

Written evidence submitted by the NFU (FR0062)

The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life.

We welcome the EFRA Committee call for evidence on the Farming Rules for Water (FRW) and correspondence between the Committee and the Environment Agency (EA) in advance of the call for evidence. The EA's current interpretation of regulation 4 (1) of the FRW – commonly known as rule one – runs counter to common good agricultural practice and does not result in the best outcome for the environment. As a result, our members are extremely concerned about the impact of rule one on their businesses as well as widely held ambitions to reduce pollution, improve soils, optimise all nutrient resources, and reach net zero by 2040.

Concern among our membership peaked this year as the implications of the Environment Agency's interpretation became clear. Defra must now intervene to ensure the same situation does not arise next year. The solution lies in all parties adopting a common-sense interpretation of rule one that benefits farmers, water quality, and wider environmental ambitions. We must work together urgently to secure this outcome and communicate it to farmers in a clear and timely fashion – many are already planning manure applications for next autumn.

We have answered all of the questions posed by the Committee in full below and hope you find our input constructive. As ever, we would be more than happy to discuss the points raised in more detail at any oral evidence sessions that follow.

What impact, if any, are the EAs implementation of Farming Rules for Water having on spreading organic fertiliser?

As we understand, the EA's current interpretation of rule one means a farmer cannot apply organic manure unless the receiving crop has an immediate need for all of the readily available nitrogen (RAN) contained therein. That is to say, manure containing RAN cannot be legitimately applied to a crop in a single application in order to help meet the nitrogen needs of the same crop later in the season. The EA has previously cited compost as a potential exception to this interpretation, as it contains an 'insignificant' amount of RAN¹.

This approach is completely at odds with decades of good agricultural practice in the UK, where many farmers apply manures to drier soils in the autumn or winter to help meet both the immediate and longer-term nitrogen need of the receiving crop. It is important to note that these applications also help to meet the wider short- and long-term needs of the soil and crop, through delivering other important nutrients (such as phosphate), as well as adding essential organic matter.

The EA has – mistakenly – used the AHDB's Nutrient Management Guide (RB209) to indicate which crops require additional nitrogen in the autumn and, therefore, may legitimately receive manure applications at that time. By this logic, oilseed rape and grass are among the few crops to which a farmer can still apply manure in the autumn, with applications to the vast majority of other winter-sown cereals falling foul of the EA's interpretation.

If the EA's interpretation of rule one is carried forward, farmers may have to reduce the amount of manure applied to crops like oilseed rape and grass, while cutting applications to crops like wheat and barley altogether. Of course, this would create an instant and unmanageable practical issue on many farms, where the production or import of manures far outstrips the immediate need of accessible soil and crops.

¹ See the EA's [FAQ document on the Farming Rules for Water](#), published in August 2021

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Considering the level of manure production is often closely tied to the viability of a livestock business, significantly reducing animal numbers to produce less manure is simply not an option for most. And, with limited opportunities for livestock and arable farms to treat or export manures, many would be faced with the prospect of having to store more manures over the winter and spread them during the following year. The majority of cereals are winter sown, and autumn application is the most viable way to apply organic manures to these crops. The EA's current interpretation of rule one will bring significant practical difficulties to using these important nutrient resources, and improving soil health with organic manures, as most cannot be applied to a growing crop in the spring. Given the importance of winter-sown cereals in the food and feed supply chains, many growers are likely to use less organic manure rather than alter rotations to suit the EA's interpretation.

A recent impact assessment of the EA's interpretation of rule one, conducted by ADAS on behalf of the AHDB, modelled this scenario². The work looked at the likely consequences of shifting around seven million tonnes of solid manures applications and three million cubic metres of slurry applications from autumn to the following spring. Key findings included:

- Between six- and nine-months' worth of storage would be required to accommodate the extra slurry – the current legal requirement ranges from four- to six-months' worth.
- Spring applications would encounter significant practical barriers, such as using spreading equipment on wet soils and applying solid manures to partially grown crops.
- Ammonia and phosphate losses from agriculture would increase by a greater extent than nitrate losses would decrease.

Our members have raised a number of other impacts across multiple sectors, some of which have already been keenly felt. For instance, some so-called 'muck for straw' deals – an arrangement whereby a livestock farm trades manure with a local arable farm in return for straw – have fallen through this year, as the latter became nervous about complying with the EA's interpretation of rule one. These occurrences left livestock farmers with more manure than expected, with limited opportunity to spread it on grass before animals take to the field next year. Some arable farms had already accepted biosolids from water companies too, forcing them to find extra storage space on farm or, where possible, arrange for it to be returned. Horticulture farmers also face a unique set of challenges around having to leave six months between spreading and sowing certain crops as well as supplying enough organic matter for field scale salad and vegetable crops.

