

arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to the land under a program specified in §1400.1(a)(1) and (2) will not be eligible to receive any payment with respect to the cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

- (1) Active personal labor; or
  - (2) Significant contributions of both active personal management and equipment.
- (b) If the equipment is leased by the tenant from:
- (1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area; or
  - (2) The same person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts.
- (c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop year. Complete control is defined as exclusive access and use by the tenant.
- (d) If the cash rent tenant is a joint operation, then each member or their spouse must make a significant contribution of active personal labor or active personal management as specified in §1400.203(a)(1)(ii) to be considered eligible for the member's share of the program payments received by the joint operation on the cash rented land.
- (e) If the cash rent tenant is a legal entity, then a significant contribution of active personal labor or active personal management must be made to the legal entity as specified in §1400.204(a)(2) for the legal entity to be considered eligible for the program payments on the cash rented land.

[85 FR 52040, Aug. 24, 2020]

### Subpart E—Foreign Persons

#### § 1400.401 Eligibility.

(a) Subject to the conditions set out in paragraphs (b) and (c) of this section, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101–1778) will be ineligible to receive any type of loans or payments made available under Title I of the Food, Conservation, and Energy Act of 2008, the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714–714o), or subtitle D of Title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3836), or under any contract entered into under Title XII of that Act (16 U.S.C. 3801–3845), with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by the person, unless the person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on the farm. Likewise, and subject to the same conditions, such persons may be ineligible for payments under any other program which by its own regulations specifically provides for that ineligibility and adopts the regulations in this subpart.

(b)(1) A corporation or other legal entity will be ineligible to receive payments, loans, and benefits if more than 10 percent of the ownership of the legal entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign person who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by the legal entity. However, upon the written request of the legal entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the legal entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by the legal entity.

### Subpart D [Reserved]

## § 1400.402

(2) In determining whether more than 10 percent of the ownership of a legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ownership interest will be the higher of the amount of the interest on:

(i) The date the applicable program contract or agreement is executed by the legal entity or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other legal entity must inform the county committee of any increase in ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in ownership after a payment, loan, or benefit has been made, the legal entity will refund the payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, a person's or legal entity's percentage share of the limited partnership, corporation, or other similar legal entity will be based upon the outstanding shares of stock or other similar unit of ownership held by the person or legal entity as compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar legal entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar legal entity owned by a person or legal entity will be determined by the Deputy Administrator on the basis of market quotations. If market quotations are unavailable or so infrequent that they do not represent fair market value, the percentage share will be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of the stock or other unit of ownership, including the various rights and privileges that are attributed to each the class.

(c) A citizen of the United States, lawful alien, or legal entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by a person or

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legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 19189, Apr. 14, 2010]; 85 FR 52040, Aug. 24, 2020]

### § 1400.402 Notification.

(a) Any legal entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the legal entity conducts its farming operation if:

(1) Any person, group of persons, legal entity, or group of legal entities holds more than a 10 percent interest in the legal entity; and

(2) The person, group of persons, legal entity, or group of legal entities, in accordance with §1400.401, are ineligible to receive a payment, loan, or benefit.

(b) Written notification must include the name and social security number or taxpayer identification number of the a person or legal entity, if known, and of all persons and legal entities that hold an interest in the legal entity.

(c) The failure of the legal entity to provide this information will result in the ineligibility of the legal entity to receive any payment, loan, or benefit.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52040, Aug. 24, 2020]

## Subpart F—Average Adjusted Gross Income Limitation

### § 1400.500 Applicability.

(a) A person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in §1400.1 if the average adjusted gross income of the person or legal entity exceeds \$900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) Determinations made under this subpart for conservation programs are:

(1) Applicable starting with the 2015 fiscal year, except for AMA which is applicable with the 2014 fiscal year;