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United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: "Examining the Federal Regulatory System to Improve Accountability, Transparency and Integrity" - Responses to Post-Hearing Questions for the Record

Chairman Grassley, Ranking Member Leahy, and Members of the Committee, thank you again for the invitation to testify on behalf the American Farm Bureau Federation (AFBF) and the nation's farmers and ranchers on this important hearing on the transparency and integrity of federal agency rulemaking. The "Waters of the U.S." rule is now final and by the end of the summer, farmers, ranchers, business owners, cities, municipalities and other landowners across the nation will face new restrictions and tremendous uncertainty and legal risk regarding commonplace activities on their land as a result of this flawed and illegal rulemaking. Although the lawsuits have already been filed by AFBF and others representing farmers and ranchers, other major segments of the U.S. economy, and 28 state governments (so far), it is entirely appropriate that this Committee should consider the lessons to be learned from this poster child for the regulatory process gone wrong. I hope my responses to your questions below shed some light on those flaws and will be useful to the Committee as it contemplates how to improve our regulatory system.

RESPONSES TO QUESTIONS POSED BY SENATOR GRASSLEY

1. Concerns have been raised about the EPA's efforts to rally support for the proposed WOTUS rule during the open comment period and to downplay legitimate concerns raised by farmers, small business owners, and others who might be impacted by its provisions.

    a. Do you believe the WOTUS rulemaking process provided a meaningful opportunity for the public to have their opinions heard and seriously considered?

    Response: No, it did not. Rather than seriously considering the concerns expressed by agriculture, other industries and the vast majority of state, county and municipal governments, EPA launched its public comment period with an extraordinary public *advocacy* campaign to solicit support for (but not informed comment on) the proposed rule. Hundreds of public meetings were nothing more than a forum for delivery of EPA's talking points, and many were simply staged photo ops for EPA and a carefully selected audience supportive of the proposed rule. These meetings, along with a blitz of blogs, tweets and YouTube videos long on rhetoric, but lacking any substantive explanation of

the rule, were the substitute for what should have been an open and honest exchange of information between the agency and the public.

In private meetings with high-level agency staff and so called "stakeholder" meetings, farmers, ranchers and their representatives reported back to us that they asked specific questions about the rule, but EPA staff rarely dared to move off script. Instead, they told farmers, ranchers and their representatives that their questions were based on "misunderstandings" of the proposed rule and if they had concerns they could raise them through written comments. Perhaps if agency staff had moved away from their talking points, engaged in a real conversation and avoided the "dog and pony show", some questions would have been answered and critics would have at least felt that they were heard. Instead, the agencies aimed to conduct enough "outreach" sessions so that they could claim, as they do now, that the agencies "listened" to agriculture.

As I stated in my testimony, EPA started responding to public comments (particularly those comments from the agricultural community) the moment the proposed rule was released for public comment and before critics had the time to carefully review the proposal. The agency publicly rejected our criticisms and those of other industries, states and local governments long before the original comment period closed. When EPA extended the comment period, it took the opportunity to further its propaganda campaign, letting critics (such as AFBF, farmers and ranchers) know that their opinions had already been heard and rejected. Clearly, submitting comments loses some of its appeal when those comments have already been rejected by the agency.

b. In your opinion, was the EPA sufficiently open-minded in the WOTUS rulemaking process?

Response: No, EPA was anything but open-minded at any time during or after the comment period. From the very first day the proposed rule was made public, EPA's written materials, websites, presentations made during stakeholder meetings and public statements by key agency officials sought to undermine the credibility of anyone who expressed valid concerns about how the proposed rule would affect agriculture. EPA essentially called any concerns or criticism a "misunderstanding" of the rule – as if farmers, ranchers and their representatives (such as AFBF) were not capable of reading the rule and understanding what it really means. Nothing we said was considered a valid concern—it was all just a misunderstanding that the agency would further clarify either in its publicity campaign materials or the final rule itself. Even EPA's website for the rule contained absolutely nothing of substance about the content of the rule, but focused entirely on the rule's purported benefits and debunking the "myths" of its critics, mainly AFBF.

