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REGULATORY REFORM

Issue:

Federal regulations have a direct impact on farmers and ranchers. Over the years, the breadth and extent of that regulatory landscape have increased. Today, agricultural producers are faced with a flurry of requirements through the Clean Water Act (such as the "waters of the U.S." rule, the "prior converted cropland" criteria, wetlands jurisdictional determinations or total maximum daily load (TMDL) limits); the Endangered Species Act (ESA) (through designation of species, establishment of critical habitat, questionable use of science); the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); the Food Safety Modernization Act (FSMA); immigration and labor regulations; and interpretation of the Federal Land Policy and Management Act (FLPMA), to name just a few.

These requirements can be the result of federal legislation, agency interpretations, or they can sometimes emanate from court decisions. But no matter how they are established, however, the result often can be controversial. Stakeholders may disagree on the language in the statute; affected parties may disagree on the science, the data or the models underpinning one or the other.

Farm Bureau strongly believes that all Americans, including farmers and ranchers, need a regulatory system that is fair, transparent, adheres to the will of Congress, takes economic impacts into account and respects our freedoms.

Background:

The Administrative Procedure Act (APA) is the principal federal statute that governs how regulations are promulgated. Enacted in 1946, the law has not substantially changed in the 73 years it has been on the books—even while the federal government has expanded enormously. In 1946, when the APA was signed into law, the entire federal government raised $358 billion in revenues; in 2018, the deficit alone amounted to $779 billion. When the APA went on the books, the federal regulatory landscape did not include the Clean Water Act, the Clean Air Act, the ESA, Superfund, wetlands regulations, the Consumer Product Safety Act, the Taft-Hartley Act, Medicare, the Occupational Safety and Health Act (OSHA), banking laws such as Dodd-Frank, or the Affordable Care Act. All of these statutes generate regulations that affect our everyday lives.

Policies today are also increasingly determined as the result of litigation. Beginning in the 1970s, citizen lawsuit provisions were added to many environmental statutes, and one law in particular—the ESA—has gotten pre-eminence over many other laws. The Judgment Fund, an open-ended account in the Treasury Department , is used to pay claims against the federal government but its operations are too often obscured. The Equal Access to Justice Act, enacted in 1980, can provide attorneys' fees for litigants against the federal government, but its implementation has been controversial. By granting "standing" to litigants when their injury appears to be little more than speculative, judges have broadened their ability to interpret federal laws, sometimes verging on establishing policies not approved by Congress. Additionally, in 1984 in its *Chevron* decision, the Supreme Court firmly

established the principle that courts must show "deference" to federal agency interpretations of the statutes that they administer, even if the agency's interpretation is not the best reading of the words of the statute. Another Supreme Court decision, *Auer v. Robbins*, issued in 1997, granted deference to agencies when they interpret their own regulations—essentially giving agencies the ability to write vague or ambiguous regulations and later interpret those rules as they choose.

Legislative and Regulatory Status

In the 115th Congress, which concluded in December 2018, the House of Representatives passed H.R. 5, which contained several important regulatory reforms. In the Senate, the Committee on Homeland Security and Government Affairs approved S. 951, a companion bill sponsored by Senators Portman and Heitkamp. Unfortunately, the legislation never came to the Senate floor for a vote.

While working to amend the Administrative Procedures Act, AFBF is also addressing specific regulations that call for reform. Of chief importance is the new Clean Water Rule proposed by EPA in December 2018; AFBF is working actively to have this regulation finalized and promulgated. We are also waiting for the Labor Department to propose regulatory reforms of the H-2A program; AFBF has commented on changes to the swampbuster rule proposed by the Agriculture Department of. The GIPSA rule, also administered by USDA, is the focus of AFBF efforts, as well as aspects of the Food Safety and Modernization Act rule implemented by the Food and Drug Administration.

AFBF Policy:

AFBF policy contains many recommendations to improve the federal regulatory system. They include the use of sound science; having USDA coordinate with EPA on regulations affecting agriculture; estimating the costs and benefits of regulations; ensuring transparency in the rulemaking process; vigorous congressional oversight; a minimum 60-day comment period on proposed rules; limiting federal agencies' ability to use social media and similar resources in relation to pending rules; and litigation reform.

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