More generally, there is a widespread concern among members that the EA's interpretation of rule one is ultimately discouraging the production and use of manures and biowastes, at a time when Defra is trying to move farmers away from manufactured fertiliser. In reality, as not all autumn applications could be moved to the following spring, the current interpretation of rule one may effectively reduce the total volume of manures applied. Given the multiple benefits of manure use, the authorities should be actively encouraging the use of this important natural resource and in a coordinated way, particularly in light of the ongoing challenges in the manufactured fertiliser market. The vast amount of organic matter supplied by manures will also play a vital role in helping farmers deliver the aims of the recently announced soil standards in the Sustainable Farm Incentive (SFI). Defra must ensure that all government agencies are delivering consistent policy messages to farmers.

To date, the EA's work has appeared to focus on the supply and uptake of nitrogen from manures, with clear implications for autumn applications. However, we have also heard reports of the regulator taking an equally concerning approach to other important nutrients in manures, particularly phosphate. Some of our members have been told they cannot apply manures to land where the soil phosphate index is above two – the target index, as referenced in RB209.

We strongly believe the target index for phosphate is just that; an optimal level that farmers can work towards over time, rather than a pre-requisite for applying manures. The main reason for this view is

² See the AHDB's [impact assessment of the Farming Rules for Water](#), published in June 2021

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that there is a spectrum of pollution risk from low to high indices, which can be influenced by local conditions and farming practices. Therefore, there are ample opportunities for the EA to work locally with farmers to reduce risk, without telling them to stop spreading manures in a blanket way.

Are there changes that should be made to the rules or how they are applied?

In terms of rule one, the NFU takes no issue with the regulation as such; it is *the EA's interpretation* of the regulation that is causing concern among our members. Rule one of the FRW sets out reasonable requirements around planning manure and fertiliser applications, so as not to exceed soil and crop needs or cause a significant risk of pollution. Nowhere in the regulation does it say that applications must only meet the immediate nutrient needs of the crop at the time of the application.

We have engaged heavily with the relevant authorities throughout the development of the FRW and at no point was there any indication that rule one would be interpreted in this rigid way. Indeed, shortly before the regulations were introduced in 2018, Defra said they would allow farmers to '*determine what approach is best for their land*', such as '*deciding when it is safe to spread fertilisers*'. The then-Environment Minister, Thérèse Coffey, said the rules would be '*a win-win for farmers and the environment*', '*help businesses save money*', and help deliver a '*better future for farming business*'³.

Nor did we foresee the interpretation arising, given farmers typically meet soil and crop needs over timescales ranging from the lifespan of a single crop (nitrogen) through to crop rotations (phosphate) and longer (organic matter). Moreover, no matter what the timescale, soil and crop needs are best met with multiple appropriately-timed manure and/or fertiliser applications – an approach that helps ensure needs are not exceeded with a single application.

Clearly, the current EA interpretation of rule one is not in line with the original ambitions of Defra or the expectations of industry. And, with the EA refusing to listen to industry concerns, the impetus is now on Defra to intervene and find an interpretation that works for all parties. Thankfully, we have received assurances to this effect from ministers in recent weeks, culminating in a productive meeting with them, the EA, and industry on 2 December. At that meeting, we agreed that the terms of reference for the EA working group on rule one would be rewritten to reflect our dialogue. However, this work needs to be progressed rapidly, as we need the working group to produce clear messaging for farmers on rule one in good time for next autumn, preferably before the current regulatory position statement expires on 1 March.

As noted above, the EA has often called upon RB209 to support its interpretation of rule one, which is both a misuse of the document and a misrepresentation of the information therein. RB209 is just one of several useful sources of nutrient management advice available to farmers and advisors, created by the industry, for the industry. The document is certainly not intended to be formal regulation or regulatory guidance and, therefore, should not be used by the regulator to justify a legal requirement. Specifically, the EA cites the nitrogen recommendations – or lack thereof – in RB209 to indicate whether manures can be applied to the crop in the autumn. However, these recommendations are partly based on an economic assessment of using manufactured fertiliser rather than manure, for which the economic profile is likely to be far more preferable. Moreover, all crops will take up at least some nitrogen in the autumn, and so the requirement for additional nitrogen will depend on the soil nitrogen supply – a field specific assessment.

What are the best ways of preventing agricultural diffuse pollution?

The NFU would like to clearly state that our opposition to the EA's interpretation of rule one is not an attempt to limit the role of agriculture in helping further improve water quality. While the quality of our rivers has improved markedly over recent decades – thanks in no small part to the actions of farmers –

³ See Defra's [news story on the regulations](#), published in 2017

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we do recognise more needs to be done and stand ready to do our fair share. However, this effort must be balanced with both the economic prosperity of the industry and achieving wider environmental ambitions.

