

## Commodity Credit Corporation, USDA

## § 1400.205

management, or a combination of active personal labor and active personal management to the farming operation as specified in paragraph (a)(1)(ii) of this section will be considered to be actively engaged in farming with respect to the farming operation.

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

### **§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations, and other similar legal entities.**

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar legal entity will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The legal entity independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(2) Each partner, stockholder, or member with an ownership interest or their spouse with an ownership interest makes a contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation; that are:

(i) Performed on a regular basis;

(ii) Identifiable and documentable; and

(iii) Separate and distinct from the contributions of any other partner, stockholder or member of the farming operation;

(3) The collective contribution of the partners, stockholders and members is significant and commensurate;

(4) The legal entity has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation; and

(5) The legal entity makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation.

(b) If any partner, stockholder, or member fails to meet the requirements

in paragraph (a)(2) of this section, any program payment and benefit subject to this subpart provided to the legal entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder, or member in the legal entity.

(c) An exception to paragraph (b) of this section will apply if:

(1) At least 50 percent of the stock is held by partners, stockholders, or members that are actively providing labor or management and

(2) The partners, stockholders, or members are collectively receiving, directly or indirectly, total payments equal to or less than one payment limitation.

(d) For a farming operation conducted by a legal entity in which the capital, land, or equipment is contributed by the legal entity, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1) of this section, must be contributed directly by the legal entity and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

(2) To meet the requirements of paragraphs (a)(4) and (a)(5) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

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

### **§ 1400.205 Trusts.**

A trust will be considered to be actively engaged in farming with respect to a farming operation if:

(a) The trust independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(b) The income beneficiaries collectively make a significant contribution

of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management, must be at least 50 percent;

(c) The trust has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(d) The trust makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation;

(e) For a farming operation conducted by a trust in which the capital, land, or equipment is contributed by the trust, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the trust and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

(2) To meet the requirements of paragraphs (c) and (d) of this section and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(f) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

(g) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

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

**§ 1400.206 Estates.**

(a) For 2 program years after the program year in which a person dies, the person's estate will be considered to be actively engaged in farming if:

(1) The estate, as a legal entity, makes a significant contribution of either:

(i) Capital, equipment, or land or  
(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management or

(ii) The combination of active personal labor and active personal management; and

(3) The estate has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(4) The estate makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation; and

(5) The representative of the estate has provided a tax identification number for the estate and a copy of a court order, will, or other legal document that identifies the heir(s) and tax identification number(s) of the heir(s).

(b) For a farming operation conducted by an estate in which the capital, land, or equipment is contributed by the estate, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the estate and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

(2) To meet the requirements of paragraphs (c)(3) and (a)(4) of this section, and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and