EPA made this personal—high-level political appointees such as the Administrator herself made public statements dismissing as "silly" and "ludicrous" and "myths" our organization's serious concerns about the rule during the public comment period. It is personal for me—as an experienced Clean Water Act lawyer who has litigated these issues for decades—because I can personally attest to the legitimacy of our concerns

regarding the rule. But more important, when a high level agency official publicly rejects and even ridicules objections during the comment period, it is a clear signal to those who have not yet commented that the minds of the agency's decision-makers are not open. This extraordinary behavior, by the Administrator and other senior officials as part of an artfully orchestrated advocacy campaign, clearly demonstrates the agency's mind was closed from the moment the proposed rule was released.

2. In *Decker v. Northwest Environmental Defense Center*,[1] Justice Scalia warned of the dangers of deferring to agencies' interpretations of their own vague regulations, because it might encourage agencies to be vague and ambiguous when first drafting rules.

   a. Do you think the EPA may have been deliberately vague with some of the terms it included in the WOTUS rule?

   Response: Yes, many of the key terms in the final rule are undeniably vague—even key terms, such as "waters," that are crucial to understanding the scope of the rule. Farmers and ranchers, and even experts in the field of Clean Water Act regulation with well-qualified technical consultants, cannot read the final rule and then reasonably determine what features on the landscape are jurisdictional waters. What we don't know is whether EPA and the Corps will come forth with guidance to provide landowners with more information on evaluating features or will simply interpret the rule in the context of enforcement actions. Guidance would certainly be preferable. But either way, the formal rulemaking process and the opportunity for public comment has ended without providing the public an opportunity to understand and comment on the full impact of the rule.

3. In his written testimony, Professor Parenteau states that "[t]he process employed by EPA reflects an unprecedented degree of public outreach and responsiveness to concerns and suggestions of numerous stakeholders."

   a. Do you agree with this assessment of the WOTUS rulemaking? Why or why not?

   Response: What was unprecedented was EPA's publicity and advocacy campaign designed to manufacture support for the rule among the public and dampen opposition. As far as "public outreach" is concerned, EPA held hundreds of "listening sessions" across the country, but few of them were open to the stakeholders most likely to have concerns about the rule—the farm and ranch community. Our members reported back to us that some of those meetings were open only to carefully selected and supportive farmers. Others, with broader farmer and rancher representation, were just another part of the PR campaign consisting almost entirely of non-substantive platitudes about the rule's purported benefits, while omitting any meaningful information about the actual content of the rule—i.e. what the rule would do, and what activities would be regulated as a result. For the most part, agency representatives did not move off their scripts, told farmers that their concerns were based on misunderstandings, myths and falsehoods (if questions were allowed or answered at all), and if farmers wished to comment they must do so separately. Was EPA "responsive" to criticisms? Not if "responsive" means listening to and honestly addressing the issues.

[1] *See Decker v. Nw. Env'tl Defense Ctr.*, 133 S. Ct. 1326, 1341 (2013) (Scalia, J., concurring in part).

4. In his written testimony, Professor Parenteau states that "[t]he rule is based on the best available peer reviewed science and it reflects a very conservative exercise of the statutory authority granted by the CWA."

   a. Do you agree with this assessment of the WOTUS rulemaking? Why or why not?

   Response: I do not agree. It is frankly ridiculous to claim that the WOTUS rule is a "conservative" exercise of statutory authority. That is pure rhetoric with no basis in reality, and it matches the rhetoric we have heard from EPA throughout its extraordinary advocacy efforts to sell its new rule. Now, I suppose some previous EPA and Corps interpretations of their Clean Water Act jurisdiction arguably have been as bold as parts of the new WOTUS rule—such as the unlawful "migratory bird rule" invalidated in the Supreme Court's *SWANCC* decision. But to have overreached badly before does not make the agency's current regulatory stretch "conservative."

   Far from being conservative, the WOTUS rule is an aggressive expansion of regulatory power calculated to allow EPA and the Corps to regulate—or disallow—countless commonplace land use activities throughout every corner of the country. The WOTUS rule is full of vague and expansive definitions designed to aggrandize the agencies' power: vague definitions of "tributary," "adjacent," "neighboring," "substantial nexus," "aquatic functions," and other terms, the interpretation of which will be essentially left to the agencies' judgment with extreme deference from the courts.

