National Farmers Union

May 26, 2015

Mr. James Baxa
Production, Emergencies, and Compliance Division
Farm Service Agency, U.S. Department of Agriculture
Stop 0501
1400 Independence Ave. SW.
Washington, DC 20250-0501

Re: 7 CFR Part 1400 RIN 0560–AI31; Payment Limitations and Payment Eligibility; Actively Engaged in Farming

Dear Mr. Baxa:

National Farmers Union (NFU) welcomes the opportunity to submit comments to the Farm Service Agency (FSA) on the proposed rule regarding payment limitations and payment eligibility for individuals actively engaged in farming. NFU is the second largest general farm organization in the United States. Since 1902, NFU has advocated for the economic and social well-being and quality of life of family farmers and their communities by supporting the sustainable production of food, fuel and fiber. NFU represents 200,000 members nationwide with members in almost every state and organized divisions in 33 states. NFU is a federation of state and regional organizations.

Our grassroots policy has long held that the primary objectives of national agricultural policy should be to enable family farmers to significantly increase net farm income, improve the quality of rural life, and increase the number of family farmers so farmers may continue to provide a reliable supply of food, fiber, feed and fuel and serve as stewards of our nation's resources. Rural communities are richer and more viable with more farmers, even if there is the same amount of agricultural production.

NFU supports the direction of farm program benefits to family farm producers in such a way as to reduce government costs while fortifying the sustainability of our family farms, our rural communities and our natural resources. This objective can be achieved through payment limits that are meaningful, realistic, and targeted to farmers who are "actively engaged" in farming. The definition of a person who is actively engaged in production agriculture needs to remain strong and require active personal management and active personal labor in the actual farming operation. Transparency of payments is of equal importance. NFU believes payments should be transparent and directly attributable to a person who meets the criterion of actively engaged.

There will be a range of perspectives on whether the definitions and policies set forth in this rule are too restrictive or too general. NFU, while appreciative of the initial steps taken by FSA, concludes that this proposal is not forceful enough. Directing benefits to family farmers that are actively engaged in farming is an imperative that will not only strengthen rural America, but also ensure lower expenditures by FSA in a time of shrinking federal budgets. Meaningful savings could be elusive as the rule is currently written. Within this rule is a fair degree of ambiguity that leads NFU to believe there are significant methods to circumvent the intended impact of this proposed rule. Most notably, the allowance for qualified managers and operators could invite abuse.

We understand the rule to mean a given operation, deemed large and complex, could have up to eight individuals eligible for payments. This understanding is based on the assumption that an owner-operator and his or her spouse constitute two separate payment limits, followed by manager one, manager two in the case of a large operation, manager three if the operation is deemed complex, and their corresponding spouses. That holds open the possibility that an operation could have an effective payment limit of $1 million, negating the purpose of the proposed rule.

While we understand that reaching the $1 million limit is unlikely, the allowable level of eligible individuals for non-family operations is a problem. During congressional debate over the 2014 Farm Bill, the Government Accountability Office's (GAO) "*Farm Programs: Changes Are Needed to Eligibility Requirements for Being Actively Involved in Farming*" was used to clearly demonstrate a need for reform, not only for the rules surrounding active personal management, but also the number of individuals eligible for farm payments. The report showed that in 2012, the top 50 entities receiving farm program payments averaged roughly $395,000. Those same operations had 10 individual members claiming contributions. Further illustrating the point, the report disclosed the fact that the highest payments subject to actively engaged in farming requirements was a general partnership that received $651,910 based on 16 individual members' claims of contributing only active personal management. A compliance review of this farming operation for 2010 found that all members had made their claimed contributions of active personal management.

This rule was intended to halt such examples from occurring in the future. We believe the rule falls short of this objective. For that reason, we urge FSA not only to provide additional clarity on several points, but also to further revise the rule. Additional clarity is required in order to understand:

- Whether the owner-operator of a farm is considered to be the first manager under this rule.
    - NFU believes the first manager should be the owner operator.
- Whether the first manager is required to fulfil the actively engaged obligations set forth in this rule.
    - NFU believes the owner operator should be subject to the definition of actively engaged.
- Whether each of the manager's spouses are entitled to a separate payment limit, and if so, are they exempt from the new actively engaged requirements.
    - Only the first manager's (owner/operator) spouse should be entitled to a separate payment limit and only if he/she meets the requirements set up under this rule.

The Economic Research Service (ERS) has stated on a number of occasions that cost of production declines as herd size or acreage increases[1]. While that does not demonstrate risk, which is a factor for every operation, it does convey a higher level of viability and strength. Larger crop farms still realize better financial returns, on average, and they are able to make more intensive use of their labor and capital resources.[2] As such, it makes sense that, under this rule, payments are reduced. Reductions would be achieved through limiting the number of eligible managers for all farms.

As stated above, NFU believes that the definition of actively engaged must be strong and meaningful. Therefore, NFU proposes that a non-family farm should not be allowed to exceed two eligible managers under any scenario. We believe the first manager should be the owner operator, subject to the definition of actively engaged and only qualify for an additional manager if the operation is deemed to be large and/or complex. NFU appreciates and understands that certain operations will require several managers, but the rule does not include a limit on the number of managers that an operation can maintain. It simply limits the eligibility of payments. We believe that farms should be allowed to grow, but that government payments should be curtailed above a certain amount so as to not artificially add to an already likely economic advantage inherently enjoyed by larger farmers.

NFU prides itself on being the voice of family farming. Even though we believe that farm benefits should be directed towards family farms, we do not believe that those benefits should be limitless. These core values of our organization drive us to believe that this proposed rule should not only apply to non-family farms, but to family farm operations as well. As it stands, the proposed rule would only impact 1,400 joint operations with a total savings of roughly $50 million over crop years 2016 through 2018. It simply does not go far enough to protect the integrity of farm payments.

The proposed rule classifies active personal management as the contribution of 500 hours of management or at least 25 percent of the total management required for a given operation annually. We find this threshold to be very modest and reasonable. Families provide the base of labor for family farms, and, given this modest threshold, we believe that the true managers of these operations will have no trouble qualifying as an actively engaged manager. The findings by the Economic Research Service (ERS) support this deduction. It shows that the share of hours contributed by the principle operator on family farms is above 50 percent on average. When sales range from $1 million to $5 million, the average drops to 42 percent, then falls to 21 percent among farms with over $5 million in sales.[3]

NFU does not propose changing the hours or percentage of labor required towards classifying a manager as active, though we request that FSA clarify the recordkeeping requirements pursuant to the standards. We understand, based on the proposed rule, that a manager would be required "to maintain contemporaneous records or activity logs," but there does not appear to be a consideration as to whether this recordkeeping should also come with a reporting requirement, only that such records must be available for review if requested by FSA. Our long-standing position over this issue would encourage some baseline level of compliance verification for the

[1] http://www.ers.usda.gov/amber-waves/2014-march/family-farming-in-the-united-states.aspx#.VUob8FVVhBe
[2] http://www.ers.usda.gov/media/1156726/err152.pdf
[3] http://www.ers.usda.gov/amber-waves/2014-march/family-farming-in-the-united-states.aspx#.VUodYlVVhBe

enforcement of the recordkeeping requirements. We would ask FSA to clarify the compliance process it envisions.

We appreciate your attention in this matter and thank you for your consideration. We look forward to future opportunities to work with you.

Sincerely,

Roger Johnson
President