Although we do not believe regulation is the best way of addressing diffuse pollution from agriculture, we do accept the FRW will be in place for the foreseeable future, and we will continue to raise awareness of the regulations among our membership. Since 2018, we have held numerous member meetings, written many informative communications, and even produced a podcast, all as part of a sustained effort to help our members remain compliant. Only this summer, we worked with industry partners and the EA to produce fresh guidance for farmers and advisers on rule one, focusing on nutrient management planning and managing risk⁴. We now look forward to working constructively with the authorities to develop and communicate any new messages around rule one that may stem from the working group over the next few months.

While the authorities have made some effort to communicate the FRW since they were introduced – the EA will often attend our member meetings, for instance – we do believe they could have done more and done so more clearly. Before this summer, a straw poll of grassroots members would typically have suggested awareness of the regulations is very low and understanding of them perhaps even lower. More of our members may now be aware of the regulations, but there is also a huge amount of concern and confusion, specifically around rule one. The outcome of the working group should provide the authorities with an opportunity to start afresh with their communications, through the provision of clear and workable requirements in good time for next autumn.

Putting the FRW aside, we believe the best way of addressing diffuse pollution from agriculture is through voluntary action, encouraged by the right mix of advice, tools, and incentives. As noted above, farmers have played a major role in water quality improvements over recent decades, partly by using nutrients more efficiently. For instance, the amount of nitrogen and phosphate applied to agricultural land England and Wales has fallen by 42% and 69%, respectively, since 1984⁵. However, reduction in use is only one dimension to a wider and more complex balance for us to strike. We need to see policy, regulation and industry practice working together to ensure use is optimised for the environment, food production and soil health. Through the Agricultural Transition Plan (ATP), there is a once-in-a-generation opportunity for Defra to help support this aim.

In terms of advice, industry partners will continue their work to promote best practice around nutrient management to farmers, through initiatives like Championing the Farmed Environment (CFE) and Tried & Tested⁶. For many years, such industry-led initiatives have complemented the government-led initiative, Catchment Sensitive Farming (CSF), and we welcomed its expansion this year. However, as CSF expands geographically and by theme, Defra must ensure this is, at least, matched by an expansion of capacity. The demand for its services, particularly the approval of grant applications, has seemingly been ever more prioritised in recent years and is only likely to grow further over coming years.

Alongside advice, there are various tools available to help farmers improve their nutrient management planning, such as those supplied by Tried & Tested and the government-funded MANNER NPK. These planning tools will continue to play an important role going forward and further investment from Defra would help improve useability, relevance and, ultimately, uptake. However, we strongly believe there is a gap in the market for a nutrient accounting tool, which could provide an even greater return on investment for the department.

Such a tool would allow farmers to monitor nutrient inputs and outputs and target interventions to reduce losses to the environment, with applications ranging from compliance to trading. While a nutrient

⁴ See the FACTS-branded [guidance on FRW and rule one](#), published in August 2021

⁵ See overall nitrogen and phosphate application rates to all crops in the [British Survey of Fertiliser Practice 2020](#)

⁶ See the websites for [CFE](#) and [Tried & Tested](#) for more information

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accounting tool would have national relevance, it would also be pivotal to the Poole Harbour Nutrient Management Scheme (PHNMS) – an NFU and farmer-led nutrient trading proposal to reduce the amount of nutrients ending up in the designated site. We commissioned research on the accounting tools available around the world and found none adequately matched the needs of UK farmers and regulators. A significant investment would be needed to either tailor an existing tool to our needs or develop a new tool from scratch.

The third and final mechanism to encourage voluntary action on diffuse pollution is financial incentives, be it through regular payments or one-off grants. We have seen past and current agri-environment schemes make a big difference in this space and there is an opportunity for the SFI to do even more. However, the new scheme must secure a high uptake among farmers, otherwise significant progress on diffuse pollution and other environmental issues will be put at risk. Defra can make this happen by ensuring the actions are relatively simple, there are relevant standards for all farming systems, and farmers are rewarded fairly for delivering public goods.

The ATP also promises to deliver incentives through other schemes like the Slurry Investment Scheme (SIS), which would help 10's of thousands of farmers to better manage nutrients by part-funding slurry stores and covers. Defra's plans for the SIS were announced in November 2020 and broadly welcomed by the industry. It is the NFU's firm view that a significant campaign is required to invest in and improve both storage and application of manures, slurries and biowastes on farm. However, we understand Defra has recently taken a step back from this plan and is taking a broader view of the slurry management issue, encompassing regulatory and trading aspect as well as funding. While we support this approach and are presently engaged with the co-design process, concerns remain around the level of ambition for funding infrastructure, the limited time to put an offer in place, and barriers to building new infrastructure, particularly gaining planning permission. We believe we must make progress at pace and if this step back from the SIS means funding will now be offered through the Farm Investment Fund instead – as mooted – Defra must communicate this to farmers as soon as possible with clarity.

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