   With regard to science, I presume Professor Parenteau is referring to the so-called connectivity study on which the agencies based their assertion of jurisdiction over features that otherwise appear to be quite isolated from navigable waters. Our primary objection to reliance on that study is that it was never available to the public in its final form until after the public comment period had ended. The agencies may maintain that it is the best available peer reviewed science, but the public was unable to assess and comment on that during the rulemaking process. I would add that other scientific and technical underpinnings of the rule are completely invalid. The economic analysis, for example, is indefensible. And there have been credible reports that expert staff within the agencies themselves raised serious objections to its validity, only to have those concerns ignored.

RESPONSES TO QUESTIONS POSED BY SENATOR VITTER

Under the final rule in WOTUS, ponds, ditches, and ephemeral drainages may now come under federal jurisdiction. Everything from golf courses to farmland that have these waters on them or near them will likely be required to obtain costly, federal permits for any land management activities or land use decisions in, over or near them such as pesticide and fertilizer applications and stream bank restorations and the moving of dirt.

- Please explain how this expanded definition will affect hardworking American farmers and consumers.

Response: Thank you for recognizing that farming and ranching is a profession done by hardworking families who dedicate their lives not only to growing food and fiber but protecting our natural resources. The problem with this rule, however, is that it uses the wrong tool for the job. It applies a cumbersome, highly complex and costly regulatory and permitting regime—with tens of thousands of dollars in potential penalties for even paperwork violations—to hundreds of thousands of farmers and ranchers and their routine farming and land management practices. These are small business owners without legal and technical staff on hand to navigate this complex program—and without the resources to hire teams of lawyers and consultants just to farm a field.

Because ditches and ephemeral drainages are ubiquitous on farm and ranch lands—running alongside and even within farm fields and pastures—the new WOTUS rule will make it impossible for many farmers to apply fertilizer or crop protection products to those fields—or even move dirt in those fields—without triggering Clean Water Act "discharge" liability and permit requirements. A Clean Water Act "pollutant discharge" to waters of the U.S. arguably would occur each time even a *molecule* of fertilizer or pesticide falls into a jurisdictional ditch, ephemeral drainage or low spot—even if the feature is *dry* at the time of the purported "discharge." To avoid liability, farmers will have no choice but to seek a federal permit to farming, or else farm around these features—allowing wide buffers to avoid activities that might result in a discharge. Such requirements are unnecessary to protect water quality and present a major roadblock to farming.

Another problem is the level of uncertainty over created by the rule. Because of the vague definitions of regulated "waters" (which often don't look like "water" at all), the rule leaves farmers and ranchers with no idea what features on their land are jurisdictional "waters" and which ones are not. But farmers and ranchers must make decisions now about where they can apply crop protection products, where they may use fertilizer—even where they can harvest a growing crop without violating the law. If they make the wrong decision, even in good faith, they risk tremendous potential liability and penalties if EPA, the Corps, the state, or even an ordinary citizen decides to enforce the law. Hardworking people acting in good faith should not have to live under this cloud of legal risk.

- Please explain Congress' constitutional authority to regulate such waters.

Response: Congress's authority to regulate water pollution under the Clean Water Act arises under the Commerce Clause of Article 1, Section 8 of the U.S. Constitution. The Supreme Court explained in *United States v. Lopez*, 514 U.S. 549 (1995), that the Commerce Clause permits the regulation of "three broad categories" of activities: "the use of the *channels* of interstate commerce," "the *instrumentalities* of interstate commerce, or persons or things in interstate commerce," and activities "that *substantially affect* interstate commerce." *Id.* at 558-559. The Supreme Court in *Solid Waste Agency of North Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), held that Congress adopted the Clean Water Act solely under the first head of its Commerce Clause authority, over waters as channels of interstate commerce.

Accordingly, the Clean Water Act applies to traditionally navigable waters, which—like interstate highways—are capable of being used by the public for transportation and commerce and play an integral role in the Nation's economy. It also covers waters that are immediately adjacent to, and have a direct and unmistakable impact on, such waters. But Congress's "channels" Commerce Clause power does not extend to wholly intrastate waters (like ponds and the like) or to interstate waters that are not navigable in fact and do not have a direct impact on navigable waters (like ephemeral drains and ditches).

- Chief Justice Marshall in *McCulloch v. Maryland* proclaimed that our federal government is one of enumerated powers and, "this principle is now universally admitted." Does the "substantial effect test" laid out in *Wickard v. Filburn* comport with this principle?

