



Farming in a New Era of Regulations

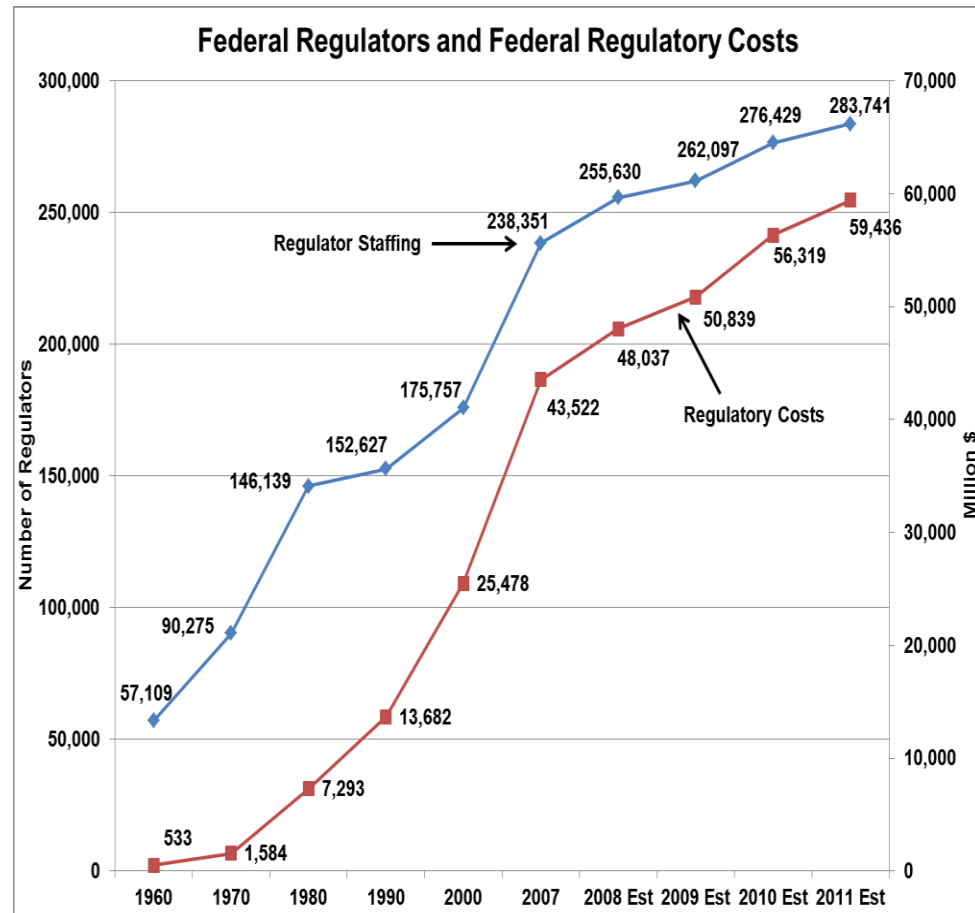
informa economics

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Social & Economic Regulatory Costs Up Sharply

- Government spending to develop and enforce regulatory controls more than doubled last 10 years to record \$59.4 billion
- During same time period staffing rose 60% to a record full-time staff of 283,741
- Homeland Security accounts for much of the cost increase
- But environmental regulation costs also grew sharply and ranked second
- Although the total number of regulatory rules released in 2010 were below Bush's last year, the number of major final rules in 2010 were a record at 100



Regulatory Climate

- Targeted from All Directions
 - ◇ Environmental and other Activist Groups
 - ◇ EPA
 - ◇ Courts
 - ◇ States
 - ◇ Media
 - ◇ Lawmakers
- Congress and changing way federal agencies design and implement regulations
 - ◇ Congressional Review Act
 - ◇ Amend current law
 - ◇ Approve freestanding legislation
 - ◇ Amend regulatory agency's appropriations bills
 - ◇ Regulations from the Executive in Need of Scrutiny (REINS)

Structure of Environmental Enforcement

- EPA has direct regulatory authority over point source polluters and in terms of agriculture specifically only CAFOs
- EPA does not have direct regulatory authority over nonpoint source polluters
- EPA relies on state and local agencies to manage most regulatory activities such as permits, licensing and enforcement because of limited financial resources and staff
- EPA's tools to encourage states to carry-out and enforce regulations
 - ◇ Take away permit authority granted to states
 - ◇ Disapprove specific NPDES permits
 - ◇ Withhold state grant funding
 - ◇ Increase enforcement and prosecution of point source polluters

