



June 20, 2012

Farming through Red Tape

Senate Democrats refuse to roll back red tape for our country's farmers. Some of the Obama Administration's worst regulations take aim at the family farm. Meanwhile the president tells farmers "don't always believe what you hear."

Clean Water Guidance (Ongoing)

The Environmental Protection Agency is seeking to expand the definition of "waters of the U.S." beyond its traditional purview of "navigable" waters through a guidance document.

- EPA seeks to expand its Clean Water Act (CWA) authority to include not just "navigable" waters, but intrastate waters -- including groundwater, ditches, culverts, pipes, farm and stock ponds, and prior converted cropland.
- The Supreme Court has twice affirmed that "navigable waters" under the CWA does not extend to all waters. The EPA is attempting to grant itself control over virtually all waters.
- By issuing a guidance document, as opposed to going through the rulemaking process, the EPA is bypassing the public outreach required under the Administrative Procedures Act and failing to fully consider the legal, economic, and unforeseen consequences of their actions.
- Expanding federal control over intrastate waters will substantially interfere with the ability of land owners to use their property.

Farm Dust Rule (To Be Finalized)

This month the EPA proposed a Farm Dust Rule that seeks to retain the current National Ambient Air Quality Standards for coarse particulate matter (or dust), but farmers continue to be concerned. EPA previously announced that it would be "justified" in doubling the stringency of the current dust standard. EPA is scheduled to release the final standard in December.

End User Derivatives Rule (In Development)

The Dodd-Frank law's end user derivatives rule will make farming riskier and more expensive. Farmers often use derivatives to reduce risks, such as price volatility, in their everyday operations.

- Regulators are now interpreting Dodd-Frank to require end users of any size to meet onerous margin requirements that have historically been required of only large traders.
- The cost of these margin requirements could be between \$1 trillion and \$2 trillion (since the rule is not yet finalized, the actual amount is unknown), which would result in many smaller end users dropping out of the derivatives market. This would result in greater risk to the individual farmer and greater systemic risk, which will increase costs for consumers.

Grain Inspection Packers and Stockyards Administration Rule (Finalized)

The proposed GIPSA rule creates more litigation that may hurt livestock operations. Under the Obama Administration's new definitions, the terms "competitive injury" and "likelihood of competitive injury" are so broad that mere accusations, without economic proof, will suffice for USDA or an individual to bring a lawsuit against a buyer (packer or processor).

- The GIPSA rule jeopardizes alternative marketing arrangements that allow cattlemen to get paid for value they add. GIPSA takes away incentives to pay premiums and other economic incentives to produce higher quality beef products.
- USDA issued the final rule on December 9, 2011, and it went into effect two months later.

National Pollutant Discharge Elimination System Regulation (Finalized)

The EPA developed a burdensome new National Pollutant Discharge Elimination Systems (NPDES) permitting process for pesticides:

- On November 1, 2011, the EPA and states began implementing the new permit process for the application of pesticides into, over, or near waters of the U.S. This marked the first time in the 40-year history of the Clean Water Act (and the 64-year history of the Federal Insecticide, Fungicide and Rodenticide Act) that the federal government has required such permits to control mosquitoes, forest canopy insects, algae, invasive aquatic weeds, and other pests.
- EPA finalized its NPDES general permit for certain pesticide uses just days earlier, on October 31.
- EPA has estimated their new permit systems will nearly double the number of regulated entities. This affects countless pesticide users, including state and local governments; managers of parks, recreation areas, canals, and forests; utilities; water districts; railroads; mosquito control districts; and scientists. EPA did not specifically include farmers and ranchers, but has refused to say that they are exempt.
- This new permitting system adds performance, recordkeeping, and reporting requirements to an estimated 5.6 million pesticide applications per year and will expose pesticide users to citizen lawsuits or EPA enforcement actions.

Concentrated Animal Feeding Operation (Finalized)

The EPA requires livestock and poultry operations to obtain permits originally designed to regulate wastewater from factories. Operations classified as concentrated animal feeding operations will have to comply with permits issued under the NPDES water pollution control program.

DOT Rule Requiring CDL to Operate Farm Equipment (Withdrawn)

Concerned with the amount of farm equipment making short hops between fields and down public roadways, DOT considered classifying agricultural machines like tractors as "commercial vehicles," requiring a commercial driver's license to operate. DOT has since retracted the proposal. The proposed change would have meant anyone driving a tractor or operating any piece of motorized farming equipment would be forced to pass the same rigorous tests and fill out the same detailed forms as drivers of semi tractor trailers.

- All drivers would need to keep detailed logs listing hours worked and miles traveled.
- Vehicles would have to display DOT numbers
- Drivers would need to pass a physical as well as a drug test – every two years.

Child Labor Rule (Withdrawn)

Under the guise of protecting young workers, the Obama Labor Department released a proposed rule that would severely restrict what work children and young adults can do on a farm, even if it is their family's farm. The changes proposed by DOL were a blatant example of bureaucratic overreach that could threaten the very existence of family farms. DOL finally withdrew its proposal in May, after months of criticism.

Prior to withdrawing the rule, in an attempt to back-peddle from the proposal, DOL tried to clarify that the regulations would not apply to children working on farms owned by their parents. However, nothing in the regulations would have exempted young farm workers from the onerous new restrictions if they are working on farms owned by aunts or uncles, by grandparents, or by a Limited Liability Company that is owned by the family.

The Obama Administration's proposed regulations allowed very few exceptions for career and technical education students or for students who are members of groups like Future Farmers of America or 4-H. The regulations also would have restricted the work that can be done on a farm to the point of virtually eliminating the ability of young workers to learn the business through hands-on experience. For example, the rules would have prohibited:

- The operation of power-driven equipment such as tractors, with only a very limited exception for student learners;
- The operation of hoisting apparatuses and conveyors that are run on human power or gravity, including a prohibition on being a "safety spotter";
- Working with timber, manure pits, storage bins, pesticides, and raw farm-product materials;
- Working in grain elevators, fruit and grain bins, silos, feed lots, stockyards, livestock exchanges, and livestock auctions;

- Working in construction, communications, public utilities, wrecking and demolition, and excavation;
- Working on roofs or scaffolding higher than six feet, including ladders, with only limited exceptions for student learners; and
- Working on the cultivation, harvesting, and curing of tobacco.

The Obama Administration has intended to replace well-established and reasonable regulations with needless bureaucracy and red tape. Even worse, the regulations hurt hard-working taxpayers, destroy jobs, and devastate family farms.