Response: The Court in *Wickard* held that activity—even wholly local activity—is subject to regulation by the federal government "if it exerts a substantial economic effect on interstate commerce." 317 U.S. 111, at 125 (1942). It is unclear whether the Supreme Court today would come to the same conclusion as it did in *Wickard* in 1942. But whatever the virtues and vices of the *Wickard* decision, it does not help the EPA or the Corps when it comes to justifying the WOTUS Rule. As described above, Congress in the Clean Water Act did not rely on the "effects on commerce" power addressed in *Wickard.* Instead, the Clean Water Act rests on Congress's power over the "channels" of interstate commerce, which *Wickard* does not address. The Supreme Court in *Solid Waste Agency* made clear that the *Wickard* effects analysis does not apply to the Clean Water Act when it struck down EPA's and the Corps' "migratory bird rule," which purported to bring isolated ponds within the reach of the Act because migratory birds used those ponds and migratory birds affect interstate commerce (through hunting and bird watching, for example). *Wickard* is thus irrelevant to, and cannot justify, any application of the Clean Water Act.

RESPONSES TO QUESTIONS POSED BY SENATOR TILLIS

AFBF has extensive policy on regulatory reform. Before responding to your specific questions, I would like to cite several provisions from our policy book because I believe they touch on the subject matter of the committee's review. Our farmer and rancher members believe that:

- No federal agency shall be allowed to legislative through their regulatory power.
- Federal regulations should be based on sound scientific data than can be replicated and peer reviewed.
- Risk assessment analysis should be conducted prior to final action.
- An estimate of the costs and benefits associated with public and private sector compliance action must be conducted prior to final action.
- Alternatives to the action must be thoroughly and publicly considered, especially market-based incentives.
- The ability to intervene in regulatory actions should be limited to only those parties that can demonstrate they are directly affected by the alleged violation.
- All federal regulations should have sunset provisions.
- Congress should provide for strong congressional oversight of regulatory and significant agency actions as well as a willingness to override unacceptable agency actions.

Other aspects of our policy express support for "zero-base budgeting" to federal agencies as a method of regulatory reform; development of an annual comprehensive report on the efficiency of regulations; and more vigorous congressional scrutiny of agencies. In sum, AFBF policy generally supports the activities of your Committee in its review of the federal regulatory system and the impact of that system on American agriculture. The following are specific replies to your questions.

1. During the hearing, much was said regarding efforts to improve accountability, transparency, and the integrity of our federal regulatory system. In determining how we might best accomplish those objectives, it would be helpful for us to agree on the appropriate markers we could use to measure the current regulatory environment and the effectiveness of any ensuing reforms. How might we, as members of the Congress charged with continually evaluating the regulatory landscape, quantify the current volume or level of regulations in play in the federal regulatory system? In other words, what metrics could or should Congress use to determine whether the administrative rulemaking process is appropriately balanced? What are the correct indicators for us to use to evaluate whether things truly are out of balance at this point in time as opposed to at prior points in the modern era of administrative law generally?

   Response: There can be little doubt that the cumulative impact of federal regulations is substantial, particularly on agriculture. There may well be a benefit to estimating or evaluating the overall volume or extent of the regulatory landscape. AFBF has participated in congressional efforts along these lines. Just two months ago, AFBF prepared an extensive submission to the Senate Committee on Homeland Security and Governmental Affairs as it conducted its regulatory review; a copy of that letter is attached. AFBF prepared similar materials for the House Committee on Government Reform and Oversight several years prior in a similar endeavor.

   While such efforts are undoubtedly helpful, it is worth recognizing that departments and regulatory agencies, in promulgating rules, are in large part implementing responsibilities granted to them by Congress. An overall assessment as to whether the system is out of balance might help foster deserved scrutiny. But such as assessment isn't essential for identifying and bringing appropriate oversight to bear on particular agencies run amok. Each congressional committee with authorizing authority should set as a high priority the need to conduct vigorous oversight of how their laws are being implemented. This is particularly so where agencies have active rulemaking in the implementation of decades old laws such as the Clean Water Act, Clean Air Act and Endangered Species Act.

2. The use of "sue-and-settle" tactics creates a significant loophole in the legislative process that can allow special interest groups to unfairly influence rule-making decisions without the open and transparent notice and comment period. In terms of addressing "sue-and-settle," is there an argument that the courts should actually have a more active role in this, perhaps by being more liberal with intervention rights of third parties or perhaps with statutorily defined time limitations as to how quickly an agency may formally settle after publicly disclosing the terms of such a settlement?

