



Statement of the American Farm Bureau Federation

**TO THE UNITED STATES HOUSE
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON AGRICULTURE, ENERGY AND TRADE**

**Accelerating Agriculture: How Federal Regulations Impact America's Small
Farmers"**

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Presented By:

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Chairman Blum, Ranking Member Schneider, and members of the Subcommittee, my name is Glenn Brunkow. I am co-owner of Brush Creek Cattle Company in Wamego, KS. Our farm is located in Northeast Kansas, an area known as the Flint Hills. I am a fifth-generation farmer/rancher with my father, wife and kids. The land we farm today is the piece of ground my family homesteaded in the 1860s, where we grow corn and soybeans and raise cattle and sheep.

I am grateful for the opportunity to provide testimony to the subcommittee on federal regulations and their impact on America's small farmers. I am especially pleased to present the perspective of the American Farm Bureau Federation, which is the nation's largest general farm organization. One of the strategic priorities set by the American Farm Bureau Board is regulatory reform. That includes not only specific rules such as the 'waters of the U.S.' (WOTUS) rule, but also the rulemaking process itself. It is critical for policymakers to gain an appreciation for the very real effects federal regulations have on farmers and ranchers, how farmers and ranchers respond to the demands of regulations and how those regulations affect agricultural producers in their efforts to produce food, fiber and fuel.

Right now, as you may be aware, every penny counts in agriculture. Farm income is at the lowest level in more than a decade and, since 2013, has fallen by more than 50 percent or \$64 billion. In many cases, the prices that farmers receive for their crops or livestock continue to be as much as 50 percent lower than a few short years ago. In tough economic times like this, farmers feel the impact of regulations even more because money dedicated to compliance – especially when it is of doubtful value – is money that cannot be reinvested in the farm or put in the bank to cushion against hard times. So today's hearing is timely and welcome. The subcommittee could not have chosen a more appropriate topic.

As an overview, I think it is important to underscore an overlooked fact: farmers and ranchers today are highly regulated and face an increasing array of regulatory demands and requirements that appear to be unprecedented in scope. Because of the impact of regulations, Farm Bureau has been deeply engaged in a wide range of regulatory reform efforts. I would like to provide an overview of these to the subcommittee. To start, I would like to give you some specific regulatory compliance issues that are at the top of our agenda; we are hoping to gain some relief from some of these provisions in the farm bill. Others relate to ongoing topics that we are working to correct.

Kansas

In my home state of Kansas, the Flint Hills region is home to the world's largest undisturbed tall grass prairie ecosystem in the world, a unique area that spans roughly 50 miles east to west and runs from just south of the Nebraska border through more than 14 Kansas counties and into three counties in Oklahoma. Long before western settlement and the invention of barbwire, bison

roamed this vast expanse and both lightning strikes and Native American tribes set fire to the prairie each year. These annual fires rejuvenated the tallgrass prairie plants and kept at bay common species found just to the east of this ecosystem – herbaceous shrubs, deciduous and conifer trees. Today, 99 percent of the Flint Hills region is privately owned grasslands used to graze cattle, horses and other livestock. Landowners and tenants routinely organize and partner together to utilize prescribed and managed fire in order to maintain prairie grasses and forbs and keep invasive shrubs and trees at a minimum, and reduce the fuel load and associated risk of wildfire. In less than ten years, without regular fire, land in the Flint Hills can be overrun with Eastern Red Cedar trees and other non-productive plant species. It is most common to experience prescribed wildlands fires in the early spring months of March, April and May. In order to get an effective fire a gentle breeze is a must; and, when dealing with topography and real estate improvements in many areas the wind has to be blowing in certain directions in order to burn specific pastures. However, depending on the direction of the wind, it has been known to carry haze, ozone and PM2.5 associated with burning to urban communities such as Kansas City, Wichita, Omaha, and Oklahoma City. In fact, within the past decade prescribed fire in the Flint Hills has caused National Ambient Air Quality Standards (NAAQS) monitoring stations to record an exceedance of either ozone or PM2.5 on more than one day. In an attempt to be a good partner with the regulated communities in larger metropolitan regions as well as public health officials, the State of Kansas and agricultural producers created a Smoke Management Plan in 2010

(http://www.ksfire.org/docs/about/Flint_Hills_SMP_v10FINAL.pdfhttp://www.ksfire.org/docs/about/Flint_Hills_SMP_v10FINAL.pdf). Since then groups like Kansas Farm Bureau (KFB) and Kansas Livestock Association (KLA) have encouraged ranchers and prescribed fire councils to look at www.ksfire.org prior to striking a match to see what impact their burning will have downwind.

However, even with the 2010 Smoke Management Plan, it is becoming more difficult every year to find windows of opportunity throughout the year to successfully burn large acres of grasslands for fear of knocking an air monitoring station out of compliance with the ever-tightening air quality requirements. KFB and other groups have actively lobbied Kansas' congressional delegation and the Environmental Protection Agency (EPA) to create a regulatory mechanism to continue to allow for annual prescribed wildlands fire to not count toward non-attainment exceedances at monitoring stations. We are hopeful this can be addressed once and for all so that landowners will have certainty knowing they can use a tool that Mother Nature and Native Americans knew for centuries was the only way to maintain the natural ecosystem and keep invasive shrubs and trees from taking over the Flint Hills region. Without the use of prescribed fire, invasive trees such as the Eastern Red Cedar will overtake the landscape and eventually an accidental fire will create a situation like we have seen in the intermountain west and areas of the southern High Plains where out of control infernos cause loss of life and property.

Swampbuster

Swampbuster today is a regulatory program in which USDA sits as judge and jury. Many of today's compliance problems arise when farmers undertake basic everyday farming activities such as such removing or cleaning up fence rows, squaring off or modifying a field footprint, improving or repairing drainage, cleaning out drainage ditches, or removing trees in or adjacent to farm fields.

To provide the subcommittee background, in 1985 Congress included in the farm bill a provision that was intended to discourage the conversion of wetlands to non-wetland areas. The provision, dubbed Swampbuster, provided that any farmer who produced an agricultural commodity on a converted wetland would be ineligible for farm program benefits in that crop year. The idea was to freeze conversions at the point in time that the legislation became law (December 23, 1985). In other words, if the land (wetland) had been converted to agricultural use prior to the magical date of December 23, 1985, the land was deemed by Congress to be *Prior Converted Cropland* (PCC for short).

