

#### § 1400.4

(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

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evade, or that has the purpose of evading, the provisions of 7 U.S.C. 1308, 1308-1, or 1308-3, as amended, the person or legal entity will be ineligible to receive payments under the programs specified in §1400.1 in the year the scheme or device was perpetrated or adopted and the succeeding year.

(d) A person or legal entity that lies or perpetuates fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, to exceed the applicable limit on payments or the requirements of this part will be subject to a 5-year denial of all program benefits. Examples of equally serious actions include, but are not limited to:

(1) Knowingly engaged in, or aided in the creation of a fraudulent document;

(2) Failed to disclose material information relevant to the administration of the provisions of this part, or

(3) Any other actions of a person or legal entity determined by the Deputy Administrator as designed or intended to circumvent the provisions of this subpart.

(e) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance to the interest held by the person or legal entity in any other legal entity or joint operations and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52038, Aug. 24, 2020]

### § 1400.6 Joint and several liability.

(a) Any legal entity, including joint operations, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other equally serious actions to evade the payment limitation provisions in this part, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other examples of equally serious actions mentioned in this section or in §1400.5, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the payment limitation and payment eligibility provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute.

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

### § 1400.7 Revocable trust.

A revocable trust and the grantor will be considered to be the same person under this part.

[85 FR 52038, Aug. 24, 2020]

### § 1400.8 Equitable treatment.

(a) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the Administrator may be accepted as meeting the requirements of this part to the extent the Administrator deems necessary to provide fair and equitable treatment to the person or legal entity.

(b) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the NRCS Chief may be accepted as meeting the requirements of this part to the extent the NRCS Chief deems necessary to provide fair and equitable treatment to the person or legal entity.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52038, Aug. 24, 2020]

### § 1400.9 Appeals.

(a) A person or legal entity may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth in part 780 of this title. With respect to the appeals, the applicable reviewing authority will:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) will not apply if: