



2012 FARM BILL

Issue:

The early discussion regarding the upcoming farm bill is overshadowed by talks of the budget deficit. All eyes are focused on the Biden group's discussion on ways to reduce the deficit in order to secure the votes to pass an increase in the debt ceiling by early August.

The overall budget deficit is just one of many budget concerns legislators will face in writing the 2012 farm bill. The 2008 farm bill contains 38 farm programs that have no budget beyond 2012. In order to maintain these programs, funding will have to be taken from other places. In this budget environment, the House and Senate Agriculture Committees will not be able to fill the gap by using additional funding from other committees as they did in the 2008 farm bill.

Additionally, Congress and the administration reduced funding in several agricultural programs in 2010, thereby reducing the overall funding available to write the 2012 farm bill. For example, the administration cut \$6 billion from the crop insurance program, and Congress used almost \$12 billion in funds from the Supplemental Nutrition Assistance Program (SNAP) to continue funding for teachers and education.

Background:

These budget factors will make it impossible to make a carbon copy of the 2008 farm bill in 2012. While the concepts of the 2008 farm bill could be continued, money is not available to fully fund each of the programs. Given this budget situation, Farm Bureau will be working to ensure that farmers and ranchers do not bear a disproportionate share of any cuts that have to be made due to budget constraints. Additionally, Farm Bureau will support:

- Maintenance of a strong safety net for farmers and ranchers;
- The direct payment program, marketing assistance loans, the counter-cyclical program, a simplified Average Crop Revenue Election (ACRE) program and risk management programs; and
- The protection and improvement of working lands conservation programs over retirement land programs.

Legislative Status:

Writing of the farm bill probably will not begin in earnest until 2012. Extensive congressional hearings and educational efforts have already begun in both the House and the Senate and will continue in Washington, D.C. and throughout the country during the remainder of the summer.

An adequate farm safety net is imperative. Agriculture is willing to do its part to reduce the overall budget deficit, but we should not be asked to do more than our fair share, especially given the reductions we've already taken. Some key points to consider:

- The budget cannot be balanced by simply cutting farm programs. In fact, farm programs account for less than one half of one percent of total federal spending.
- The Federal Reserve states that "rural America is leading the U.S. economic recovery," but also notes that farm debt has risen "the fastest since the prelude to the 1980s farm debt crisis." In order for agriculture to remain healthy and to continue to lead the charge in America's economic recovery, a safety net is critical.
- The United Nations predicts that farmers will have to produce 70 percent more food by 2050, making a safety net that protects the farmers that will grow this food paramount to international food security.

AFBF Policy:

Farm Bureau made significant changes to farm bill-related policies in Atlanta in January 2011. Policies 225-231 and 330 cover most of the issues that will be addressed in the 2012 farm bill.

July 2011

For additional information, contact the Washington Office staff person who serves your state.



PENDING TRADE AGREEMENTS

Issue:

Congress needs to pass the three outstanding free trade agreements (FTAs). Farm Bureau estimates that the three FTAs combined represent almost \$2.5 billion in additional exports, but that is only if they are implemented. The U.S. is facing a proliferation of FTAs being negotiated or already negotiated that will increase our competitors' export potential, while putting U.S. agriculture at a disadvantage. For agriculture, Congress' inaction on these agreements is no longer simply about the potential export gains but about preventing the loss of existing export markets.

Background:

U.S.-COLOMBIA TRADE PROMOTION AGREEMENT (COLOMBIA TPA)

- The Colombia TPA represents U.S. agricultural export gains of more than \$370 million per year at full implementation. Currently, products from Colombia enter the United States duty-free through the Andean Trade Preference Act, passed and extended numerous times by Congress.
- U.S. farmers, on the other hand, continue to face significant tariff barriers that average 25 percent when exporting products into the Colombian market. Passage of the Colombia TPA will eliminate the tariffs placed on U.S. products.

Lost opportunities: While U.S. agriculture continues to wait for passage of the agreement, U.S. market share has been slipping in Colombia due to our competitors implementing their own trade agreements. Between 2008 and 2009, we have seen almost a 50 percent drop in our exports (2008- \$1.6 billion, 2009- \$906 million). Our market share is being taken by Brazil and Argentina, who have their own free trade agreement with Colombia.

U.S.-PANAMA TRADE PROMOTION AGREEMENT (PANAMA TPA)

- Farm Bureau's economic analysis estimates that the Panama TPA could mean increased U.S. agricultural exports to Panama of more than \$46 million per year by full implementation.
- Most Panamanian agricultural imports to the United States enter with zero tariffs under U.S. preference programs. The agreement will level the playing field by providing U.S. products exported to Panama with the same duty-free access already enjoyed by Panamanian products imported by the United States.