In 1990, Congress set out three criteria to determine what constitutes a wetland and provided that when any one of the three wetland criteria is absent, the land is “nonwetland” and any action on such land is exempt from the ineligibility provisions of the statute. That language remains in effect today. In 1996, in the last substantive farm bill change to Swampbuster to date, Congress strengthened the PCC provision by deeming that farmland converted prior to 1985 could never lose converted status.

Unfortunately, although Congress clearly wanted to ensure that PCC, once converted, would remain in that status, farmers are having to fight the federal government repeatedly to assert their rights. That means getting USDA to recognize and accept the mandatory Minimal Effect Exemption. It also means getting the word out to young farmers and ranchers, who may not realize their land is PCC, or that they have rights. And perhaps most importantly, it is trying to fix an appeals process that is heavily weighted in favor of the government and against farmers.

Waters of the United States (WOTUS)

Probably no single regulation of the federal government affecting farmers has gotten more attention than the 2015 WOTUS rule. That is true for a simple reason: if allowed to go into effect, this regulation would create tremendous difficulties for farmers and ranchers. There is no doubt that the final rule poses tremendous risks and uncertainty for farmers, ranchers and others who depend on their ability to work the land.

For example, the definition of “tributary” was broadened significantly to include landscape features that may not even be visible to the human eye, or that existed historically but are no longer present. The 2015 rule even gave the federal agencies the power to conclusively identify

WOTUS remotely using “desktop tools.” There are many other significant problems including outright ambiguity and confusion with the exclusions.

While we acknowledge that the 2015 rule provides a list of exclusions, many of the exclusions are extremely narrow, or are so vague that they lend themselves to narrow agency interpretation. As an example – both puddles and dry land are excluded from the definition of WOTUS.

Puddles

One of the most fundamental problems with the 2015 rule is that it simply does not define the term “water.” In an attempt to mock concerns over the ambiguity of the definition of puddle “the final rule adds an exclusion for puddles. A puddle is commonly considered a very small, shallow, and highly transitory pool of water that forms on pavement or uplands during or immediately after a rainstorm or similar precipitation event.” Clean Water Rule: Definition of “Waters of the United States”, 80 Fed. Reg. 37054, 37099 (Jun. 29, 2015). It may be comforting to some to know that bureaucrats will not be regulating small pools of water on pavement. But for farmers and ranchers, such a narrow exclusion is clear evidence of just how expansive the 2015 rule really is. Farm fields are not made of pavement, they are made of soil, and in many low areas that soil stays wet long enough to look like a puddle in the middle of a field. We learned after the rule was final that the Corps was concerned about the lack of definition for “water” and how difficult it would be to distinguish between non-wetland areas and puddles. (USACE Implementation Challenges Pre-Rule Documents, CWA “Waters of the U.S.” Implementation Concerns, HQUSACE April 24)

Dry Land

The agencies declined to provide a definition of “dry land” in the regulation because they “determined that there was no agreed upon definition given geographic and regional variability.” (Final Rule at 173)

However, the preamble claims that the term is “well understood based on the more than 30 years of practice and implementation” and further states that “dry land” “refers to areas of the geographic landscape that are not water features such as streams, rivers, wetlands, lakes, ponds, *and the like.*” (Final Rule at 173)

Based on the broad and confusing preamble explanation of what are “waters,” there will be an equal amount of confusion over the definitions of “puddle” and “dry land.”

Farm Bureau is looking forward to working with EPA to either revise or repeal the 2015 rule and replace it with a commonsense definition that protects clean water but provides clear, understandable rules. As AFBF President Zippy Duvall says, a farmer should be able to walk out into his field and, without having to hire lawyers and engineers, point to one area and say it’s WOTUS and point to another area and say it is not WOTUS. That clarity does not exist today.

Duplicative Regulatory Burdens

For nearly three decades, the application of pesticides to water was regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), not the Clean Water Act (CWA). A series of lawsuits, however, yielded a trio of 9th Circuit Court of Appeals decisions holding that pesticide applications also needed CWA National Pollutant Discharge Elimination System (NPDES) permits. To clear up the confusion, EPA issued a final regulation to clearly exempt certain applications of aquatic pesticides from the CWA's NPDES program. EPA's final rule was challenged and overturned in *National Cotton Council v. EPA*. This decision exposed farmers, ranchers, pesticide applicators and states to CWA liability by subjecting them to the CWA's NPDES permitting program.

The general permits are now in place for over 360,000 new permittees brought within the purview of EPA's NPDES program. This program carries significant regulatory and administrative burdens for states and the regulated community beyond merely developing and then issuing permits. It goes without saying that a meaningful environmental regulatory program is more than a paper exercise. It is not just a permit. EPA and states must provide technical and compliance assistance, monitoring and, as needed, enforcement. These new permittees do not bring with them additional federal or state funding.

There are three fundamental questions each member should ask. First, are FIFRA and CWA regulations duplicative? Second, in light of FIFRA's rigorous scientific process for labeling and permitting the sale of pesticides, are duplicative permits the appropriate way to manage pesticide applications in or near water? And third, is this costly duplication necessary or does it provide any additional environmental benefit? Your answer to all three questions should be NO. Never, in more than 40 years of FIFRA or the CWA, has the federal government required a permit to apply pesticides for control of pests such as mosquitoes, forest canopy insects, algae, or invasive aquatic weeds and animals, such as Zebra mussels, when pesticides are properly applied "to, over or near" waters of the U.S.

Lastly, state water quality agencies repeatedly have testified that these permits provide no additional environmental benefits, that they simply duplicate other regulations and impose an unwarranted resource burden on their budgets.

The House of Representatives has taken a strong stand on this issue, voting several times to correct this over-regulation, and we thank the members of the subcommittee for their support. A provision to remedy this problem is included in the House farm bill that is awaiting final passage. We hope that legislation will clear the final hurdle soon and we hope all House members will work to protect this provision when the measure is sent to conference with the Senate.

