

## EPA Regulatory Reform

For farmers, regulations don't just impact their livelihood. Unlike nearly any other economic enterprise, a farm is not simply a business: it's often a farm family's home. When a government regulation affects the ability of a farmer to use his or her land, that regulatory impact 'hits home' – not just figuratively, but literally. That happens because the farm often is home and may have been passed down in the family for generations. If the regulatory demand is unreasonable, it can be frustrating and economically burdensome. If it takes away an important crop protection tool for speculative or even dubious reasons, it can harm productivity or yield. If it costs the farmer money, he or she will face an abiding truth – farmers, far more often than not, are price takers, not price makers; with little ability to pass costs on to consumers, farmers are often forced to absorb increased regulatory costs.

Political leaders, both Democratic and Republican have expressed the desire for an honest, transparent and credible regulatory process. Note some of the following statements concerning how past presidents considered how the regulatory process should function.

President Jimmy Carter, Executive Order 12044 (March 23, 1978)

*"Regulations ... shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. ... Regulations shall be developed through a process which ensures that ... the need for and purposes of the regulations are clearly established; meaningful alternatives are considered and analyzed before the regulations is issued; and compliance costs, paperwork and other burdens on the public are minimized."*

President Ronald Reagan, Executive Order 12291 (February 17, 1981)

*"Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society; regulatory objectives shall be chosen to maximize the net benefits to society; among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen."*

President Bill Clinton, Executive Order 12866 (September 30, 1993)

*"Federal regulatory agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. ... In choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages;*

*distributive impacts; and equity) unless a statute requires another regulatory approach.”*

President Bill Clinton, Executive Order 13132 (August 4, 1999)

*“National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.”*

President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies (March 3, 2009)

*“The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification and use of scientific and technological information policymaking.”*

President Barack Obama, Executive Order 13563 (January 18, 2011)

*“Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. ... This order...reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and cost are difficult to quantify; (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations ...”*

The following are a few EPA regulations that have been identified as burdensome on the farming community. This is by no means meant to be an exhaustive list of regulations that could be identified as eliminating jobs, are outdated, impose costs that exceed benefits or are inconsistent with initiatives, policies or Congressional intent. Also, some of the regulations listed are currently in the process of being withdrawn by the Administration or are being considered by Congress under the Congressional Review Act, and may see action separate from this request for input.

**The Clean Water Rule (also known as the Waters of the United States Rule)**

**Docket ID: EPA-HQ-OW-2011-0409**

The final Clean Water Rule (WOTUS) would significantly expand the definition of traditional “navigable” waters and the significant nexus standard that are used to determine EPA jurisdiction over specific areas. Under final rule guidance, a hydrological connection would not be necessary to establish a significant nexus between a wet area and traditional navigable water. The rule would also allow aggregation of all similar waters within an entire watershed. Combined, these measures could ultimately expand EPA jurisdiction to any area that has the potential to hold water for any amount of time. The WOTUS Rule is in the process of being withdrawn, but is still awaiting final action and remains “on the books” for the time being.

### **Worker Protection Standards (WPS)**

EPA in the last year has finalized changes to its worker protection standards (WPS) rule. The new regulation imposes new recordkeeping, training and other requirements on farmers that will cost millions of dollars. EPA claimed that the rule was justified because it would confer safety benefits to workers – even though in numerous instances in the proposal it admitted it could not quantify or justify its assertion of increased benefits.

### **Concentrated Animal Feeding Operation (CAFO) Standards**

***EPA-HQ-SFUND-2007-0469-0001*** CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste

EPA finalized an exemption from Section 304 emergency notification requirements of air releases of hazardous substances from animal waste at farms that are below certain thresholds and for those farms that have animals that are not stabled or confined. EPA considers animals that reside primarily outside or an enclosed structure (barn or a feed lot), and graze on pastures, not to be stabled or confined, making them exempt from the reporting requirement. The concern was that while the rule exempted most animal feeding operations, the definition of confined could expand reporting requirements to farms who confine a relatively small number of livestock for a period of 45 days or more for feeding purposes that may not meet the definition of pastures.

***EPA-HQ-OW-2005-0037-0917*** Revised National Pollutant Discharge Elimination System Permit Regulations for CAFOs

This final rule revises several aspects of EPA's current regulations governing discharges from CAFOs. EPA is modifying the requirement to apply for a permit by specifying that an owner or operator of a CAFO that discharges or proposes to discharge must apply for an NPDES permit. The final rule also includes an option for an unpermitted CAFO to certify to the permitting authority that the CAFO does not discharge or propose to discharge. In addition, EPA is clarifying how the agricultural stormwater discharge exemption criteria are interpreted for unpermitted Large CAFOs. EPA is also requiring CAFOs seeking permit coverage to submit their

nutrient management plans (NMPs) with their applications for individual permits or notices of intent to be authorized under general permits.

### **The Clean Power Plan**

#### ***EPA-HQ-OAR-2013-0602; FRL-930-65-OAR***

On October 23, 2015 EPA published a final rule establishing final emission guidelines to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units. The standards set essentially were unattainable by any coal-fired generating unit; existing or proposed. This standard moved electric generation from coal to natural gas generation, that could result in higher costs for nitrogen producers since natural gas is the basic ingredient in nitrogen production. Kentucky enjoys one of the lowest costs for electricity making Kentucky an attractive site for industrial development. Kentucky consumers also enjoy the benefits of lower electrical costs. Moving electric generation from coal to natural gas also reduced demand for Kentucky-produced coal that idled many coal mines in the state.

### **Spill Prevention Control and Countermeasures**

A farm that stores, transfers, uses, or consumes oil or oil products, such as diesel fuel, gasoline, lube oil, hydraulic oil, adjuvant oil, crop oil, vegetable oil, or animal fat; and stores more than 2,500 U.S. gallons in aboveground containers; and could reasonably be expected to discharge oil to waters of the United States or adjoining shorelines, such as interstate waters, intrastate lakes, rivers, and streams is required to prepare and implement an SPCC Plan (plan may need to be certified by a professional engineer or a farmer may be able to self-certify).

### **Corporate Average Fuel Economy (CAFE) Standards**

#### ***EPA-HQ-OAR-2009-0472 or NHTSA-2009-0059***

On May 19, 2009, President Barack Obama proposed a new national fuel economy program which adopts uniform federal standards to regulate both fuel economy and greenhouse gas emissions while preserving the legal authorities of DOT, EPA and California. The program covered model year 2012 to model year 2016 and ultimately required an average fuel economy standard of 35.5 miles per US gallon (6.63 L/100 km; 42.6 mpg-imp) in 2016 (of 39 miles per gallon for cars and 30 mpg for trucks), a jump from the 2009 average for all vehicles of 25 miles per gallon.

#### ***EPA-HQ-OAR-2014-0827***

Posted October 25, 2016, the EPA and the Department of Transportation, in close coordination with the California Air Resources Board, finalized a comprehensive National Program for Medium- and Heavy-Duty Vehicle Greenhouse Gas Emission and Fuel Efficiency Standards for model years beyond 2018. These standards will further reduce greenhouse gas emissions and fuel consumption from a wide range of on-road vehicles from semi-trucks to the largest pickup trucks and vans, and all types and sizes of work trucks and buses.

## **Pesticide Review and Re-Registration**

### ***EPA-HQ-OPP-2011-0586: Atrazine Review***

Atrazine is an important herbicide for corn farmers and others; it is used today on more than half of all corn acres and has a long history of use and study (by some estimates, nearly 7,000 studies). Yet EPA has published a draft ecological assessment of atrazine that, if left unchallenged, could eliminate its use by farmers. Despite its widespread use and decades of data demonstrating its safety and efficacy, EPA appears to be relying on methodological errors and disputed scientific studies in this draft assessment in order to eliminate use of the chemical. In its assessment, the agency has adopted an approach that has raised significant scientific questions and apparently disregarded the advice of multiple studies over the years.

### ***EPA-HQ-OPP-2011-0855-0034: Paraquat***

EPA's suggested interim mitigation proposals could unnecessarily restrict usage of this important crop protection tool. We are especially concerned with agency proposals that would prohibit applications with hand-held equipment and restrict use to only certified applicators. EPA notes incidents related to hand-held spraying equipment that may not be attributable to the specific activity, but faulty equipment or applicators utilizing inappropriate protective clothing or safety devices. Fruit and tree producers in particular use hand-held equipment for very precise applications to control weeds, but not damage trees. Many producers also use additional farm labor, and when properly trained, these workers can effectively and safely apply restricted-use pesticides such as paraquat under direct supervision of a certified applicator. Effective training, supervision and availability of approved personal protective equipment is currently required for farm workers allowing safe, and effective pesticide application under direct supervision of a certified applicator.

### ***EPA-HQ-OPP-2015-0653: Chlorpyrifos***

Only recently did EPA deny a petition that was filed in 2007 by the Pesticide Action Network North American (PANNA) and the Natural Resources Defense Council (NRDC) that EPA revoke all tolerances for chlorpyrifos. Originally EPA proposed revoking all tolerances for chlorpyrifos in 2015. Many specialty crops benefit from chlorpyrifos as an insecticide. EPA has proposed revoking tolerances for the product (effectively eliminating its use in agriculture). In doing so, EPA is relying in part on an epidemiological study. Although the agency has requested raw data from the study those requests have been rejected by the researchers. Yet EPA continues to employ the study despite the fact that the agency's own Science Advisory Panel has expressed concern with how EPA is using the study. While the initial petition has been denied, EPA has allowed objections or requests for hearings to be received prior to June 5, 2017.

Please continue to check periodically for updates and additions to this information.