

§ 1400.202

7 CFR Ch. XIV (1–1–24 Edition)

(1) A separate and distinct interest in the land, crop, and livestock involved in the farming operation;

(2) The demonstration of separate and total responsibility for the interest in the land, crop, and livestock in the farming operation; and

(3) All funds and business accounts of the farming operation are separate from that of any other person and legal entity.

(d) In determining if the person or legal entity is independently and separately contributing a significant amount of active personal labor or active personal management, all of the following factors will be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area;

(3) The total amount of labor and management necessary for the farming operation in the area; and

(4) Whether the person or legal entity receives compensation for the labor and management activities.

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

§ 1400.202 Persons.

(a) A person will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The person independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

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

(b) If one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming as specified in paragraph (a) of this section, the

other spouse is considered to have made a significant contribution, as specified in paragraph (a)(1)(ii) of this section, only to the same farming operation.

(c) If a farming operation is conducted by a person, and the capital, land, or equipment is contributed by the person, the capital, land, or equipment:

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

(2) To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if acquired as a loan made to, guaranteed, co-signed, or secured by the persons, joint operations, or legal entities, 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]

§ 1400.203 Joint operations.

(a) A member of a joint operation will be considered to be actively engaged in farming with respect to a farming operation if the member:

(1) Makes a significant contribution of:

(i) Capital, equipment, or land or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management, and that are:

(A) Performed on a regular basis,

(B) Identifiable and documentable, and

(C) Separate and distinct from the contributions of any other member of the farming operation;

(2) Has a share of the profits or losses from the farming operation commensurate with the member's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a