



# Statement of the American Farm Bureau Federation

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**TO THE UNITED STATES SENATE  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

**S.\_\_\_\_, the Agriculture Creates Real Employment (ACRE) Act**

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**Presented By:**

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Chairman Barrasso, Ranking Member Carper, and Members of the Committee, my name is Ryan Yates and I am Director of Congressional Relations at the American Farm Bureau Federation. I am pleased to be here today to offer testimony on the Agriculture Creates Real Employment (ACRE) Act. This legislation addresses several issues of importance to farmers and ranchers across the country.

On behalf of the nearly 6 million Farm Bureau member families across the United States, I commend your leadership in providing oversight of federal environmental regulations and policies and appreciate the Committee's desire to understand the "real-world effects" of federal regulations. Such a review is timely and, in our judgment, will permit policymakers to gain a greater appreciation for the impact federal regulations have on farmers and ranchers, how farmers and ranchers must respond to the demands of regulations and how those regulations affect agricultural producers in their efforts to produce food, fiber and fuel.

Farmers and ranchers today face an increasing array of regulatory demands and requirements. Federal regulations – and the state and local regulations that often flow from them – permeate virtually every phase of agricultural production. The Agriculture Creates Real Employment (ACRE) Act addresses a range of environmental policy issues which impose real costs and substantive burdens to our members.

AFBF policy speaks to both the regulatory process and specific regulations. As a general observation, our members believe that federal regulations should respect property rights; be based on sound scientific data; be flexible enough to recognize varying local conditions; be transparent; and take into account the costs and benefits associated with public and private sector compliance prior to being promulgated.

### **Section 3. Exemption from Certain Notice Requirements and Penalties**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted to provide for cleanup of the worst industrial chemical and toxic waste dumps and spills, such as oil spills and chemical tank explosions. CERCLA has two primary purposes: to give the federal government tools necessary for prompt response to problems resulting from hazardous waste disposal into water and soil, and to hold polluters financially responsible for cleanup. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires parties that emit hazardous chemicals to submit reports to their local emergency planning offices, thus allowing local communities to better plan for chemical emergencies.

In 2008, EPA finalized a rule to exempt all agricultural operations from CERCLA reporting and small operations from EPCRA reporting requirements, recognizing that low-level continuous emissions of ammonia and hydrogen sulfide from livestock are not "releases" that Congress intended to regulate. When the rule was challenged in 2009, the Obama administration spent eight years defending this Bush-era regulation. In defending the lawsuit, the Obama EPA argued that CERCLA and EPCRA language does not explicitly exempt farms because Congress never

believed that the continuous emissions of agricultural operations would fall into the realm of regulation. However, in April 2017, the D.C. Circuit Court of Appeals issued a decision vacating EPA's 2008 exemption, concluding that the exemption violated the statutes.

Not only does this court decision have the potential to require nearly 200,000 farms and ranches to report their low-level emissions, but it will also unnecessarily jeopardize our nation's environmental and public health. Currently, Hazardous Substance release reports are taken by the National Response Center (NRC), run by the Coast Guard. This department has averaged 28,351 reports per year over the last eight years. When farms from across the nation must suddenly report their low-level emissions, these reports from over 200,000 agricultural operations will inundate the NRC. This increase of over four times the average annual amount, in the weeks after the court's decision goes into effect, could prevent the Coast Guard from responding to actual hazardous waste emergencies, entirely defeating the primary purposes of CERCLA.

Importantly, emergency responders do not see value in reporting from farms, and the influx of agricultural reports could compromise emergency response coordination. The National Association of SARA Title III Program Officials, which represents state and local emergency response commissions, notes the continuous reports "are of no value to [Local Emergency Planning Committees] and first responders" and that the reports "are generally ignored because they do not relate to any particular event." In addition, the Coast Guard and EPA have stated that these emission reports will serve no useful purpose in terms of the crisis and emergency response function of CERCLA and EPCRA. The massive volume of reports will impede the efforts of the Coast Guard, EPA, and state and local emergency responders. CERCLA and EPCRA were intended to focus on significant events like spills or explosions, not routine emissions from farms and ranches.

Following the D.C. Circuit Court of Appeals decision, the EPA's options are limited. EPA has provided reporting guidance to farmers and ranchers, but there is no scientific consensus on how to measure air emissions on individual farms, requiring many farmers to spend resources on consultants. These requirements not only require reporting by larger farms, but also small pastured cow-calf farms, ranchers grazing on federal lands and horse farms.

The court recently granted a stay for three months, providing additional time for the agency to further develop administrative guidance and streamlined reporting forms, but buying time does not change the ultimate outcome: thousands of farms and ranches across the nation will be forced to report their daily emissions to the EPA or face liability of up to nearly \$54,000 per day.

The ACRE Act will ensure that the EPA is not required to implement this overly burdensome court decision and expose hundreds of thousands of farms and ranches to the threat of activist lawsuits while potentially creating a database of sensitive private farmer information. The whole point of activists' dogged effort to require reporting is to create a federal database that makes it easier to harass farmers and ranchers.

Farmers and ranchers support the solution provided in Section 3 of the ACRE Act, which will protect their privacy and their businesses from the financial strain and burden of these unnecessary reporting requirements on ordinary activities on their land.

### **Section 5 – Baiting of Migratory Game Birds**

Section 5 would protect farmers from federal penalties levied under the *Migratory Bird Treaty Act* if they are following best practices provided by their state Cooperative Extension Office. Under the *Migratory Bird Treaty Act*, the government has the authority to regulate hunting seasons for some protected species and prohibit certain actions in the interest of preserving those species.

The U.S. Fish and Wildlife Service has stated that ratoon crops which have been rolled qualify as baited fields, making them out-of-bounds for hunters, despite the fact that local Cooperative Extension Offices advised farmers to roll their fields to help return nutrients to the soil. Inadvertent baiting of a field can produce a fine of up to \$15,000 or prohibit hunting on the land.

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.

AFBF supports Section 5, the Hunter and Farmer Protection Act. This section would allow each state’s Cooperative Extension Service to weigh in on the difference between what constitutes baiting and normal agricultural practices.

### **Section 6. Use of Authorized Pesticides; Discharges of Pesticides; Report**

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 promulgated 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.

### **Section 7. Farmer Identity Protection**

The American Farm Bureau Federation opposes the disclosure of personal and/or business information by an organization, business or government agency about individual farmers and ranchers. The release of any information should only be allowed by specific written or electronic authorization of the individual, or any private business entity. Farmers and ranchers have a strong privacy interest in their personal information, including their home address, even when they live and work on the farm.

Farm families usually live on the farm and federal information disclosures could facilitate unwanted contact and harassment of farmers and ranchers. The fact that government agencies may have that information and even store it on the Internet does not eliminate the individual's privacy interest.

AFBF supports Section 7, the Farmer Identity Protection Act, which would prohibit the EPA or an EPA contractor from disclosing information collected under CWA requirements from livestock operations. Relevant information includes names, telephone numbers, email addresses, physical addresses, global positioning system coordinates, and other information related to the location of the owner, operator, livestock or employees.

### **Section 8. Privacy of Agricultural Producers**

Farm Bureau supports the use of unmanned aircraft systems (UAS) as another tool for farmers and ranchers to use in managing their crops and livestock and making important business decisions. A farmer faces daily challenges that can affect the farmer's yield, environmental

conditions on the farmer's property and, ultimately, the economic viability of the farm. Farmers rely on accurate data to make these decisions, and the use of UAS adds a valuable and accurate tool for the farmer in making optimal decisions to maximize productivity.

America's farmers and ranchers embrace technology that allows their farming businesses to be more efficient, economical and environmentally friendly. American agriculture continues to evolve. Farmers and ranchers use precision-agriculture techniques to determine the amount of fertilizer they need to purchase and apply to the field, the amount of water needed to sustain the crop, and the amount and type of herbicides or pesticides they may need to apply. These are only a few examples of the business decisions a farmer makes on a daily basis to achieve optimal yield, lower environmental impact and maximize profits.

UAS provides detailed scouting information on weed emergence, insect infestations and potential nutrient shortages. This valuable information allows the farmer to catch threats before they develop into significant and catastrophic problems.

The imagery from UAS also allows the farmer to spot-treat sections of fields as opposed to watering or spraying the entire field. Images from UAS allow the farmer to identify the specific location where a specific treatment – be it fertilizer, water, pesticides or herbicides – is necessary. By spot-treating threats to the crop, the farmer lowers not only the cost of treatment but also, potentially, the environmental impact by minimizing application.

While Farm Bureau supports this new technology and the potential opportunities it offers for farmers and ranchers, Farm Bureau is also concerned about the data collected from UAS and the privacy and security of that data.

Even if an individual operator follows all the applicable rules, regulations, and best management practices in his or her farming operation, there is still concern that regulatory agencies or one of the numerous environmental organizations that unnecessarily target agriculture might gain access to individual farm data through subpoenas. While a farmer's pesticide or biotech seed usage may be a necessary, appropriate and accepted practice, it also may be politically unpopular with certain groups.

The biggest fear that farmers face in data collection is government accessing their data and using it against them for regulatory action.

Questions abound within the agricultural community about "who owns and controls the data." If a farmer contracts with a company authorized to fly UAS, does the farmer own all the data from that UAS or is it shared by both the contractor and the farmer? In the case of a farm on rented ground, does the tenant or the landlord own the data?

Farm Bureau supports the use of UAS and believes it will be an important addition to farmers' management toolbox, but it is critical that the data remain under the ownership and control of the farmer and is not available to government agencies or others without the farmer's permission.