State Regulations

- Must follow federal guidelines
- Must at be at least as strict or stricter than federal regulations
- Stakeholders must maintain awareness of local, state, and federal level regulatory developments
 - ◇ State regulations can be a bellwether for other states or Federal government
- Challenges for businesses that operate across state boundaries in meeting regulatory requirements
 - ◇ Some state regulations may reduce the competitiveness of those producers in comparison to producers who operate in other states with less restrictive regulations
 - ◇ Some regulations provide opportunity for farmers, depending on the incentives offered and type of environmental degradation targeted

EPA Focus

- Spending up sharply with major focus on water
 - ◇ EPA spending up from \$8 billion in prior administration to \$10.4 billion in current administration
 - Categorical grants - \$1.2 billion (2011)
 - Infrastructure financing - \$3.9 billion (2011)
 - Trust funds - \$1.5 billion (2011)
 - ◇ Increase mostly for water quality
 - Primarily to protect and restore watersheds and systems

EPA Budget Resources by Goal

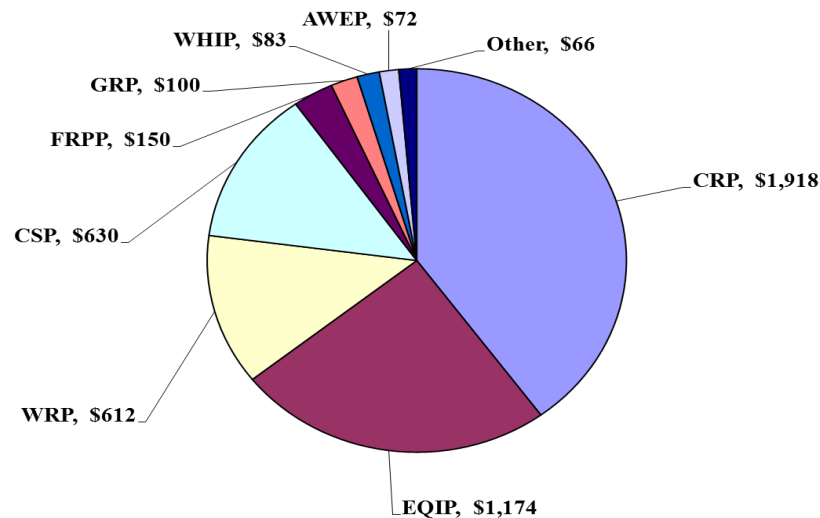
In \$ Million

Goal	2007	2008	2009	2010	2011	2012
Clean and Safe Water	2,731	2,714	2,880	5,645	5,645	4,343
Clean Air and Global Climate Change	932	912	1,037	1,130	1,130	1,131
Land Preservation and Restoration	1,690	1,663	1,254	681	681	703
Healthy Communities and Ecosystems	1,229	1,172	1,732	2,075	2,073	2,017
Compliance and Environmental Stewardship	734	744	750	808	808	830
Total	7,316	7,205	7,653	10,339	10,337	9,024

USDA Focus

- NRCS administered \$4.5 billion in annual grants and loans in 2011 to help offset costs of implementing approved conservation practices.
 - ◇ The NRCS budget has steadily increased from \$3.4 billion in 2008.
- NRCS maintains a list of 161 approved conservation practices that are continually reviewed and updated.
- CEAP program quantifies benefits and effectiveness of conservation practices.

FY 2010, Selected USDA Conservation Programs
Dollars in millions



Water Regulatory Issues

- Water regulatory issues are greatest immediate challenge to farm operations
- Current Issues
 - ◇ Chesapeake Bay TMDL
 - ◇ Florida's numeric nutrient criteria
 - ◇ Mississippi River Basin Initiative
 - ◇ Draft Guidance on identifying waters protected by CWA
 - ◇ Spill Prevention, Control and Countermeasures
 - ◇ Ammonia emissions and CWA
 - ◇ Proposed NPDES CAFO Reporting Rule

Chesapeake Bay TMDL

- Result of settlement of *Fowler v. EPA*
- Single largest Total Maximum Daily Load (TMDL) established by EPA to date
- Agriculture identified as largest source of nutrient and sediment pollution
- Ag groups suing EPA challenging establishment of TMDL
 - ◇ EPA usurping control of state implementation decisions
 - ◇ EPA model incomplete and flawed
 - ◇ EPA provided insufficient information and time to provide public comments

Florida Numeric Nutrient Standards

- Result of settlement of *Florida Wildlife Federation v. Jackson*
- First EPA establishment of statewide numeric nutrient criteria
- EPA standards controversial involving disputes over:
 - ◇ Data underlying EPA proposal
 - ◇ Potential costs of complying
 - EPA usurpation of state's rights
 - EPA estimates initial BMP costs \$112.9 million
 - Florida Department of Agriculture estimates initial costs at \$855 million to \$3.1 billion.