Response: AFBF policy supports limiting the ability to intervene in regulatory actions to only those parties who can demonstrate that they are directly affected by the alleged violation. While this policy was written in the context of regulations, we believe the reasoning behind this position applied equally to litigation. Unfortunately, we find in many instances that federal agencies (EPA in particular) are more likely to oppose intervention by regulated interests, including agricultural associations' such as AFBF. In addition, the law has developed to grant environmental groups far greater latitude to intervene. This imbalance should be corrected and the Judiciary Committee may wish to consider options for legislation to accomplish that.

a. Is there a statutory solution that would make this process less likely to shut out stakeholders with a different viewpoint than those espoused by a hypothetical plaintiff and sympathetic or collusive agency-defendant?

Response: Creating a statutory solution that minimizes the chances for "sue and settle" while also allowing parties the ability to settle their claims is a challenge. At this point I have no specific statutory language to suggest, but would welcome the opportunity to work with the Committee to find a solution.

b. Should Congress consider reforms to make settlements and consent decrees achieved through "sue-and-settle" tactics more transparent? If so, how?

Response: The first major step is to ensure that agencies do not bind themselves into finalizing a rule or any particular policy as part of any settlement or consent decree, when those actions must be implemented under the APA.

3. Currently, under *Chevron*, if a statute is deemed ambiguous, an agency must merely show that their interpretation of the statute was reasonable and, in the words of Chief Justice Roberts, within "the bounds of the permissible." In your expert opinion, should Congress consider raising this bar in an effort to reduce judicial deference to agencies' rule-making authority? If so, what should the standard be?

Response: AFBF believes the question of Chevron deference merits careful review and attention by the Committee. However, Congress can't predict every possible application of each statute that it writes, and leaving room for interpretation allows for common sense application of the statute as unanticipated circumstances arise. The interpretive gaps that result have to be filled by someone—either by a judge behind a bench, or an administrator behind a desk. As a practical matter, there can be benefits to assigning the task to an agency. Agencies often develop technical expertise, which they can bring to bear on the interpretive question. And the notice-and-comment process allows the regulated parties to make important policy-based arguments that lack traction in a courtroom. On the other hand, there are also disadvantages. In particular, because agencies are prone to expanding their power rather than narrowing it, deference to agencies leads to predictable growth of the administrative state. So, in my view, *Chevron* deference cuts both ways.

In the end, I see two potential checks on the inappropriate agency interpretation of statutes. . The first is for Congress, to the greatest degree practicable, to set out clear directions in its legislative drafting, thereby providing reasonably intelligible guidelines within which agencies should operate. A second might be action by Congress to better articulate the standard to be applied by courts at *Chevron* "Step One"—the determination of whether the statute is ambiguous on the question at issue. Time and time again, we see courts engaging in mental gymnastics to find a statutory phrase "ambiguous"—and therefore triggering deference to any "permissible" agency interpretation—when in fact the words used by Congress support one clearly best, common sense interpretation. In my view, it would certainly be worthwhile to explore whether the standard for judicial review at *Chevron* Step One could be more clearly articulated to aid courts in overturning agency interpretations that are at odds with the plain meaning of the words written by Congress.

I would add that an even better candidate for potential congressional action is *Auer* deference, which requires courts to defer to agencies' interpretations of their own vague regulations. This second layer of deference perversely encourages agencies to draft ambiguous regulations, so that they can later issue "interpretations" that amount to de facto new regulations. The result is vague rules that leave the regulated public guessing about what is required of them, followed by the issuance of binding interpretations that are not subject to the notice and comment process. Several justices of the Supreme Court have recently expressed serious doubts about *Auer* deference, explaining that, when "the power to prescribe is augmented by the power to interpret," it encourages agencies "to speak vaguely and broadly, so as to retain a 'flexibility' that will enable 'clarification' with retroactive effect." *Decker v. Nw. Env'tl Defense Ctr.*, 133 S. Ct. 1326, 1341 (2013) (Scalia, J., concurring in part).

If Congress is concerned about excessive deference to agency decision-making, I suggest focusing on *Auer* deference. Doing away with *Auer* deference would be a very meaningful step toward ensuring that agencies issue clearer and more predictable regulations from the outset.

