farming operation; or

(3) A member of a joint operation that is an owner, lessor, or lessee of the land in the farming operation or has an interest in the agricultural products, commodities, or livestock produced by the farming operation.

*Irrevocable trust* means a trust as specified in this definition. Any trust not meeting this definition will be considered a revocable trust. A trust may be considered to be an irrevocable trust only if:

(1) The trust cannot be modified or terminated by the grantor;

(2) The grantor has no future, contingent, or remainder interest in the corpus of the trust; and

(3) The trust agreement does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the remainder beneficiary achieving at least the age of majority or the death of the grantor or income beneficiary.

*Joint operation* means a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

*Land* means farmland that meets the specific requirements of the applicable program. The land may be leased from any source. If the land is leased from another person or legal entity with an interest in the farming operation, the land must be leased at a fair market value.

*Lawful alien* means any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses appropriate valid credentials issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

*Legal entity* means an entity created under Federal or State law and that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

*Livestock* means those animals included in § 1416.304(a) of this chapter.

*Payment* means:

(1) Payments made in accordance with part 1412 of this chapter or successor regulation of this chapter;

(2) CRP annual rental payments made in accordance with part 1410 of this chapter or successor regulation of this chapter;

(3) NAP payments made in accordance with part 1437 of this chapter or successor regulation of this chapter;

(4) ELAP, LIP, LFP, and TAP payments made in accordance with part 1416 of this chapter or successor regulations of this chapter;

(5) Price support payments made in accordance with parts 1421 and 1434 of this chapter; and

(6) For other programs, any payments designated in individual program regulations in this chapter.

*Person* means an individual, natural person and does not include a legal entity.

*Public school* means a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

*Secretary* means the Secretary of the United States Department of Agriculture.

*Sharecropper* means a person who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of the crop in return for work.

*Significant contribution* means the provision of the following to a farming operation:

(i)(A) For land, capital, or equipment contributed independently by a person or legal entity, a contribution that has a value at least equal to 50 percent of the person's or legal entity's commensurate share of the total:

(1) Value of the capital necessary to conduct the farming operation;

(2) Rental value of the land necessary to conduct the farming operation; or

(3) Rental value of the equipment necessary to conduct the farming operation; or

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(B) If the contribution by a person or legal entity consists of any combination of land, capital, and equipment, such combined contribution must have a value at least equal to 30 percent of the person's or legal entity's commensurate share of the total value of the farming operation;

(ii) For active personal labor, an amount contributed by a person to the farming operation that is described by the smaller of the following:

(A) 1,000 hours per calendar year; or

(B) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such person's or legal entity's commensurate share in the farming operation;

(iii) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the person's or legal entity's commensurate share in the farming operation; and

(iv) With respect to a combination of active personal labor and active personal management, when neither contribution by itself meets the requirement of paragraphs (ii) and (iii) of this definition, a combination of active personal labor and active personal management that, when made together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as defined in paragraphs (ii) and (iii) of this definition.

*Substantial amount of active personal labor* means the provision of active personal labor to a farming operation in an amount described by the smaller of the following:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to the person's or legal entity's commensurate share in the farming operation.

*Total value of the farming operation* means the total of the costs, excluding the value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry

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out the farming operation for the year for which the determination is made.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014; 85 FR 52037, Aug. 24, 2020; 85 FR 73602, Nov. 19, 2020]

#### § 1400.4 Indian Tribe.

Provisions of this part do not apply to Indian tribes as defined in § 1400.3.

#### § 1400.5 Denial of program benefits.

(a) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part.

(b) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part and adopts or participates in adopting a scheme or device designed to evade this part, or that has the effect of evading this part. Examples of acts may include, but are not limited to:

(1) Concealing information that affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements and other arrangements to conceal the interest of a person or legal entity in a farm or farming operation for the purpose of obtaining program payments the person or legal entity would otherwise not be eligible to receive. Examples of business arrangements or acts include, but are not limited to the following:

(i) No crops are grown or agricultural commodities produced by the represented operation;

(ii) The represented operation has no appreciable assets;

(iii) The only source of capital for the operation is the program payments; or

(iv) The represented operation exists only for the receipt of program payments.

(c) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to