

## Commodity Credit Corporation, USDA

## § 1400.210

(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

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authority information to verify that the person did make a conscious effort to and would have been determined to be actively engaged in farming if not for the person's death or incapacitation. If the person dies or is incapacitated after being determined to be "actively engaged in farming," the determining authority will allow the determination to be in effect for that program year or fiscal year, as applicable. However, the following year the person or the person's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

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

### **§ 1400.211 Persons and legal entities not considered to be actively engaged in farming.**

Any person or legal entity that does not satisfy all of the applicable provisions of §§1400.201 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity will not be considered to be actively engaged in farming with respect to the farming operation.

### **§ 1400.212 Growers of hybrid seed.**

The existence of a hybrid seed contract for a person or legal entity will not be taken into account when making an actively engaged in farming determination with respect to the person or legal entity. However, the person or legal entity must satisfy all other applicable provisions of this part.

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

### **§ 1400.213 Military personnel.**

If a person is called to active duty in the military before a determination is made that the person is actively engaged in farming, the person may be considered to be actively engaged in farming if the determining authority determines that the person did make a conscious effort to, and would have been determined to be, actively engaged in farming if the person would not have been called to active duty. If the person is called to active duty after being determined to be actively en-

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gaged in farming, the determination will remain in effect for the program year.

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

### **§ 1400.214 Cash rent tenants.**

(a) Any tenant that is actively engaged in farming in accordance with the provisions of this subpart and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any 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