Lost opportunities: Panama has completed a trade agreement with Canada. If this agreement goes into effect before the U.S. agreement, Canadian exporters will gain a significant competitive advantage over the United States in the market for products such as beef, frozen potato products, beans, lentils, pork, malt and other processed foods. Any market share lost by the United States will be difficult to regain from our competitors.

KOREA-U.S. FREE TRADE AGREEMENT (KORUS FTA)

- The KORUS FTA is one of the largest trade agreements for the United States. The benefits involve expanded exports of a wide range of farm products. Farm Bureau's economic analysis estimates that once fully implemented, U.S. agriculture could exceed \$1.9 billion per year in additional agricultural exports.

Lost opportunities: Korea has completed an agreement with the European Union (EU), which is expected to be implemented by July 2011. The Korea-EU FTA will immediately eliminate 82 percent of Korea's tariffs; in five years, the agreement will eliminate 94 percent of Korea's tariffs. In contrast, the KORUS FTA would eliminate 94.5 percent of Korea's tariffs within three years of implementation; virtually all tariffs will be eliminated within 10 years. If the Korea-EU FTA agreement enters into effect before the KORUS FTA, European exporters will gain a significant competitive advantage over the United States in the Korean market.

Legislative Status:

A bipartisan deal has been struck by the administration, House leadership and Sen. Max Baucus (D-Mont.) regarding the pending trade agreements and Trade Adjustment Assistance (TAA). All parties have expressed that they would like to secure passage of the trade agreements before the August recess.

On June 30, Senate Finance Committee Chairman Baucus was forced to postpone a "mock" markup of the three pending FTAs because committee Republicans boycotted the markup. Committee Republicans boycotted the markup due to the inclusion of TAA in the implementing language of the KORUS FTA. The view is that this is only a temporary hurdle.

AFBF Policy:

Farm Bureau supports immediate passage of the U.S.-Colombia Trade Promotion Agreement.

Farm Bureau supports immediate passage of the U.S.-Panama Trade Promotion Agreement.

Farm Bureau supports passage of the U.S.-Korea Free Trade Agreement.

July 2011



CLEAN WATER ACT NPDES PERMIT FOR PESTICIDE APPLICATIONS

Issue:

For the first time in the history of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) will require CWA permits for certain applications of pesticides.

Background:

In 2009, the 6th Circuit Court of Appeals overturned an EPA rule clarifying that National Pollutant Discharge Elimination System (NPDES) permits were not required for pesticides applied into, over or near waters of the U.S. in accordance with relevant requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). EPA elected not to seek Supreme Court review of that decision and now is working to develop an NPDES permitting system for such pesticide applications. EPA has estimated that this one decision will nearly double the number of entities regulated under NPDES permits. Permitted pesticide users will include state agencies, city and county municipalities, parks and recreation managers, utility rights-of-way managers, railroads, roads and highway vegetation managers, mosquito control districts, water districts and managers of canals and other water conveyances, commercial pesticide applicators, forest managers, scientists and many, many others. EPA has not specifically proposed to include farmers and ranchers, but also has refused to take a position that farmers and ranchers are excluded from these permit requirements.

EPA finalized its NPDES general permit for certain pesticide uses early on April 1, 2011. States that administer the NPDES program within their jurisdictions are expected to issue their own general permits similar to the EPA model. EPA and the states will begin implementing and enforcing the permit program starting Oct. 31, 2011. NPDES permitting will add performance, recordkeeping and reporting requirements to an estimated 5.6 million pesticide applications per year, and preempt the science-based ecological review of pesticides and label requirements for uses regulated under FIFRA. Just as important, pesticide users who are not eligible for coverage under an NPDES general permit, or who cannot obtain coverage quickly enough, will be at risk of citizen or EPA enforcement action for pesticide application without a permit. Never in the 62 years of FIFRA or 38 years of the CWA has the federal government required a permit to apply pesticides to, over or near waters of the U.S. for control of such pests as mosquitoes, forest canopy insects, algae or invasive aquatic weeds and animals, like zebra mussel. Congress chose not to include pesticides in 1972 when it enacted the CWA NPDES program and, despite major rewrites since, never looked beyond FIFRA for the regulation of pesticides.

The problems:

- *Unnecessary Burden* - New requirements for monitoring and surveillance, planning, recordkeeping, reporting and other tasks will create significant delays, costs, reporting burdens and legal risks from citizen suits for thousands of permit holders without enhancing the environmental protections provided by FIFRA compliance.
- *Uncertain Liability* - To date, EPA's proposed general permit only covers applications of pesticides registered for aquatic use and applied to water or forest canopies over flowing or seasonal waters; it would not cover pesticide applications registered and intended for terrestrial use. However, activists indicate that they believe most pesticide applications should require a permit if there is even a chance that the pesticide could come in contact with any water. So, even though EPA may not currently cover farm applications, nothing in the CWA or the proposed permit protects farmers against environmental activists who want to sue them for not having a permit.
- *Unrealistic Timeframe* - The new permit will be directly enforced by EPA in Alaska, Massachusetts, New Jersey, New Mexico, Idaho, Oklahoma, on Indian and federal lands, and in most territories. The remaining states must adopt the federal model or develop their own NPDES permitting program pursuant to their CWA delegated authority from EPA. Although the 6th Circuit Court extended the implementation deadline, many states suggest they will have difficulty completing permits and education compliance requirements by the new deadline.