Mississippi River Basin (MRB)

- Concern EPA actions in Chesapeake Bay and Florida waterways could be precedents for similar regulatory action in MRB
- Environmental groups petitioned EPA to established numeric nutrient criteria for MRB but EPA has indicated for now it prefers working with states and localities to reduce water pollution
 - ◇ In 2009 Natural Resource Conservation Service launched MRB Healthy Watersheds Initiative
 - \$80 million of financial assistance for FY 2010-2013
 - Helps producers implement voluntary conservation practices to reduce water pollution

Draft Guidance on Identifying Waters Protected by CWA

- EPA introduced proposed revised Guidelines for CWA to clarify regulatory jurisdiction over US waters and wetlands
 - ◇ Opposition to guidance argues it would substantially increase waters subject to CWA jurisdiction
 - ◇ Lawmakers claim EPA is using guidance document rather than legislative change or the regulatory rulemaking process to expand the scope of law
 - ◇ Farm groups are concerned guidance could expand EPA's authority over wetlands including isolated waters as ditches and farm ponds and increase their costs and vulnerability to lawsuits
- EPA cost-benefit analysis found the guidance could result in an increase in the number of waters deemed to be jurisdictional

Proposed NPDES CAFO Reporting Rule

- Large CAFOs defined as point sources and under CWA are required to obtain a permit
 - ◇ EPA has direct permit authority but can delegate authority to individual states
- Under 2008 CAFO regulations only CAFOs discharging or proposing to discharge are required to obtain a permit
 - ◇ Environmental groups opposed allowing CAFOs to self-determine if they are discharging
- EPA agreed under *Natural Resources Council v. EPA* settlement to propose a reporting rule requesting all CAFOs to provide EPA with information on location of facility, number of animals, number of acres available for land application of manure, and if they currently have permit coverage
 - ◇ Agriculture industry concerned this information could leave livestock sector open to lawsuits from animal rights groups and could be used to bolster EPA enforcement actions

Air Regulatory Issues

- National Ambient Air Quality Standards (NAAQS)
 - ◇ Institutional engine of air quality regulatory framework
 - When particulate matter levels of contamination exceed NAAQS standards, that area is designated a “nonattainment area”
 - States need to submit plans to EPA to mitigate problem
 - EPA has authority to implement its own plan if state doesn’t
 - ◇ Only two agricultural zones declared non-attainment areas at present (counties in Central Arizona and Southwestern California)
- Dust Regulation (PM-10)
 - ◇ EPA Scientific Advisory body recommends possibly tightening NAAQS with respect to particulate matter (PM 10 and PM 2.5) and lowering levels of contamination in air that is acceptable
 - ◇ Despite assertions EPA won’t regulate dust, a change in NAAQS could require regulation of dust unless EPA or Congress acts to prevent it.

GHG Emissions Tailoring Rule and “Cow Tax”

- Clean Air Act initially required a stationary source that produces more than 100 tons per year of any regulated pollutant including GHGs must obtain a “Title V” permit
- Tailoring rule increased threshold from 100 tons to 75,000 tons (eventually to be lowered to 50,000 tons)
 - ◇ Effectively exempts almost all farms from regulation regarding GHG emissions
- But this issue will be revisited again in 2013 leaving open the possibility of increased federal, state or local regulation of GHGs on farms

Other Areas of Regulatory Issues

- Pesticide regulations
- Energy regulations
- Child labor regulations
- Food Safety issues
- Animal Welfare issues
- Dodd-Frank Act

Voluntary and Incentive Based Approaches

- Uncertainty associated with regulatory compliance is a major cost and could be partially offset by farmer conservation practices either through voluntary or incentive based approaches through:
 - ◇ USDA and EPA funding programs
 - ◇ Certainty programs or Safe Harbor programs
 - EPA and USDA officials working together
 - Potential to define BMPs that could comply with regulatory programs rules
 - Such as those involving Chesapeake Bay TMDL
 - ◇ Nutrient or Other Environment Trading Programs
 - Credits earned by projects that exceed nutrient reduction targets can be traded to other projects falling short of targets
 - EPA expected to allow trading of nutrients as a strategy to reduce costs in Chesapeake Bay watershed
 - ◇ Voluntary conservation practices done to benefit the farm

Final Observation

- But, the growing imbalance continues between:
 - ◇ The broad, unfunded social and economic costs assessed to industries (including agriculture), and
 - ◇ The benefits enjoyed by the by the population in terms of better health and a more attractive environment
- While the need for resources to be transferred to offset compliance costs is broadly understood (and is the basis for many EPA programs) these appear to fall short of compliance costs in many cases

Questions