



Recent EPA rule may impose costly expanded rules on farmers.

The Environmental Protection Agency in May published long-awaited — and some would say long-dreaded — revisions to rules implementing the 1972 Clean Water Act that critics say seriously erode property rights and may force costly changes to the way farmers deal with run off and damp areas on their farms.

According to the American Farm Bureau Federation, the 300-page final rule issued jointly by the EPA and the Army Corps of Engineers redefines “navigable waters” to include virtually any wet spot, ditch or area where water pools.

The EPA says the rule does not apply to “ephemeral streams” or ditches, but given the agency’s history of making rather broad interpretations of its own rules, agriculture officials remain concerned that the vagueness of the rule’s language leaves the door open to a vastly wider array of areas that would come under its jurisdiction.

“Regardless of EPA’s assurances about what the rule will or won’t do, we’ve dealt with enough EPA doubletalk and overzealous enforcement to know that it’s the fine print that really matters,” the AFBF says

in a blog post about the rule.

“[T]he agencies have doubled down on their definition of regulated ‘tributaries’ broadly to include any place on the landscape where rainwater channels and flows enough to leave a mark,” the farm trade group says.

In other words, an area in a cattle pasture that is wet during some period of the year, but not necessarily all year round, could become subject of erosion control and run off mitigation. Also, areas where water pools in fields or ditches, or seasonal streams that flow only during the wetter fall and winter months, could be covered by the regs.

“I think farmers are like others in wonderment at the EPA’s attempt to extend its jurisdiction over ‘navigable’ waters to the lengths contemplated in this set of rule makings and especially peeved that farming seems to be one of the activities that the agency wants to control,” says Ben Cooper with the Fauquier Farm Bureau.

Other industry groups, such as the National Association of Home Builders (NAHB), are likewise concerned about the private property implications of the EPA rule. Testifying before a June 4 House Science,



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Space and Technology Committee hearing, Bob Kerr of Kerr Environmental Services told the committee that “the rule fails to follow the intent of Congress and Supreme Court precedent, and it does not acknowledge the states’ role in regulating their own waters.”

“This rule will increase federal regulatory power over private property and will lead to increased permit requirements, project delays and avoidance and mitigation costs,” said Kerr.

According to NAHB, the rule, which goes into effect mid-August, establishes a broad definition of tributaries which, for the first time, includes ditches. It will also allow federal agencies to regulate adjacent non-wetlands located more than a quarter-mile from a traditional navigable water and isolated ponds located within the 100-year floodplain.

“It certainly is a larger reach than before,” Tim Mize, an agriculture extension agent for the Fauquier Cooperative Extension says. “It looks as if ephemeral streams that aren’t navigable [are included], but are flowing into lakes, basically any water.”

He says the EPA was going to exclude man-made

ponds that farmers use for irrigation, as well as ditches, but then the final rule seems to indicate that any ditch or other wet area taking in rain water would be included.

“That’s where we get the mistrust and the misunderstanding,” Mize says. “The EPA is saying, no, ditches that don’t contain water all the time or most of the time aren’t covered, but [in other sections says] ditches that do drain into ponds or are connected to other streams would be.”

The EPA’s concern is over streams that drain into major water ways. Streams that run only in the winter or for a couple weeks after a major storm may escape scrutiny. “We have a lot of streams that are dry all summer and as soon as the water table rises after leaf fall and through winter, they run water,” Mize says.

For farmers whose families have worked the same piece of land for 100 or more years, the rules make little sense. “They question the need for a rule that suddenly puts part of their operations off limits,” he says.

According to Mize, organizations such as the John Marshall Soil and Water Conservation District will urge

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farmers to fence off those wet areas from livestock, an expensive proposition.

He offered three recommendations for area farmers concerned about the impact of the EPA’s new rules.

- Get involved with the John Marshall Soil and Water Conservation District and take advantage of the cost-share program to fence off streams from livestock.

- Work with the Virginia and Fauquier Farm Bureaus which offer farmers a united voice when lobbying regulators and legislators on agriculture issues.

- Contact your state and federal legislators, who Mize says “need to hear from farmers what their concerns are.”

The U.S. House passed legislation attempting to force the EPA and the Corps to withdraw the controversial rule. A companion bill in the Senate would, according to NAHB, return the language of the Clean Water Act to a “workable and sound definition of ‘waters of the United States.’”

Even though they’re stewards of the land, Mize says, “farmers get vilified. They’re trying to be environmentalists but they’re also trying to be profitable.”



NUMBERS:

45,900
Farms in Virginia

1,258
Farms in Fauquier County

330
Farms in Prince William County

Virginia Farmers Lose Ground in 2014

According to a report in the Virginia Farm Bureau’s monthly magazine, the number of farms in Virginia fell by 100 to 45,900 in 2014.

The number of farms has been steadily decreasing over the past five years, falling by 2.1 percent since the 2009 level of 46,900 farms in the Commonwealth.

Drawing on U.S. Department of Agriculture’s National Agriculture Statistic Service, the farm bureau says that Virginia had 8.2 million acres devoted to farming in 2014, a decrease of 100,000 acres from 2013. The average farm size was also down to 179 acres, one acre less than in 2013.

Also, the number of farms selling more than \$100,000 in agricultural products increased by 100, while the number selling

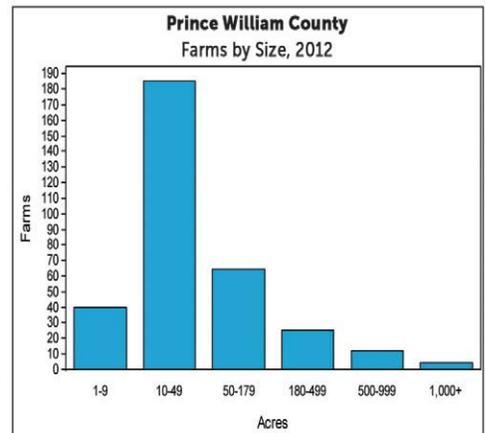
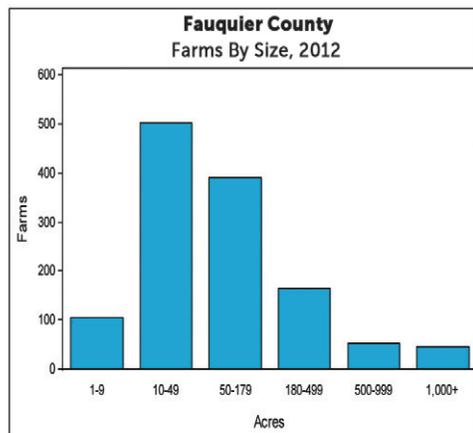
less than \$100,000 fell by 200.

The increase in larger dollar sales was attributed to an increase in farm prices in 2014.

The 2012 U.S. Census of Agriculture reported 1,258 farms in Fauquier County and 330 in Prince William.

Fauquier devoted 228,285 acres to agriculture in 2012, compared to 35,638 in Prince William County. The average size of a Fauquier farm was 181 acres compared to 108 acres for Prince William farms.

The average market value of products sold per farm for Fauquier was \$42,884 and \$36,467 in Prince William. Fauquier’s farms sold nearly \$54 million in agriculture products in 2012, while Prince William farms sold \$12 million.



SOURCE: U.S. DEPARTMENT OF AGRICULTURE, 2012 CENSUS OF AGRICULTURE