For additional information, contact the Washington Office staff person who serves your state.

Legislative Status:

H.R. 872, the *Reducing Regulatory Burdens Act of 2011* passed the House in the 112th Congress by a convincing vote of 292-130. The legislation passed both the House Committee on Agriculture by unanimous consent and the House Transportation & Infrastructure Committee by an overwhelming 46-8 count.

H.R. 872 passed the Senate Agriculture Committee by voice vote. Currently, Sens. Barbara Boxer (D-Calif.) and Ben Cardin (D-Md.) have placed holds on the legislation to prevent it from coming to the Senate floor.

H.R. 872 would amend FIFRA and the CWA to clarify that additional duplicative CWA permits are not needed when a pesticide is applied in accordance with the FIFRA approved label.

AFBF Policy:

Farm Bureau believes implementation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) should be based on credible scientific information in order to benefit farmers, the environment and the public and should be the sole federal regulatory authority over pesticides.

Farm Bureau opposes any regulation that would require a permit prior to application of a chemical for crop protection.

July 2011



CLEAN WATER ACT JURISDICTION

Issue:

The Clean Water Act (CWA), enacted in 1972, limits federal jurisdiction to “navigable” waters of the United States. The U.S. Supreme Court, in 2001 and 2007, reaffirmed those limits. The Environmental Protection Agency (EPA), through regulations, guidance and other means, is seeking to expand its authority beyond the limits approved by Congress. Farm Bureau opposes proposals to fundamentally change the CWA by expanding jurisdiction of the federal government to intrastate waters, including groundwater, ditches, culverts, pipes, desert washes, sheet flow, erosional features, farm and stock ponds and prior converted cropland.

Background:

NAVIGABLE WATERS

Two Supreme Court decisions over the past decade have reaffirmed that “navigable waters” under the CWA does *not* extend to all waters. Legislation to overturn those decisions – despite aggressive lobbying campaigns by environmental groups – has failed to reach a vote on the floor of either the House or the Senate. That has happened primarily for two reasons. First, bipartisan leaders continue to strongly support the structure and goals of the CWA and do not want to see EPA intrude on traditional state prerogatives relating to land use planning and economic growth. Second, the legislation aggressively pushed by environmental groups would allow EPA to use the CWA to regulate activities even on dry land and even when those activities are not connected to interstate commerce. Such an over-reach goes well beyond anything contemplated by the framers of the 1972 law.

Legislative/Regulatory Status:

EPA has proposed a guidance document that attempts to do by itself what Congress has not authorized it to do in legislation and is seeking to establish regulatory control over virtually all waters. Such a shift in policy would mean that EPA could regulate any or all waters found within a state, no matter how small or seemingly unconnected to a federal interest. Such a boundless approach would give the federal government new authority over many traditionally state and local decisions, such as the regulation of ephemeral drainages, small and isolated depressional wetlands, roadside ditches and potentially groundwater. Congress should not permit the agency to adopt such an approach.

AFBF Policy:

Farm Bureau believes federal CWA authority should be limited to navigable streams and flowing waterways that have continuous flow.

July 2011



AGRICULTURE CHEMICALS

Issue:

The product label and the application of agricultural pesticides have always been regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), a statute that is implemented by the Environmental Protection Agency (EPA). Several ongoing developments within EPA threaten to undermine farmers' ability to use important crop protection chemicals pursuant to reasonable FIFRA restrictions.

NPDES PERMIT REQUIREMENT

A top Farm Bureau priority is to achieve a legislative remedy (H.R. 872) to make certain that farmers and ranchers will not have to get a Clean Water Act (CWA) permit to apply pesticides when done in accordance with the FIFRA label, thus clarifying that FIFRA is the "law of the land." A federal court, in 2009, handed down an unprecedented ruling that declared that the use of a pesticide, even in complete accordance with FIFRA, may constitute a "discharge of a pollutant" under the CWA if the pesticide is applied into, over or near waters of the U.S. Unless Congress acts, permit requirements are expected to become effective on Oct. 31, 2011. For more details, please see the [*NPDES Factsheet*](#).