H-2A reforms

As many of you know, the shortage of workers to assist in agricultural production is reaching crisis proportions. Part of that problem is due to problems with the nation's immigration law, and that is exacerbated by the current H-2A program. The H-2A program is bureaucratic, expensive, and time-consuming for farmers and ranchers. To make it worse, farmers are never guaranteed that they will actually get their workers on their date of need – and some sectors of agriculture, such as dairy, are ineligible to participate at all because the program is restricted to temporary and seasonal work.

The Administration recently announced that they would be proposing reforms to the H-2A program, and that is a welcome development. Anything we can do to clear away the regulatory underbrush will help farmers.

But in a broader context, we need a new, revitalized program—one that is open to all of agriculture and does not impose unnecessary recruitment costs on growers. We need a program that protects workers but does not stifle agricultural production through above-market wages, bureaucratic delays and suffocating requirements.

That means Congress needs to pass legislation to update and reform agriculture's guest worker program. The AG Act, which was reported from the House Judiciary Committee last year, contains many positive elements that align with AFBF policy. AFBF has not endorsed the legislation because there remain important matters that we want to see addressed. However, the legislation provides a solid foundation on which to build and we will continue to work with members on both sides of the aisle to make the legislation even stronger in meeting producers' needs.

EPA Review of Costs and Benefits

I would like to bring to the subcommittee's attention an important initiative EPA has just announced that merits your support.

One June 13, EPA published in the Federal Register an Advanced Notice of Proposed Rulemaking in which the agency announced it was seeking to promote greater transparency in how it determines costs and benefits in rulemakings. This is a very welcome initiative. As the agency itself noted:

In this advance notice of proposed rulemaking (ANPRM), EPA is soliciting comment on whether and how EPA should promulgate regulations that provide a consistent and transparent interpretation relating to the consideration of weighing costs and benefits in making regulatory decisions in a manner consistent with applicable authorizing statutes. EPA is also soliciting comment on whether and how these regulations, if promulgated,

could also prescribe specific analytic approaches to quantifying the costs and benefits of EPA regulations.

AFBF commends the agency for this ANPR. We have had significant concerns in the past as to how the agency evaluates costs and benefits. To cite just one example, in the agency's update of the worker protection standards rule, the agency – more than a dozen times – claimed that it could not quantify benefits but at the same time asserted that the benefits outweighed the costs of newly imposed regulatory requirements. These types of unsubstantiated assertions do not help to build trust, support and cooperation with the regulated community . And perhaps more importantly, it actually engenders a certain agree of disrespect for the process. When rulemaking is transparent, open, based on sound science and economics, it gives the regulated community the assurance that they are being treated fairly.

This leads to my next point.

Regulatory Process Reforms

All Americans have a vested interest in a regulatory process that is open, transparent, grounded on facts and respectful of our system of federalism, and a process that faithfully reflects and implements the will of Congress and adheres to the separation of powers in the Constitution. Particularly in the field of environmental law, all affected stakeholders – businessmen and women, farmers, environmentalists, agribusinesses small and large, university researchers, scientists, economists, taxpayers, lawmakers and state and federal regulators – benefit from a process that is fair, generates support and respect from diverse viewpoints, and achieves policymakers' goals.

Most people would be surprised if they knew the extent to which farms and ranches of all sizes and types are affected by federal laws and the regulations based on those laws. Rural agribusinesses, which provide much-needed economic activity and jobs in rural America, also are challenged on the regulatory front.

While farm bill programs such as crop insurance and conservation programs are most readily recognizable as affecting agriculture, producers confront numerous regulatory challenges. A list that is by no means exhaustive includes lending and credit requirements, interpretations of the tax code, health care provisions, energy policy, labor and immigration laws, and environmental statutes ranging from air and water quality concerns to designations of critical habitat and other land uses. For farmers and ranchers, regulations don't just impact their livelihood. Unlike nearly any other economic enterprise, a farm is not simply a business; it's often a family's home.

When a government regulation affects the ability of a farmer to use his or her land, that regulatory impact "hits home" – not just figuratively but literally. That happens because the farm often *is* home and may have been passed down in the family for generations. If the regulatory demand is unreasonable or inscrutable, it can be frustrating. If it takes away an important crop

protection tool for speculative or even arguable reasons, it can harm productivity or yield. If it costs the farmer money, he or she will face an abiding truth – farmers, far more often than not, are price takers, not price makers: with little ability to pass costs on to consumers, farmers often are forced to absorb increased regulatory costs. And when, under the rubric of “environmental compliance,” the regulation actually conflicts with sound environmental methods the farmer is already practicing, regulations can be met with resistance and ultimately a lack of respect for the process itself.

We believe a fair, transparent, open and updated regulatory process will benefit not just farmers and ranchers: it will reinvigorate public respect for the important and critical role regulations must and do play while benefiting taxpayers, the environment, small businesses and people in all walks of life.

The regulatory process today is the product of decisions made over decades, often done without any effort to integrate those decisions into a coherent system. Such a system should assure stakeholders a fair outcome, further congressional intent, safeguard our environment, take into account modern communication methods such as social media, respect the role of the states, and reinforce public confidence in the integrity of the system. That is not the case today. Regulatory agencies, with judicial approval, increasingly exercise legislative functions – and they are encroaching on judicial functions as well, creating an imbalance that needs correction.

I have attached to my testimony a white paper on regulatory reform that was signed by over fifty agricultural organizations. It outlines in great detail specific examples of regulatory burdens to American farmers and ranchers, and recommendations on how Congress and the Administration can improve the regulatory framework and strengthen the existing system to protect our environment and agricultural landscape, and to reinvigorate the American economy.¹

Last year, the House of Representatives passed H.R. 5, which incorporated a number of reforms that Farm Bureau supports. One in particular was debated on the House floor and received bipartisan support. That amendment, offered by Rep. Peterson of Minnesota, would prohibit any federal agency from using social media to “stack the deck” in favor of its own proposal during a rulemaking.

You would think we don’t need a prohibition like that, but that is exactly what EPA did in its WOTUS rulemaking. In fact, the Government Accountability Office found that the agency violated the law in undertaking a Thunderclap campaign to generate comments in support of its proposal. The counterpart to H.R. 5, S. 951, was approved over a year ago by the Senate Committee on Homeland Security and Governmental Affairs. It has unfortunately not been scheduled for debate in the Senate. We regret that, because we think the legislation is worthy of strong support on both sides of the aisle.

