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USDA Farm Bill Rules And Regs – Legislating From The Executive Bench

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In teaching policy, I tell my class that the passage of a piece of legislation is only one step in the process. Once Congress has passed a piece of legislation, the appropriate government agency must take the legislative language and turn it into concrete regulations. Occasionally the proponents of a legislative action argue that the regulations do not reflect the original intent.

In most years, when I explain this process, it takes the form of a theoretical discussion. This year I have a number of real life examples.

Unlike many farm bills which eventually receive support from both the Congress and the administration, the 2008 Farm Bill was enacted over the veto of the President. In that situation it is not surprising to see an ongoing struggle between the administration and the advocates of various programs in the farm bill, especially when it comes to the writing of the implementing regulations.

At the moment we have three examples of this: the ACRE program, the 10 acre rule, and COOL. In each case the advocates argue that the administration is ignoring the intent of Congress in their rule making. Let us look at these one at a time.

The ACRE (Average Crop Revenue) program is a revenue protection program that farmers can opt into in exchange for giving up a percentage of their direct payments and the support levels provided by the Counter-Cyclical Payment program. Once a farmer signs up for ACRE they must stay into the program until the end of the current farm program.

The issue with ACRE is which crop years are to be used for computing the two-year average crop prices that are part of the ACRE payment formula. The administration would like to use the 2006 and 2007 crop years while farmers and Sen. Harkin insist that the intention of the legislation was to use the latest two years – for the 2009 crop year (the first year farmers can sign up for the program) that would be 2007 and 2008. The administration wants the earlier years because the payments are lower while farmers want 2007 and 2008 because the average crop revenue is higher in those years.

The 10 acre rule concerns a provision in the 2008 Farm Bill that disallows farm program payments for units of less than 10 acres. The administration sees this as a cost savings measure. Many of the farmers involved have several farming units that are less than ten acres. To participate in the program, farmers want to combine separate acreages of less than 10 acres into one "farm." The ability for a farmer to aggregate such acreages for the purpose of the program was specifically mentioned as allowable in written comments that attended the legislation. The administration ruled that the budget was set assuming that consolidation would not be allowed and they do not want to allow farmers to consolidate their acreage in order to stay in the farm program.

The COOL (Country of Origin Labeling) has been simmering since it was included in the 2002 Farm Bill. The administration was forced to implement it for some products, but did not implement it for beef, pork, and lamb along with a number of other agricultural products. The proponents of COOL want consumers to be able to identify where their food products come from because they believe that consumers have a preference for US production. For meat, a product labeled "Product of the United States" must be born, raised and slaughtered in the US. It cannot be backgrounded in Mexico or born in Canada and receive the "Product of the United States" label.

After 6 years of delays, Congress set a hard deadline for the implementation of mandatory COOL – September 30, 2008. The processors and food industry in general concerned about the potential cost of implementing these rules and have also complained about the paperwork. On August 1, 2008, the USDA issued interim regulations governing cool. One of the rules has many livestock producers concerned because to them it seems to be designed to defeat the purpose of COOL.

The pertinent regulation reads "In the case of all inclusive labels such as 'Product of the United States, Canada, or Mexico,'…under this interim rule, if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter…the origin of the resulting meat may be designated as Product of the United States, Country X and/or (as applicable, Country Y, where Country X and Country Y represent possible countries of foreign origin (emphasis added).

That would suggest that the packers can get around the rules by commingling cattle from all three countries within the last 60 days and put a label saying "Product of the United States, Canada, and/or Mexico." This way the packers could avoid segregating US produced meat so consumers could have a choice of whether or not they want US meat or if they don't care where their meat comes from.

The interim COOL regulations deal with the issue of country of origin labeling as if health safety would be a more legitimate reason for labeling but, since health safety is not a central part of COOL, don't worry about commingling. The interim wording says, "COOL is a retail labeling program and as such does not provide a basis for food safety. Food products, both imported and domestic must meet the food safety standards of the Food and Drug Administration (FDA) and the Food Safety and Inspection Service (FSIS).

Because food safety is not an issue, they seem to allow more exemptions and more multi-origin labels than the proponents of the legislation intended. In the section on recordkeeping we find the following statement: "USDA continues to look for ways to minimize the burden associated with this rule." One wonders if that attitude carries over to all of the rules regarding COOL.

They fail to consider what is at stake for the proponents of the legislation. For some it is a matter of consumer preference or producer pride. When we were kids, the children of dairy farms that milked Guernseys wore brown and white saddle shoes while those who came from farms that milked Holsteins wore black and white saddle shoes.

When we go to the grocery store to buy apples if the same variety is available from New Zealand and Washington State, we buy the Washington State apples as a way of supporting US farmers.

Similarly when we go to the hardware store we are more likely to buy a tool that is made in the US over one made overseas, even if it cost a little more. It is not a matter of safety, but consumer preference of where we want to spend our money.

I have been teaching policy classes for 36 years. It is common for authorizing legislation for a particular farm bill element to not be funded or not be fully funded by appropriation committees and thereby not be implemented.

But this farm bill go-around has given me more classroom examples of legislating from the executive bench via USDA rules and regs – that specifically conflict with Farm Bill originators – than I can recall during any of my preceding 35 years in the classroom. Δ