4. Given the current vast and expanding bureaucratic structure of the federal agencies, most, if not all, of their current focus is placed on the promulgation of new rules. There are over 176,000 pages of regulations which some sources have stated amount to a regulatory burden of $1.6 trillion. This regulatory effect is increasingly frustrating for business owners of all sizes, including farmers and ranchers. In your opinion, do you feel there should be a process to retroactively review rules to eliminate any excessive or duplicative rules to help simplify the current regulatory scheme and reduce the current regulatory burden felt by so many businesses and farmers?

    a. Further, should Congress create a commission to review and recommend the elimination of outdated, ineffective, and duplicative regulations in an effort to reduce the current regulatory burden?

    b. Alternatively, should agencies be required to make systematic reviews of their own rules to determine if there are any duplicative or outdated rules?

Response: AFBF policy supports a thorough review of existing federal regulations. In fact, AFBF policy specifically supports the "immediate review and revision of existing federal regulations to limit promulgation only to rules that are essential to the protection of human health and public safety." Legislative proposals, such as the SCRUB Act, are designed to address this proposal; we believe such an approach is worth considering to judge how well it can meet this important goal.

Even greater relief, however, would result from congressional action to rein in specific regulatory overreach resulting from the misinterpretation of existing law. For example, there is now ongoing litigation related to emissions of greenhouse gases and EPA's clean power rules. Congress could address this controversy by amending the law to clarify whether and how greenhouse gases are regulated by the Clean Air Act. Unfortunately, this all stems from the Supreme Court's ruling in *Massachusetts v. EPA*, which gave the agency the discretion to characterize CO^2 as a pollutant. Similarly, Justice Kennedy's concurring opinion in *Rapanos v. U.S. Army Corps of Engineers* has been deemed by many courts and EPA itself and the controlling opinion in that case. This has led EPA to base its entire "waters of the U.S." regulation on Justice Kennedy's "significant nexus" test (as over-broadly construed by the agency). It is astonishing to realize that one individual sitting on the Supreme Court has set the United States on a policy of regulating land as "water." As AFBF has stated repeatedly, elected officials who are accountable to citizens—not life-tenured judges or bureaucrats—should be making these decisions.

5. Many states have implemented policies aimed at reviewing regulations and removing those that increase regulatory burden without accomplishing net positives for the public. For example, in 2013, North Carolina passed a comprehensive regulatory reform measure that slated all regulations for sunset in 10 years if they were not reviewed by their originating agency before that period. Further, the process includes significant public comment periods to ensure transparency and accountability. In addition, North Carolina has a Rules Review Commission to ensure rules are promulgated with appropriate authority, clarity, and necessity. Are these types of reforms transferrable to the federal level? Said differently, is the regulatory environment of the federal government too leviathan to be improved by similar, incremental reforms? What other reforms would you recommend we consider?

   Response: AFBF would support incremental reforms–such as greater transparency, longer comment periods, more open science and more scrupulous attention by agencies to their obligations under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). One particular initiative that we support is the Regulatory Accountability Act, H.R. 185. This legislation passed the House of Representatives on January 13 of this year. Among other provisions, this legislation revises rulemaking notice requirements to require agencies to:

   - publish in the Federal Register advance notice of proposed rulemaking involving a major or high-impact rule, a negative impact on jobs and wages rule, or a rule that involves a novel legal or policy issue arising out of statutory mandates (NOTE: a 'major' rule is a rule defined as having on the general economy an impact of greater

than $100 million; a 'high-impact' rule is defined as having on the general economy an impact of greater than $1 billion);
- consult with the Administrator of OMB before issuing a proposed rule and after the issuance of an advance notice of proposed rulemaking;
- provide interested persons an opportunity to participate in the rule making process;
- hold a hearing before the adoption of any high-impact rule;
- expand requirements for the adoption of a final rule, including requiring that the agency adopt a rule only on the basis of the best evidence and at the least cost; and
- grant any interested person the right to petition for the issuance, amendment, or repeal of a rule.

While HR 185 is by no means the whole solution to the problem of federal regulatory burdens, it does take the important step of attempting to revise the Administrative Procedure Act, a 1946 law that desperately needs updating in light of the changes in the regulatory and judicial landscape that have occurred in the last 70 years.

We at the American Farm Bureau Federation appreciate the Committee's willingness to listen to our concerns and this opportunity to provide additional input into this important issue of regulatory accountability and transparency. Thank you.