¹ Regulatory Improvement and Reform: A priority for American Agriculture

The Endangered Species Act

The Endangered Species Act (ESA) provides a set of protections for species that have been listed as endangered or threatened and is administered by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service. Originally enacted in 1973, Congress envisioned a law that would protect species believed to be on the brink of extinction. When the law was enacted, there were 109 species listed for protection. Today, there are 1,661 domestic species on the list, with another 29 species considered as “candidates” for listing. Unfortunately, the ESA has failed at recovering and delisting species since its inception. Less than 2 percent of all listed species have been removed from ESA protection since 1973, and many of those are due to extinction or “data error.”

The ESA is one of the most far-reaching environmental statutes ever passed. It has been interpreted to put the interests of species above those of people, and through its prohibitions against “taking” of species it can restrict a wide range of human activity in areas where species exist or may possibly exist. The ESA can be devastating for a landowner – and the extent of the problem can be large when it is noted that 70% of all listed species occur on private lands.

The ESA is a litigation-driven model that rewards those who use the courtroom at the expense of those who practice positive conservation efforts. Sue-and-settle tactics employed by some environmental groups have required the government to make listing decisions on hundreds of new species. These plaintiffs have been rewarded for their efforts by taxpayer-funded reimbursements for their legal bills.

While the ESA has had devastating impacts on many segments of our society, its impacts fall more unfairly on farmers and ranchers. One reason for this is that farmers and ranchers own most of the land where plant and animal species are found. Most farmland and ranchland is open, unpaved and relatively undeveloped, so that it provides actual or potential habitat for listed plants and animals. Often farm or ranch practices enhance habitat, thereby attracting endangered or threatened species.

Unlike in other industries, farmers’ and ranchers’ land is the principal asset they use in their business. ESA regulatory restrictions are especially harsh for farmers and ranchers because they prevent them from making productive use of their primary business asset. Also unlike in most other industries, farm and ranch families typically live on the land that they work. Regulations imposed by the ESA adversely impact farm and ranch quality of life.

Although the ESA was enacted to promote the public good, farmers and ranchers bear the brunt of providing food and habitat for listed species through restrictions imposed by the ESA. Society expects that listed species be saved and their habitats protected, but the costs for doing this fall to the landowner on whose property a species is found.

The scope and reach of the ESA are far more expansive today and cover situations not contemplated when the law was enacted. Both statutory and regulatory improvements would help to serve the people most affected by implementation of the law's provisions. The ESA should provide a carrot instead of the regulatory stick it currently wields.

For example, the Obama Administration promulgated two regulations by FWS governing the process for designating critical habitat under the ESA and the definition of "adverse modification" as applied in ESA, Section 7 consultations. The proposed rules depart from the limited scope and purpose intended by Congress. First, it allows the agency to designate critical habitat based on speculative conditions, including designation of areas that do not have physical and biological features needed by the species. Second, it allows for broader designation of unoccupied areas as critical habitat. Finally, it provides unfettered discretion to establish the scale of critical habitat—extending to landscape or watershed-based designations that do not look to whether all areas within the designation actually meet the criteria for designation as critical habitat. These regulatory changes grossly expanded the scope of the ESA and provided the Service greater reach in critical habitat land designations that can have a significant negative impact on farmers' and ranchers' ability to maintain active farm and ranch operations on both private and federal lands.

Conclusion

Farm Bureau and I appreciate the subcommittee's willingness to listen to farmers' and ranchers' concerns. The need for continued oversight and reform of the nation's environmental regulatory framework cannot be overstated. Farmers, ranchers, and small businesses rely on regulatory certainty and the constitutional protection of private property rights to make sound business decisions. We look forward to continuing to work with you and all the members of the committee in pursuing solutions to these important challenges.

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RECOMMENDATION:

The undersigned agricultural organizations recommend that the new Administration and Congress make reform of the regulatory development process a top priority. The Administration should pledge to work with Congress in a bipartisan, bi-cameral fashion to craft a package of reforms that can be signed into law by the summer of 2018. The President should designate the Director of OMB and the Attorney General as the principal Administration officials charged with interfacing with Congress.

The bipartisan leadership of Congress should establish a working group to join with the Administration in crafting a bipartisan package of reforms that update, improve, strengthen and reform the existing regulatory process.

Agribusiness Council of Indiana Agricultural Retailers Association Agri-Mark, Inc.
American Farm Bureau Federation AmericanHort American Seed Trade Association
American Soybean Association American Sugar Alliance
American Sugar Cane League American Sugarbeet Growers Association
California Association of Winegrape Growers
California Specialty Crops Council CropLife America
Dairy Producers of New Mexico Dairy Producers of Utah Delta Council
Exotic Wildlife Association Federal Forest Resource Coalition The Fertilizer Institute
Idaho Dairymen's Association Michigan Agri-business Association Michigan Bean Shippers
Milk Producers Council Missouri Dairy Association National Agricultural Aviation Association
National Alliance of Forest Owners National Aquaculture Association
National Association of State Departments of Agriculture
National Association of Wheat Growers National Corn Growers Association
National Cotton Council National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Grain and Feed Association National Milk Producers Federation
National Pork Producers Council National Potato Council National Sorghum Producers
Northeast Dairy Farmers Cooperatives Ohio AgriBusiness Association
Oregon Dairy Farmers Association
Society of American Florists South East Dairy Farmers Association
Southwest Council of Agribusiness St. Albans Cooperative Creamery, Inc.
United Fresh Produce Association U.S. Apple Association
USA Rice U.S. Cattlemen's Association
U.S. Rice Producers Association Upstate Niagara Cooperative, Inc
Western Peanut Growers Association Western United Dairymen

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I. Overview

All Americans have a vested interest in a regulatory process that is open, transparent, grounded on facts, respectful of our system of Federalism, that faithfully reflects and implements the will of Congress and adheres to the separation of powers in the Constitution. Particularly in the field of environmental law, all affected stakeholders – businessmen and women, farmers, environmentalists, agribusinesses small and large, university researchers, scientists, economists, taxpayers, lawmakers and state and Federal regulators – benefit from a process that is fair, generates support and respect from diverse viewpoints, and achieves policymakers’ goals.