### **Section 9. Regulations relating to the taking of Double-Breasted Cormorants**

In response to a legal challenge, led by Public Employees for Environmental Responsibility, against the FWS for its five-year extension of two depredation orders that had been in place since 1998, the U.S. District Court for the District of Columbia remanded the 2014 Aquaculture Depredation Order (2014 Order) for the double-crested cormorant. The Court directed the FWS to expand its consideration of alternatives that had been included in its prior National Environmental Policy Act review.

In its subsequent May 2016 opinion, the Court noted the opportunity for FWS to issue individual permits and appeared to rule in favor of vacatur because of the availability of individual permits. The Court wrote:

“...if the Court were to vacate these orders, the parties agree that alternative routes remain available for the management of cormorant populations, for example, through individual predation permits under the Migratory Bird Treaty Act...According to FWS, ‘migratory bird permits could be requested and issued for the reduction of cormorant impacts on sensitive species or their habitats (vegetation).’ While the Court understands the limitations of relying on state management plans and individual permits...particularly in the long term, the takeaway remains that any seriously detrimental impact of [the Court’s decision] in the short term could be mitigated.” (Emphasize added).

In explaining his decision, the judge concluded that the FWS had “...not made a compelling case that rescission [of the depredation order] will cause significant consequences to aquaculture because the forecasted harms are imprecise or speculative.” In effect, the FWS failed to provide the Court with details of how seriously fish farmers would be impacted without the ability to control cormorants.

The double-crested cormorant is a large water bird that feeds mainly on fish. Commercial fish ponds are stocked at high densities ranging from 2,000 to 60,000 catfish per acre and 50,000 to almost 200,000 bait fish per acre. These production practices make fish farms highly susceptible to bird predation, particularly by cormorants. A study conducted prior to the 2014 Order estimated cormorant related production losses on catfish farms in the Mississippi Delta region at 18 million to 20 million fingerlings per winter. A 1996 USDA survey of catfish producers indicated that birds were responsible for 37% of catfish losses. Cormorants cause additional economic hardship by spreading fish parasites.

Section 9 would provide immediate relief to the aquaculture industry by reinstating the force and effect of the U.S. Fish and Wildlife Service’s statutory depredation order for double-breasted

cormorants with respect to freshwater aquaculture facilities in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

### **Section 10. Applicability of Spill Prevention, Control, and Counter Measure Rule**

Section 10 includes language from Senator Fischer's S. 1207, the Farmers Undertake Environmental Land Stewardship (FUELS) Act. The bill would amend the Water Resources Reform and Development Act of 2014 to provide a limited exemption to the EPA's Spill Prevention, Containment, and Control rule for farms with 10,000 gallons or less of fuel storage. The bill also provides for a volume increase for self-certification under the rule (from 22,000 to 42,000 gallons) for farms with no spill history and an established spill response process. Certification for farms with greater than 42,000 gallons of storage and/or a reported discharge history would need to be completed by a professional engineer.

Farm Bureau supports clearly defined requirements for on-farm, aboveground fueling facilities. Farmers should be assured of regulatory certainty before investing in corrective measures. We support revising Environmental Protection Agency (EPA) rules regarding aboveground fuel storage tanks to exempt farm fuel (diesel and gasoline) tanks from EPA mandates and allowing farmers, regardless of their on-farm fuel storage capacity, to complete and self-certify a spill control plan. In addition, we oppose the inclusion of any materials beyond petroleum products into the Spill Prevention, Control and Countermeasure (SPCC) regulations.

### **Section 11. Predatory and other Wild Animals**

Section 11 reaffirms the respective authorities of the U.S Fish and Wildlife Service (FWS) and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service's (APHIS) Wildlife Services division to issue appropriate permits in instances of depredation for nuisance species, birds, and other predators. The language directs the appropriate authority to use the most expeditious permitting process, including through collaboration between FWS and APHIS authorities.

Controlling wildlife damage is a critical factor in maintaining the success of American agriculture. AFBF supports property owners' having the right to protect crops and livestock from protected wildlife and predators. We support federal efforts to create a consistent process for livestock producers to follow when obtaining federal depredation permits. The process should include the ability for producers to work with local agencies to complete and submit all needed paperwork.

Additionally, increased funding is required for USDA-APHIS Wildlife Services for the agency's continued legal depredation efforts and roost dispersal of avian species that affect aquaculture production. This funding shall be utilized to efficiently manage, mitigate and further assist aquaculture producers in their efforts to deter avian depredation at aquaculture production

facilities. This shall include adequate staffing and the use of efficient and proven dispersal and depredation practices.

### **Conclusion**

We at the American Farm Bureau Federation appreciate the Committee's willingness to listen to our 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 the Senate Environment and Public Works Committee in pursuing solutions to these important challenges.