

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

Memorandum

To: Members, Committee on Small Business Subcommittee on Agriculture, Energy, and Trade
From: Committee Staff
Date: June 18, 2018
Re: Hearing: “Accelerating Agriculture: How Federal Regulations Impact America’s Small Farmers”

On Thursday, June 21, 2018 at 10:30 A.M., the Committee on Small Business Subcommittee on Agriculture, Energy, and Trade will meet in Room 2360 of the Rayburn House Office Building for a hearing titled, “Accelerating Agriculture: How Federal Regulations Impact America’s Small Farmers.” Complying with federal regulations continues to be one of the biggest challenges for America’s small businesses, including small farmers. Many federal agencies have the authority to issue regulations that impact the agriculture industry. As a result, small farmers often struggle to comply with expensive, confusing, and time-consuming regulations, which impacts their ability to grow. This hearing will examine how federal regulations affect small farmers and explore ways to provide regulatory relief to the industry.

I. Background on the Farming Industry

Family and small farms play a vital role in the American economy. According to the United States Department of Agriculture (USDA), more than 90 percent of farms in the United States are considered small, and have a gross cash farm income of \$250,000 or less.¹ Most small farms are family-owned and operated, and account for 90 percent of farm production.² Small farms also operate half of the farmland in the United States.³ The USDA has found that agricultural production in the United States has generally been shifting to larger farms for many years, but family businesses still dominate the agriculture industry overall.⁴

The agriculture industry also plays an important role in providing jobs. In 2016, direct on-farm employment accounted for approximately 2.6 million jobs, or 1.4 percent of total

¹ NAT’L INST. OF FOOD & AGRIC., U.S. DEP’T OF AGRIC., *Small and Family Farms*, <https://nifa.usda.gov/topic/small-and-family-farms> (last visited June 14, 2018).

² ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., *AMERICA’S DIVERSE FAMILY FARMS 2017 EDITION 20* (Dec. 2017), available at <https://www.ers.usda.gov/webdocs/publications/86198/eib-185.pdf?v=43083>.

³ *Id.*

⁴ See ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., *Examining Consolidation in U.S. Agriculture* (Mar. 14, 2018), <https://www.ers.usda.gov/amber-waves/2018/march/examining-consolidation-in-us-agriculture/>.

employment in the United States.⁵ The general workforce in the agriculture industry generally consists of a mixture of self-employed farm operators, family members, and hired workers. The USDA has found that the hired farm workforce is aging, and women are an increasing share of the hired farm workforce.⁶

II. Federal Regulations Impacting Small Farmers

Several federal agencies and departments have statutory authority to regulate the agriculture industry. Some of the major regulations involve environmental, agriculture, food safety, and worker safety requirements.

A. Environmental Regulations

Small farmers encounter many environmental regulations when operating their farms.⁷ Some of the major environmental requirements include the following:

- **Water:** The Clean Water Act requires a number of permits that are intended to prevent pollutant discharges into federal waters, including permits for wetlands, National Pollutant Discharge Elimination System permits, construction stormwater permits, water withdrawal permits, water rights permits, and drinking water permits.⁸ One of the most prominent water regulations of concern to small farmers is the definition of “waters of the United States” under the Clean Water Act, which determines which waters are subject to federal jurisdiction, and in turn, federal permitting requirements.⁹
- **Air Emissions:** The Clean Air Act requires a number of permits that are intended to control air pollution. Emissions from animal feeding operations, dust from certain farming operations, diesel emissions from farm equipment, and emissions from crop burning are potential farming activities that could require permits from the Environmental Protection Agency.¹⁰
- **Pesticides:** The Environmental Protection Agency (EPA) generally regulates the use of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIRFA) and the

⁵ ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., *Ag and Food Sectors and the Economy*, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/> (last updated May 2, 2018).

⁶ ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., *Farm Labor* (last updated May 2, 2018), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/>.

⁷ For a list of regulations enacted by the United States Environmental Protection Agency for farm activities, see U.S. ENVTL. PROTECTION AGENCY, *Agriculture: Laws and Regulations that Apply to Your Agricultural Operation by Farm Activity*, <https://www.epa.gov/agriculture/agriculture-laws-and-regulations-apply-your-agricultural-operation-farm-activity> (last visited June 14, 2018).