Farmers and ranchers across the country are uniquely affected by Federal laws and the regulations based on those laws; rural agribusinesses also are challenged on the regulatory front. While farm bill programs such as crop insurance and conservation programs are most readily recognizable as affecting agriculture, producers confront numerous other regulatory challenges. A list that is by no means exclusive includes lending and credit requirements; interpretations of the tax code; health care provisions; energy policy; labor and immigration laws; environmental statutes ranging from air and water quality concerns to designations of critical habitat and other land uses. For farmers and ranchers, regulations don’t just impact their livelihood. Unlike nearly any other economic enterprise, a farm is not simply a business: it’s often a family’s home. When a government regulation affects the ability of a farmer to use his or her land, that regulatory impact ‘hits home’ – not just figuratively but literally. That happens because the farm often *is* home and may have been passed down in the family for generations. If the regulatory demand is unreasonable or inscrutable, it can be frustrating. If it takes away an important crop protection tool for speculative or even arguable reasons, it can harm productivity or yield. If it costs the farmer money, he or she will face an abiding truth – farmers, far more often than not, are price takers, not price makers: with little ability to pass costs on to consumers, farmers are often forced to absorb increased regulatory costs. And when, under the rubric of ‘environmental compliance,’ the regulation actually conflicts with sound environmental methods the farmer is already practicing, the result can be met with resistance and ultimately a lack of respect for the process itself. We believe a fair, transparent, open and updated regulatory process will benefit not just farmers and ranchers: it will reinvigorate public respect for the important and critical role regulations must and do play while benefiting taxpayers, environmentalists, small businessmen and women and people in all walks of life.

II. The Current Situation

The regulatory process today is the product of decisions made over decades, often done without any effort to integrate those decisions into a coherent system. Such a system should

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assure stakeholders a fair outcome, further congressional intent, safeguard our environment, take into account modern social media, respect the role of the states, and reinforce public confidence in the integrity of the system. That is not the case today. Regulatory agencies, with judicial approval, increasingly exercise legislative functions – and they are encroaching on judicial functions as well, creating an imbalance that needs correction. Consider that:

- The primary statutory authority governing the rulemaking process, the *Administrative Procedure Act* (APA), is over 70 years old and was enacted before many Federal regulatory agencies were even in existence. Although the law is little changed from what it was seven decades ago, statutes and programs that utilize the APA process have proliferated: the Clean Air Act; Superfund; the Energy Independence and Security Act of 2007; Highway bills; the Consumer Product Safety Act; the Clean Water Act; Swampbuster and Sodbuster; the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); the Endangered Species Act (ESA); the Food Quality Protection Act; the Food Safety Modernization Act, and many, many more. Consider:
 - EPA, under the new Clean Power Plan, is literally restructuring the nation’s energy sector – and along with it much of our economy – through an APA rulemaking. The agency has done this even though Congress in 2009 failed to enact legislation to approve such profound changes. Thus, one agency has embarked on a sweeping program using a framework established nearly three-quarters of a century ago that was simply not designed to manage such profound policy changes. (This initiative of the agency, in fact, would likely not have occurred but for a 5-4 decision by the Supreme Court in 2007.)
- In the 1970’s, Congress increasingly authorized the use of citizen lawsuits, particularly in environmental statutes. Nearly concurrently (i.e., *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669 (1973)), the Supreme Court broadened the ability of parties to sue in Federal court. Those two steps significantly increased the number and range of policy decisions decided by the courts. Given the relatively few cases that are ultimately decided by the Supreme Court, many policies now are decided by a handful of judges on appellate courts or even single judges in federal district courts. Consider:
 - Perhaps the most litigated provision in the Clean Water Act is how to determine the scope of the term ‘waters of the US.’ Over the past 44 years, that single provision has been the subject of numerous lawsuits and ever-changing regulations and guidance documents (as well changes to the Army Corps of Engineers’ wetlands manuals) – even though Congress itself has not altered the language it wrote in 1972. Indeed, in response to the U.S. Supreme Court decision in *Rapanos* (2006), environmental activists advocated for legislation to overturn the court’s ruling and broaden the scope of the Clean Water Act; legislation was introduced in both the Senate and House to accomplish that goal. Those bills, however, met resistance from Democrats and Republicans alike and no proposal was even scheduled for debate on the floor of

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either the House or Senate. Nevertheless, EPA proposed and finalized the new “WOTUS” rule that effectively ignored Congress and expanded Federal jurisdiction even though Congress had not done so. Within the last year, bipartisan majorities in both the House of Representatives and the Senate voted to reject EPA’s interpretation of the law. Once again, however, the courts, not the people’s elected representatives, will decide the outcome.

- Coupled with the expansion of litigation, the U.S. Supreme Court has expanded agencies’ powers by entrenching the principle that when interpreting what laws and regulations mean, judges must give deference to agencies:
 - In *Chevron U.S.A. v. Natural Resources Defense Council* (1984), the Supreme Court required federal judges to defer to an agency’s reasonable interpretation of a statute – even if the regulation differs from what the judge believes to be the best interpretation. This principle applies if the statute in question is within the agency’s jurisdiction to administer; the statute is ambiguous on the point in question; and the agency’s construction is reasonable.
 - In *Auer v. Robins* (1997), the Court again expanded agencies’ authority. In that case, the Court held that it would give deference not only to an agency’s interpretation of a statute but to an agency’s interpretation of its own regulations as well.

At another layer of regulation, agencies may often use handbooks and field manuals in guiding decisions that affect landowners; yet these guidance documents are not subject to public notice-and-comment, and they can even vary from region to region and often change on a whim. Yet, courts are increasingly deferring to those guidance documents and even to individual agency employee interpretations of those guidance documents. Given the breadth of deference afforded to agencies, they have a strong incentive to issue ambiguous rules and then ask courts for deference when the rules are challenged in court. Our nation’s judges no longer play the role assigned them by the Constitution – to decide what the law actually means.

