

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

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

(c) After the period set forth in paragraph (a) of this section, the deceased person's estate will not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines, for the purpose of obtaining program payments, that the estate has not been settled.

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

### § 1400.207 Landowners.

(a) A person or legal entity that is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, will be considered to be actively engaged in farming with respect to the owned land, if the landowner:

(1) Receives rent or income for the use of the land based on the land's production or the operation's operating results;

(2) Has a share of the profits or losses from the farming operation commensurate with the landowner'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 landowner's claimed share of the farming operation.

(b) A landowner also includes a member of a joint operation if the joint operation holds title to land in the name of the joint operation and if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to the member of the joint operation.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

### § 1400.208 Family members.

(a) Notwithstanding the provisions of §§1400.201 through 1400.206, with respect to a farming operation conducted by persons, a majority of whom are family members, an adult family member who makes a significant contribution of ac-

tive personal labor, active personal management, or a combination of active personal labor and active personal management will be considered to be actively engaged in farming if the adult family member meets the provisions in paragraph (b) of this section.

(b) An adult family member who elects to be considered actively engaged in farming under this section must:

(1) Have a share of the profits or losses from the farming operation commensurate with the person's contributions to the operation and

(2) Make contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's claimed share of the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

### § 1400.209 Sharecroppers.

(a) Notwithstanding the provisions of §§1400.201 through 1400.206 of this part, with respect to a person who is a sharecropper, the person will be considered to be actively engaged in farming if the sharecropper meets the provisions of paragraph (b) of this section.

(b) A sharecropper who elects to be considered actively engaged in farming under this section must:

(1) Make a significant contribution of active personal labor to the farming operation;

(2) Have a share of the profits or losses from the farming operation commensurate with the person's contribution to the operation; and

(3) Make a contribution to the farming operation that is at risk for a loss, with the level of risk being commensurate with the person's claimed share of the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

### § 1400.210 Deceased and incapacitated persons.

If the person dies or is incapacitated before a determination is made that the person is "actively engaged in farming," the representative of the deceased person's estate or the incapacitated person, or other person if necessary, must provide the determining