⁸ *Id.*

⁹ For a discussion on the impact of the “waters of the United States” regulation on small businesses, see *Will EPA’s ‘Waters of the United States’ Rule Drown Small Businesses?: Hearing Before the House Comm. on Small Bus.*, 113th Cong. (2014). Currently, a new definition is being considered at the Environmental Protection Agency and the United States Army Corps of Engineers.

¹⁰ See U.S. ENVTL. PROTECTION AGENCY, *Agriculture: Agriculture and Air Quality*, <https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality> (last visited June 14, 2018).

Federal Food, Drug, and Cosmetic Act (FFDCA).¹¹ The FIRFA requires all pesticides sold or distributed in the United States to be registered with the EPA. The FFDCA requires the EPA to set tolerance levels for all pesticides used in or on food. Farmers can be subject to labeling requirements, worker protection requirements, training requirements, and storage and disposal standards. There are also certain permitting requirements if a pesticide is deposited into waters of the United States.¹²

B. Food Safety Regulations

The USDA and the United States Food and Drug Administration (FDA) have issued regulations regarding food safety and nutrition and labeling requirements. Some of the major food safety issues include the following:

- National Organic Program: Congress established the National Organic Program to ensure consistency and legitimacy for organic production claims on food product labels. The Agricultural Marketing Service at USDA develops national standards and handles accreditation for organically-produced agricultural products. The program also provides the authority to take legal action to enforce organic standards.¹³
- Produce Safety: The FDA finalized regulations regarding food safety for fruits and vegetables grown for human consumption under the FDA Food Safety Modernization Act. The final regulations include exemptions for qualified small farming establishments.¹⁴
- Antibiotics: The FDA has a strict approval process for antibiotics for animals and their potential effects on public health. The USDA also tests for residues to confirm that meat is free of harmful levels of antibiotics.¹⁵

C. Other Regulatory Issues

In addition to environmental and food safety regulations, other federal regulations impact small farmers, including the following:

- Endangered Species Act (ESA): The ESA provides protections to species that are listed as threatened or endangered, and is administered by the Fish and Wildlife Service and the National Marine Fisheries Service. The ESA restricts the use of land that is protected by

¹¹ See U.S. ENVTL. PROTECTION AGENCY, *About Pesticide Registration*, <https://www.epa.gov/pesticide-registration/about-pesticide-registration> (last visited June 14, 2018).

¹² *Id.*

¹³ AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., *About the National Organic Program* (Nov. 2016), <https://www.ams.usda.gov/publications/content/about-national-organic-program>.

¹⁴ See U.S. FOOD & DRUG ADMIN., *FSMA Final Rule of Produce Safety*, <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm> (last updated June 5, 2018).

¹⁵ See NAT'L PORK PRODUCERS COUNCIL, *USE OF ANTIBIOTICS TO MAINTAIN HEALTHY, PRODUCTIVE LIVESTOCK* (2018), available at <http://nppc.org/wp-content/uploads/2018/03/Antibiotics-Issues-Insights-03.08.18.pdf>.

a protected species and includes permitting requirements. Seventy percent of all listed species occur on private lands, and most of these lands are owned by farmers.¹⁶

- **Worker Safety:** The Occupational Health and Safety Administration has the authority to regulate worker safety, including in the agriculture industry and includes regulations such as farm equipment standards, field sanitation, and rollover protection standards.¹⁷ The EPA also has worker protection standards that apply to the agriculture industry.¹⁸
- **Transportation Regulations:** Because small farmers heavily rely on the trucking industry to transport their goods, they are impacted by hours-of-service trucking regulations and the electronic logging device regulation.¹⁹ Livestock haulers also transport animals daily. The Federal Motor Carrier Safety Administration currently provides an exemption from these requirements within a 150 mile radius of the farm where the animals were located.²⁰

III. Small Farmers are Burdened by Federal Regulations

Small farmers must overcome a number of hurdles as they try to comply with federal regulations issued by numerous federal agencies. The cost in time and money to research, understand, and comply with regulations continues to be a problem for small businesses. According to a survey conducted by the National Small Business Association, the average small business owner spends at least \$12,000 every year to deal with the costs of regulation.²¹ Seventy percent of small firms say that new regulations have a very or somewhat significant impact on their plans to grow their business, with more than half reporting that they have held off on hiring a new employee because of regulatory burdens.²² A similar report by the United States Chamber of Commerce found that 79 percent of chamber officials across the country believe federal regulations have become “more” or “much more impactful” over the past several years.²³