- With the expansion of citizen lawsuits, disbursements of public funds from the Judgment Fund have taken on increased significance. Additionally, in 1980 Congress enacted the *Equal Access to Justice Act*. The statute has the laudable goal of seeking to assure that no stakeholder is foreclosed from access to the court system; but its implementation has been unequal, even arguably unfair (see example below). Moreover, particularly for western states, there are increasing complaints that the EAJA has been used to pursue an activist agenda through the courts when such policies fail to win approval on Capitol Hill. This has often occurred in disputes over logging on public lands.
- Over the last several decades, economic and scientific models have played an increasingly important role in how regulatory agencies decide policy questions. Use of models *per se* is not wrong; they can be valuable tools. But models should not be relied upon exclusively, nor should model results be a substitute for hard facts and data when

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the two conflict . President Obama noted the critical role science plays at the start of his Administration when he issued his Memorandum for the Heads of Executive Departments and Agencies on March 3, 2009. That memorandum, enunciating many aspects of the importance science plays in the rulemaking process, has generated bipartisan support. But some question how faithful agencies are to the policy; and in any event, if agencies depart from these science guidelines in rulemaking, aggrieved parties have little recourse and none in the courts.

- Some statutes, like the Clean Air Act, significantly limit whether or how agencies can consider costs when reaching policy decisions; other statutes, such as the Clean Water Act and FIFRA, allow either some weighing of costs-and-benefits or grant greater flexibility to agencies in making determinations. Yet even the Clean Air Act requires the agency to take into account the impact its regulations will have on jobs. Other statutes, like the Regulatory Flexibility Act and the Small Business Regulatory Fairness Act, are designed to assist small businesses in the regulatory process yet agencies too often find ways to circumvent their requirements. For example, the ‘social cost of carbon’ template is being used to ‘quantify’ certain economic benefits; there may be cases where such an approach is useful. But rulemakings with significant, extensive economic implications should rely if at all possible on quantifiable, real world data whenever it is available. Rulemakings should not devolve into a game of manipulated statistics or theoretic qualifications to justify preferred policy outcomes.
- Internal agency guidance is being developed to make fundamental changes in how regulations are implemented even when explicit authority from Congress is absent. In November 2015, the President issued a memorandum to EPA, the Department of Interior and other select agencies that it shall be their policy “to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources caused by land- or water-disturbing activities...” The agriculture community is attempting to learn how such a sweeping directive may affect the issuance of permits under the Clean Water Act, grazing permits under the Taylor Act, injurious wildlife listings under the Lacey Act and other programs where any activity requires Federal assent or permission. This memorandum raises fundamental legal, even constitutional, questions; foremost among them is to what extent, if any, agencies in the Executive Branch have the authority to direct, limit or even prohibit conduct in the absence of Congress granting them such authority.

III. The Current System Poses Challenges for Agriculture

Regulations have a direct impact on America’s farms and ranches. But agricultural producers are affected uniquely: for the overwhelming majority, as stated earlier, their businesses are their homes. Thus, when a new or revised Federal regulation takes effect, more than likely it will affect how a grower can manage his or her land – what crops to grow, or where or how to grow them; how to manage them before or after harvest; how to house, feed or care for the livestock under their care; and – most significantly – how to make sure

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that farming and ranching operations are sustainable and productive for their children, the extended family, and future generations. When the Constitution was ratified over two centuries ago, more than 90 percent of Americans lived on family farms. Today, fewer than 2 percent of Americans live on the farm. But American agriculture today – as it was 240 years ago – remains, at heart, a family enterprise.

Farmers and ranchers across the country have shared stories about the impact regulations have on their lives and businesses. Additionally, agricultural facilities like grain elevators and commodity processing facilities have been subjected to unreasonable, costly and lengthy battles over Federal rules. One of the realities of life in rural America is the ‘mission creep’ that increasingly brings farmers, ranchers and related agricultural businesses face-to-face with Federal regulators. Consider the following real-life examples:

- (a) A West Virginia farmer was told by EPA that dust and feathers blown to the ground from her chicken growing operation constituted a violation of the Clean Water Act. It required tens of thousands of dollars for her to defend her farm in court (as well as intervention in the suit by the American Farm Bureau Federation). The court sided with her and rejected EPA’s allegations and the agency’s interpretation of the Clean Water Act. EPA subsequently ignored the decision and publicly stated its intent to go after more farmers for the same activity.
- (b) A Washington state grower was told by the Department of Homeland Security that the farmer had to dismiss certain workers because the workers supplied improper documentation under the Immigration Act. Subsequently, the Department of Labor told the same farmer he had to *hire* the same workers because it was required by Federal law.
- (c) A California farmer faces an enforcement action from the Army Corps of Engineers for violating the Clean Water Act. The agency alleges that the farmer created “mini mountain ranges” by plowing 4-7 inches deep in a wetland – even though Clean Water Act regulations explicitly state that plowing in a wetland is permitted.
- (d) Idaho ranchers were forced to go to court to fight the Bureau of Land Management in an effort to protect their state water rights from takings by the federal government. The BLM had threatened the ranchers to sign over their water rights to the government or face a drawn out (and costly) legal battle. The ranchers won on every point of the lawsuit all the way to the Idaho Supreme Court, but only after incurring considerable expenses during the litigation. In the end, the court ruled that it did not have authority under EAJA to require the federal government to pay attorney fees – even though a court in another state reached the opposite conclusion. The rancher now faces litigation expenses of over \$1 million because one court has ruled he cannot recover costs that other courts have said are reimbursable.”
- (e) Ranchers grazing livestock on public lands in Utah and other states are required to have Federal grazing permits for their activities. Frequently, they have separately acquired

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water rights they hold that have been adjudicated under state law. Federal law and Supreme Court precedents reaffirm those rights. Yet Federal officials, without any authority from Congress and without public notice, have attempted to require those ranchers to share or hand over their private water rights to the Federal government as a condition of their permit.