ATRAZINE

The herbicide atrazine has been used for more than 50 years and has been proven safe by more than 6,000 studies performed on the compound. Yet, in August 2009, in response to requests from environmental activists, EPA re-opened the question of atrazine's use, even though the chemical went through the normal FIFRA re-registration process in 2006, and atrazine was not due for reconsideration until 2013. The next EPA review meeting is scheduled for July. Atrazine is widely used in the production of corn, sorghum and sugar. If atrazine is removed from the market, it could not only seriously erode farmers' profitability, but also set a dangerous precedent for other important pesticides that environmental activists would like to eliminate.

PESTICIDE SPRAY DRIFT

For decades, EPA and state pesticide policies have acknowledged that some small level of pesticide drift is unavoidable and does not pose an "unreasonable adverse effect" when a pesticide is used according to product label restrictions. When it is determined that certain uses of a product could cause an unreasonable adverse effect, restrictions are placed on the use of the compound to meet the standard under FIFRA. In 2009, EPA proposed a new spray drift policy that would have the effect of setting an unachievable "zero drift" standard. The proposal would adopt a precautionary principle approach, effectively replacing FIFRA's risk-benefit standard with a new zero-risk standard. In 2010, the agency withdrew its proposal due to an overwhelming response from the farming community. However, EPA is expected to issue a similar proposal in 2011.

Legislative Status:

H.R. 872, the *Reducing Regulatory Burdens Act of 2011* passed the House in the 112th Congress by a convincing vote of 292-130. The legislation passed both the House Committee on Agriculture by unanimous consent and the House Transportation & Infrastructure Committee by an overwhelming 46-8 count.

H.R. 872 passed the Senate Agriculture Committee by voice vote. Currently, Sens. Barbara Boxer (D-Calif.) and Ben Cardin (D-Md.) have placed holds on the legislation to prevent it from coming to the Senate floor.

H.R. 872 would amend FIFRA and the CWA to clarify that additional duplicative CWA permits are not needed when a pesticide is applied in accordance with the FIFRA approved label.

AFBF Policy:

- Farm Bureau believes implementation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) should be based on credible scientific information in order to benefit farmers, the environment and the public, and should be the sole federal regulatory authority over pesticides.
- Farm Bureau opposes any regulation that would require a permit prior to application of a chemical for crop protection
- Atrazine, acetachlor and simazine are effective economical crop protection chemicals that must continue to be available to farmers.

July 2011



CLEAN AIR ACT/GREEN HOUSE GAS REGULATION

Issue:

The U.S. Environmental Protection Agency (EPA) has initiated a program to regulate greenhouse gases (GHGs) as "air pollutants" under the Clean Air Act.

Background:

In April 2007, the Supreme Court ruled that EPA had the authority to regulate GHG emissions from new cars under the Clean Air Act if it determined that GHG emissions endanger public health or welfare.

Under the Clean Air Act, once the GHG emission rules become final, certain provisions are automatically triggered that are expected to impose potentially costly and burdensome requirements on agriculture, small businesses and the economy in general. Title V of the act requires "major sources" (defined by statute to mean entities that emit more than 100 tons of the pollutant per year) to obtain permits to continue operating. Similarly, New Source Review (NSR)/Prevention of Significant Deterioration (PSD) building permit requirements automatically apply to new construction or renovation of structures for operations emitting more than 250 tons per year. A significant number of agricultural operations not previously regulated under the Clean Air Act could thus come under regulation.

With regard to the Title V permit requirements, the Agriculture Department (USDA) in comments to EPA stated, "Even very small agricultural operations would meet a 100-tons-per-year emissions threshold. For example, dairy facilities with over 25 cows, beef cattle operations of over 50 cattle, swine operations with over 200 hogs, and farms with over 500 acres of corn may need to get a Title V permit." According to the USDA publication "Farms, Land in Farms, and Livestock Operations, 2007 Summary" National Agricultural Statistics Survey, (February 2008) this covers 96.8 percent of hog inventory.

Regulation of GHGs under the Clean Air Act could also have impacts for farmers and ranchers seeking to build new structures or renovate existing ones. The NSR and PSD permitting requirements can impose costly and burdensome permit requirements for sources falling under those programs, a situation that could well arise for certain agricultural operations.

EPA recognizes that the economic impacts will be substantial and that permitting authorities will be overwhelmed by the increased number of entities subject to GHG permit requirements. In response, EPA has finalized a rule to "tailor" the regulations and phase in permitting requirements. The so-called "tailoring rule" would administratively raise the threshold limits for those needing permits from the statutory levels of 100/250 tons per year to those entities emitting more than 50,000 tons per year. The tailoring rule would not exempt those entities emitting less than 75,000 tons per year, but would re-evaluate whether and when to extend permit requirements to smaller emitters.

Because of the manner in which the tailoring rule deals with explicit statutory requirements, the rule is deemed by many legal experts as violating the Clean Air Act.

On Jan. 2, 2011, EPA regulation of GHG became applicable to stationary sources. On July 1, 2011, entities emitting only GHG will be required to obtain permits under the Clean Air Act.

