FARM BUREAU® 2018 Farm Bill Position

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The Definition of Actively Engaged for Payment Limit Eligibility Must be Changed

ISSUE

The 2014 Farm Bill directed USDA to define a "significant contribution of active personal management" for payment limit purposes and consider limits on the number of farm managers qualifying for more than one payment limit for purposes of governing commodity program payment limits. Family-only farming operations were exempted from the directive.

BACKGROUND

In 2015, USDA published a rule that governs the ability of non-family partnerships and joint ventures to qualify for payment limit eligibility. The rule made the following changes:

- It applies the new payment eligibility requirements only to general partnerships or joint ventures that include business partners unrelated by blood or marriage and who do not actually work on the farm. Importantly the rule does not apply to farms operated by family members. A family member is "a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage."

- It limits the number of individuals who may qualify as actively engaged on the basis of providing active personal management to a nonfamily farming operation. The new definition of significant contribution of active personal management requires an annual contribution of 500 hours of management or at least 25 percent of the total management required for the operation.

- It includes a list of qualifying management activities, which excludes passive management activities, and includes a requirement that managers keep records of their management activities and activity logs for nonfamily farming operations seeking to qualify more than one farm manager.

- It limits the number of individuals qualifying for payments using the "management criteria." Specifically, the rule restricts the number of farm managers to one person per nonfamily farming operation, except that a large farm (defined as more than 2,500 acres of cropland, etc.) may qualify a second farm manager and a complex farm operation (defined as more than one crop or enterprise) may, after review and approval of the state Farm Service Agency committee, qualify a third manager.

POSITION

In order to be eligible for farm program benefits and possible payments, all program participants, either individuals or legal entities, must provide significant contributions to the farming operation to be considered as "actively engaged in farming." Contributions include capital, land and/or equipment, as well as active personal labor and/or active personal management, or a combination of active personal labor and active personal management.

There are two exemptions to the above rules. The first is that both spouses may be considered "actively engaged in farming" if one spouse makes all of the requisite and at-risk contributions. Second, landowners may be considered "actively engaged in farming" if they contribute the owned land to the farming operation and, in return, receive rent or income for the use of the land. The landowner's share of the profits or losses from the farming operation must also be commensurate with the landowner's contributions to the farming operation and the contributions must be at risk.

Each partner, stockholder, or member with an ownership interest must contribute active personal labor and/or active personal management to the farming operation on a regular basis. The contribution must be identifiable and documented, as well as separate and distinct from the contributions made by any other partner, stockholder, or member. If any partner, stockholder, or member with an ownership interest fails to meet this requirement, program payments are reduced by the corresponding share held by that partner, stockholder, or member.

The rule is onerous at best. The limit of a maximum of three managers is arbitrary and doesn't allow for operations to adopt the management style that best suits their needs. It severely restricts the management options for nonfamily farm operations and does not reflect how real world operations divide up various management responsibilities.

Farmers and managers are now required to keep records that include the date, time, location, and duration of each management activity. Farming requires decision making all day, every day, and keeping records of every minute spent considering and making a decision for the farm is a daunting task. Records must be made available upon request in a timely manner, or the operation faces the risk of forfeiting all farm program payments for two years.

The definition of a "family member" impacts operations that are not solely comprised of lineal family members. However, entities comprised solely of family members eventually will be impacted by this rule. While family operations are not currently impacted by the rule, an eligible family operation often becomes non-lineal upon the death or retirement of a parent or grandparent. That means many family operations will have to comply with the new requirements in the future.

FARM BUREAU POLICY

Farm Bureau policy supports:

- "modifying "actively engaged" rules to more broadly define "family" by including non-lineal family members such as first or second cousins;"
- "the family farm exemption from the management restriction;" and
- "record-keeping requirements should remain in place."