- (f) The US Department of Labor proposed an agricultural child labor regulation in 2012. The department subsequently withdrew the proposal after it was found that the Department's characterization of the family farm exemption in the proposal differed from its own statements in its Field Manual.
- (g) Many specialty crops benefit from chlorpyrifos as an insecticide. EPA has proposed revoking tolerances for the product (effectively eliminating its use in agriculture). In doing so, EPA is relying in part on an epidemiological study. Although the agency has requested raw data from the study those requests have been rejected by the researchers. Yet EPA continues to employ the study despite the fact that the agency's own Science Advisory Panel has expressed concern with how EPA is using the study.
- (h) EPA has published a controversial draft ecological assessment of atrazine. Atrazine has been used for decades and currently is employed on over 44 million acres of corn; millions of more acres in sorghum and sugar cane also use the product. Despite its widespread use and decades of data demonstrating its safety and efficacy, EPA appears to be relying on methodological errors and disputed scientific studies in this draft assessment in order to eliminate use of the chemical.
- (i) The U.S. Fish and Wildlife Service recently added native salamanders under an interim rule as 'injurious wildlife' to prevent the importation or interstate movement of a foreign animal disease. The Lacey Act does not authorize animal disease regulation, Congress did not intend native species listings and a recent court ruling has found the Act does not authorize the Service to regulate interstate trade (*U.S. Association of Reptile Keepers, Inc. v. Sally Jewell et al., Memorandum of Opinion, May 12, 2016*)
- (j) The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) revised its hazard communication standard and classified whole grain (i.e. corn, soybean and wheat) as a "chemical hazard," basing this on the view that when the grain is processed, it produces dust which can be combustible under certain conditions. As a result, commercial grain facilities now are classified as "chemical manufacturing facilities." OSHA made this change unilaterally in the final rule, without proposing it in the proposed rule.

IV. Regulatory Missteps

Reform of the rulemaking process is critically needed. Listed below are examples of how the system has failed to deliver for stakeholders.

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(a) Waters of the US (WOTUS) rule

Perhaps no regulatory proceeding in recent memory more graphically underscores where the system is failing:

(1) EPA violated the prohibition on lobbying

The Government Accountability Office (GAO) found that EPA violated the Anti-Deficiency Act by essentially generating comments in support of its own proposal.

(2) Use/misuse of science

EPA and the Army Corps of Engineers undertook a compilation of scientific research on the subject of connectivity of waters as a means of validating the agency's proposal to expand Federal jurisdiction. The agency, however, unveiled its regulatory proposal *before* the study was even complete and available for comment; in fact, before the 'study' itself was final, EPA was defending its rule, attempting to garner public support for it and then finalized the rule itself before finalizing the 'study.' Not surprisingly, the study appeared to ratify the agency's pre-existing view that nearly all waters are somehow connected and therefore almost all "waters" – including "waters" that are actually dry land – should be regulated under the Clean Water Act. EPA has based its legal and scientific underpinning of this rule based on a misreading of the concurring opinion of a single Supreme Court Justice in *Rapanos*: that the agency could only regulate waters that had a 'significant nexus' to navigable waters. The agency took the view that virtually any connection was significant.

(3) Use/misuse of economics

EPA publicly stated and re-stated claims that were almost contradictory. In some forums, the agency claimed its proposed regulation had a negligible impact on its jurisdiction, extending it only by 3% or 4%. Such a claim allowed the agency to elide its obligations under the Regulatory Flexibility Act. Yet in other forums, the agency made the assertion that its 'clean water' rule would extend protection to 60% of the nation's flowing streams and millions of acres of wetland.

(4) Subversion of the APA notice-and-comment procedure

The APA required the agency to receive, evaluate and respond to comments received during the comment period on the proposed rule. Yet the agency manifestly used the comment period not only to defend its rule – it also used the period to attack and reject comments made by those who had criticized the rule and to generate comments in support of its own point of view. The agency went on to

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claim that it received over a million favorable comments (some being nothing more than signatures on petitions generated on the agency's behalf through social media efforts undertaken by the agency and paid for by U.S. taxpayers).

(5) Lack of State-Federal consultation

The Clean Water Act (§1251) states that “It is the policy of the Congress to recognize, preserve, and protect the primary responsibility and rights of States to prevent, reduce, and eliminate pollution...” Yet dozens of states have sued the agency over its proposal, demonstrating that the agency is not following congressional intent to work with states in implementing the law.

(6) Refusal to respect the intent of Congress

Both houses of Congress, by bipartisan votes contemporaneous with EPA's proposal, voted for legislation overturning the agency's regulation. Yet the agency has refused to acknowledge that its judgment is secondary to the Congress.

(b) U.S. Forest Service Groundwater Directive (federal taking of private property water rights)

A U.S. Court rejected an effort by the U.S. Forest Service (USFS) to coerce Federal permit holders to relinquish or share water rights permit holders had lawfully gained through state adjudication proceedings; the USFS was attempting to do this by conditioning permits on the transfer or sharing of such rights. Many western ranchers also hold water rights and have been pressured by the Bureau of Land Management (BLM) to concede their rightful ownership. Similarly, BLM appears to be increasingly moving away from the multiple-use concept authorized by Congress; rather, the agency is injecting its own preferred policy approaches to the management of public lands, often for the single use of environmental and species protections.

(c) EPA draft ecological assessment of atrazine

Atrazine is an important herbicide for corn farmers and others; it is used today on more than half of all corn acres and has a long history of use and study (by some estimates, nearly 7,000 studies). Yet EPA has published a draft ecological assessment of atrazine that, if left unchallenged, could eliminate its use by farmers. In its assessment, the agency has adopted an approach that has raised significant scientific questions and apparently disregarded the advice of multiple SAPs over the years.

(d) Worker Protection Standards rule

EPA in the last year has finalized changes to its worker protection standards (WPS) rule.

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The new regulation imposes new recordkeeping, training and other requirements on farmers that will cost millions of dollars. EPA claimed that the rule was justified because it would confer safety benefits to workers – even though in numerous instances in the proposal it admitted it could not quantify or justify its assertion of increased benefits.

- (e) The traditional definition of wetlands uses three criteria – hydrology, vegetation and the presence of hydric soils. Yet Federal regulators increasingly try to reduce or eliminate one or more of the criteria as a means of expanding Federal regulations; those policy choices are made largely without the benefit of APA procedures.
- (f) Planning Rule for National Forest Management

In 2012, the USDA Forest Service adopted new planning rules that radically restructured the purposes of the National Forest System. These planning rules advance ‘ecological integrity’ over congressionally authorized outputs, such as timber, water, forage, and recreation. The forest industry, ranchers, and recreation groups filed suit, arguing that the rules represented a fundamental departure from legislative mandates but courts dismissed the suit on the grounds that there was no concrete injury from a rule that simply guides planning. Yet the exact outcomes alleged by the plaintiffs are coming to pass: reduced timber outputs, less grazing, and more complex rules that promise to stymie needed forest management projects.