¹⁶ *The Impact of Federal Environmental Regulations and Policies on American Farming and Ranching Communities: Hearing Before the Comm. on Env't & Pub. Works of the Senate*, 115th Cong. (2018) (statement of Zippy Duvall, Pres., Am. Farm Bureau Fed'n), available at https://www.epw.senate.gov/public/_cache/files/9/a/9ad09eaa-1166-4227-9cb2-d3b59dd2f422/017DB0E861AD60F63AAB69D2E8B94FC2.duvall-testimony-02.07.18.pdf.

¹⁷ See OCCUPATIONAL SAFETY & HEALTH ADMIN., *Agricultural Operations: Standards*, <https://www.osha.gov/dsg/topics/agriculturaloperations/standards.html> (last visited June 14, 2018).

¹⁸ See U.S. ENVTL. PROTECTION AGENCY, *Agricultural Worker Protection Standard (WPS)*, <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps> (last visited June 14, 2018).

¹⁹ For a discussion of federal trucking regulations and small businesses, see *Highway to Headache: Federal Regulations on the Small Trucking Industry: Hearing Before the House Comm. on Small Bus.*, 115th Cong. (2017).

²⁰ See NAT'L PORK PRODUCERS COUNCIL, *ELECTRONIC LOGGING DEVICES MANDATE INCOMPATIBLE WITH LIVESTOCK HAULING* (2018), available at <http://nppc.org/wp-content/uploads/2018/04/ELD-Issues-Insights-03.29.18.pdf>.

²¹ NAT'L SMALL BUS. ASS'N, *2017 NSBA SMALL BUSINESS REGULATIONS SURVEY 6* (2017), available at <http://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf>.

²² *Id.* at 14.

²³ THE REGULATORY IMPACT ON SMALL BUSINESS: COMPLEX. CUMBERSOME. COSTLY, U.S. CHAMBER OF COM. FOUND. 16, 53 (Mar. 2017) available at https://www.uschamberfoundation.org/smallbizregs/assets/files/Small_Business_Regulation_Study.pdf [hereinafter Chamber Report].

Small business owners, including farmers, also spend a substantial amount of time with regulations. For example, 44 percent of small firms reported spending 40 hours or more every year to handle new and existing federal regulations, with nearly one-third spending more than 80 hours per year.²⁴ Regulatory uncertainty has been reported as “one of the biggest perceptual challenges surrounding regulation and productivity” for small business owners.²⁵ Small business owners have reported that the complexity of rules and the difficulty in understanding them are some of the biggest causes of difficulty when doing business with federal agencies.²⁶ Some examples of the most difficult and burdensome categories of regulations for small businesses include environmental protection, labor and hiring, land use and construction, and licensing and permits.²⁷ Additionally, 68 percent of small business owners have reported that guidance documents and new interpretations for existing regulations are even more burdensome, or just as burdensome, as regulations.²⁸

IV. Conclusion

The current regulatory environment on the agriculture industry disproportionately burdens small farmers. With many regulations taking a one-size-fits-all approach, small farmers are forced to comply with expensive, confusing, and time-consuming regulations, which in turn impacts the American economy. This hearing will provide an opportunity for Members to learn more about the regulations and possible solutions to ease the regulatory burden and provide flexibilities for small farmers.

²⁴ NAT’L SMALL BUS. ASS’N., *supra* note 21, at 5.

²⁵ Chamber Report, *supra* note 23, at 11.

²⁶ NAT’L SMALL BUS. ASS’N., *supra* note 21, at 8.

²⁷ Chamber Report, *supra* note 23, at 49. The following classes of regulations were reported as difficult or very difficult for the following percentages of respondents: environmental protection (82.2%), labor and hiring (79.5%), land use and construction (77.7%), licensing and permits (70.4%). *Id.* Taxation, incorporation and registration, finance and investment, contract enforcement and dispute resolution, worker safety, and international trade were also reported as difficult classes of regulations for small businesses. *Id.*

²⁸ *Id.* at 12.