V. A Bipartisan Approach

Given this set of facts – an administrative statute that is 70 years old; an explosion of Federal laws and requirements; greater Federal demands on state governments with fewer resources to accomplish them; an increase in the amount and scope of litigation; expanded ability of parties to sue; the development and use of computer models to simulate or sometimes substitute for real-world conditions; the broadening scope of environmental statutes to affect and sometimes override economic considerations and property rights; the judicial principle that courts must defer to agencies rather than interpret the law themselves – it is no surprise that the impacts of regulations on agriculture have increased. Coupled with this set of facts is another critical component: the increasing difficulty of Congress in finding agreement on bipartisan solutions. In truth, over the past few decades we have seen executive/regulatory and judicial activities increase to the point that those branches are deciding policy questions at the expense of Congress – where the Constitution explicitly vested policy decisions. At the heart of regulatory reform should be a bipartisan effort to rectify this imbalance.

In recent years, Congress has sought to address shortcomings in the existing system, considering legislative proposals to make improvements in the *Administrative Procedure Act*. Unfortunately, to date such efforts have failed to gain sufficient bipartisan support. We do believe, however, that there are common principles on which both parties agree.

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The striking feature on regulatory reform that gives us cause for optimism is that, for years, even decades, we have seen both Democratic and Republican presidents enunciate a set of principles that are strikingly similar. While clearly there are different emphases and priorities, we believe Republican and Democratic Presidents alike have reiterated the desirability and need for an honest, transparent, open and credible regulatory process. Note the statements below taken from Executive Orders and other presidential documents, some nearly four decades old, that speak to these questions:

Regulations ... shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. ... Regulations shall be developed through a process which ensures that ... the need for and purposes of the regulations are clearly established; meaningful alternatives are considered and analyzed before the regulations is issued; and compliance costs, paperwork and other burdens on the public are minimized.

President Jimmy Carter, Executive Order 12044 (March 23, 1978)

Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society; regulatory objectives shall be chosen to maximize the net benefits to society; among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen.

President Ronald Reagan, Executive Order 12291 (February 17, 1981)

Federal regulatory agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. ... In choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity) unless a statute requires another regulatory approach.

President Bill Clinton, Executive Order 12866 (September 30, 1993)

National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.

President Bill Clinton, Executive Order 13132 (August 4, 1999)

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The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification and use of scientific and technological information policymaking

President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies (March 3, 2009)

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. ... This order...reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and cost are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations ...

President Barack Obama, Executive Order 13563 (January 18, 2011)

In the 2016 presidential election campaign, Donald Trump has spoken to the need to address over-regulation. In response to questions from the American Farm Bureau Federation, Mr. Trump said:

As President, I will work with Congress to reform our regulatory system. ... We will increase transparency and accountability in the regulatory process. Rational cost-benefit tests will be used to ensure that any regulation is justified before it is adopted. Unjustified regulations that are bad for American farmers and consumers will be changed or repealed.

Similarly, in response to the same question, Hillary Clinton's campaign responded:

As president, she will always engage a wide range of stakeholders, including farmers and ranchers, to hear their concerns and ideas for how we can ensure our agriculture sector remains vibrant. If there are implementation challenges with a particular regulation, Hillary will work with all stakeholders to address them."

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VI. Proposals to Consider

Members of America's farm and ranch community call on the new Administration and Congress to initiate a process that will draw upon the best of ideas from a broad range of stakeholders. Republicans and Democrats should invite comments from the broadest range of perspectives. As stated earlier, we firmly believe that *all* affected parties have a fundamental interest in a process that commands respect; that is transparent; that reflects congressional intent; and that seeks to fairly and evenly balance the interests of all affected parties. We do not believe the system that exists today exhibits those characteristics.

Listed below are some provisions that in our view deserve consideration. There are undoubtedly others; they should all be up for discussion, consideration and debate. We pledge our readiness to work with the new Administration and all members, on both sides of the aisle, in an effort to strengthen the existing system to protect our environment, the agricultural landscape, and to reinvigorate the American economy.

1. Review *Chevon* and *Auer* deference policies. Congress should consider:
 - a. To what extent deference should apply
 - b. What is the appropriate way to acknowledge agency expertise
 - c. Whether the existing system fairly treats the regulated community
 - d. How best to re-establish equilibrium among Congress, agencies and the courts
2. Review agency use of science. Congress should consider:
 - a. How to assure the President's memorandum on science is implemented
 - b. How the Information Quality Act is implemented
 - c. How agencies can assure transparency in the science they use
3. Review agency use of economic data. Congress should consider:
 - a. How agencies utilize economic data and economic models
 - b. How agencies implement executive orders on least-cost alternatives
 - c. How well agencies implement SBRFA
4. Review agency transparency in rulemaking. Congress should consider:
 - a. How well the APA promotes transparency
 - b. What further steps can promote agency openness
 - c. How well the APA respects Federalism and the role of the states
5. Review Federal-state cooperation. Congress should review:
 - a. How well agencies implement the Clinton EO on federalism
 - b. How well agencies respect state authority
 - c. Whether agencies are unduly burdening state governments with regulatory costs
6. Review the *Administrative Procedure Act*. Congress should:
 - a. Undertake a comprehensive review of the APA
 - b. Mandate a minimum 60-day comment period for major rules

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- c. Establish special procedures for rules that have significant impact on the economy or certain sectors
 - d. Examine ways to promote advance notice to states and regulated parties about upcoming regulatory initiatives
 - e. Explore ways to assure the APA reflects Presidential Executive Orders on rulemaking
 - f. Explore the appropriateness of cost-benefit considerations in rulemaking
7. Re-affirm the public's right to know. Congress should
- a. Mandate greater transparency of disbursements from the Judgment Fund
 - b. Assure the *Equal Access to Justice Act* is fairly and impartially implemented
 - c. Assure that settlement decrees that affect the regulated community are disclosed in advance
8. Review the impact of judicially-driven policy and regulation. Congress should
- a. Review the issue of standing and how it impacts regulations
 - b. Review the scope of matters subject to judicial review
 - c. Review need for narrowing scope of judicial interpretation
9. Review Congress' role in rulemaking. Congress should
- a. Examine the need or appropriateness for congressional approval of major rules
 - b. Examine the need for greater congressional oversight of agency rulemaking