

Analysis of House Vote on the American Clean Energy and Security Act

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On Friday, June 26, the House of Representatives passed the American Clean Energy and Security Act of 2009, which was the first time a chamber of Congress has passed legislation regulating greenhouse gas emissions in the United States.

The 1,200+ page bill establishes a cap-and-trade system in the U.S. for carbon dioxide, methane, nitrous oxide and other greenhouse gases. After months of negotiations, the bill passed by a narrow vote of 219 – 212. Forty-four Democrats voted against the measure and eight Republicans voted in favor.

Earlier this year, NMPF endorsed a set of nine key principles that must be included in a climate bill if a cap-and-trade system is to be workable for agriculture. At NMPF's Board meeting in June, the board also decided to support a cap-and-trade legislation that did not subject agriculture to an emissions cap in light of the recent EPA endangerment finding. Shortly after the board meeting, Energy and Commerce Chairman Henry Waxman worked with Agriculture Chairman Collin Peterson to draft a substantial agriculture amendment to make the bill more palatable for agriculture. NMPF participated in these negotiations throughout the month of June and played a significant role in bringing about improvements to the bill.

When the agriculture package was released to the public NMPF expressed our support for the Peterson amendment while staying neutral to the overall bill to reflect the lack of information we have on the full impact to the dairy industry as a result. Almost all of the commodity groups supported the Peterson amendment; however, opinions were split on the larger bill.

NMPF continues to have concerns with the legislation; however, an analysis of the nine principles shows that many of our priority items were incorporated into the bill before final passage:

1. The agricultural sector must not be subject to an emissions cap – The bill explicitly excludes production agriculture from the capped sector and its associated regulatory requirements. However, the bill still contains language establishing a process for creating performance standards for uncapped entities that emit more than 25,000 tons of CO₂e/year. It remains unclear as to whether livestock operations would be affected by this. This could result in setting performance standards that require the use of digesters on farms to reduce emissions. If this were required, livestock facilities would not be able to sell these reductions as offsets.

While our industry has been assured that this is not the intent of the law, EPA's modeling of the domestic offset market was so low indicates that some readings of the bill could allow this option. NMPF strongly opposes this language and is working to get it corrected in the Senate version of the bill.

2. Any cap and trade legislation must fully recognize the wide range of carbon mitigation or sequestration benefits that agriculture can provide – The Peterson amendment folded into the bill includes fifty pages of ag specific language that creates a workable offsets program for our industry. Prior to inclusion of these provisions, agriculture was largely shut out of the process and actually not mentioned at all within previous versions of the bill. The Peterson amendment includes realistic expectations for carbon sequestration contract length (with options for 5, 10 and 20 years), as well as the ability for verification to occur at a program level rather than each and every sequestration project.

3. Cap and trade legislation that makes economic sense for agriculture – This is the largest underlying concern with the entire bill. Due to expected cost increases for ag inputs such as diesel, electricity and machinery, there is a real concern that the bill could negatively affect the bottom line of many farmers who already operate on thin margins. However, because of the proven methane reduction technology available to the dairy industry there are unique opportunities for the industry to benefit. Furthermore, any analysis of future costs to the industry should also take into consideration the likely alternatives should cap-trade legislation fail—including direct regulation by EPA through the existing Clean Air Act. Estimates indicate that this route would likely be far more costly than cap and trade legislation—and would not allow for an offsets market to bring in new revenue.

4. USDA should promulgate the rules and administer an agricultural offset program – The Peterson amendment gives USDA sole authority over the agricultural offsets program in the bill. EPA has been relegated to an administrative role of simply issuing the carbon credits but has no rulemaking authority or ability to implement the program.

5. The use of domestic offsets must not be artificially limited – The legislation calls for a two billion ton cap on offsets, which is the most robust proposal to date. Half of these tons are domestic and half are international, and the value of international

credits has been discounted by 25% to make the domestic offsets more competitive. NMPF along with most experts believe the two billion ton cap provides a sufficiently large market opportunity for agriculture.

6. Establish carbon sequestration and greenhouse gas mitigation rates based on science – Much of the science will be determined during a rulemaking phase if/when a climate bill is signed into law. However, the shift from EPA to USDA already provides some comfort that appropriate soil science and measurement techniques will be used.

7. Any cap and trade legislation must provide an initial list of project types that are eligible agricultural offsets – A specific list of agricultural offset projects has been included in the bill. Originally, the list was only inserted in non-binding report language, but Peterson was able to elevate the specific ag projects list into statutory language, which was a major improvement.

8. Recognize early actors – In the original version of the bill, only carbon reduction practices that began after January 1, 2009 would be eligible to participate in an offsets market. Congressman Zack Space (OH) succeeded in moving the date back to January 1, 2001 during committee markup. According to USDA and EPA only 11 methane digesters were installed prior to 2001. Additionally, in the closing moments of floor debate on Friday afternoon, freshman Congressman Frank Kratovil (MD) was able to obtain a .28 percent allowance allocation for agricultural carbon sequestration that falls outside the offset market, which amounts to about \$1 billion over a five year period. These funds could be used to incentivize project prior to the 2001 date. This is another area where we hope to see improvement in the Senate version of the bill.

9. Stackable credits – The bill ensures that growers who have received conservation funds or government grants will still be able to participate in the offsets market with the same carbon reduction practices. In addition, the bill does not preclude producers from participating in multiple conservation markets at the same

time, which could become significant if voluntary water quality trading regimes are established in certain areas of the country.

Next Steps

NMPF has been told that Senate Environment and Public Works Chairwoman Barbara Boxer intends to use the House bill as the starting point for Senate negotiations, and she wants to hold a markup in her committee this fall. The Senate has already held a hearing on agriculture's role in the legislation and we expect more in the near future. Senate Majority Leader Reid's office has indicated that he would like to pass the bill out of the Senate before the end of October—in advance of the international climate negotiations in Copenhagen, Denmark in December.

How EPA Would Regulate Greenhouse Gasses

By Agricultural Carbon Market Working Group

In April 2009, the U.S. Environmental Protection Agency (EPA) issued an endangerment finding that formally declared that greenhouse gases (GHG) pose significant harm to human health and welfare. Because of the endangerment finding and recent court action, EPA is required to control greenhouse gases under the existing Clean Air Act.

When EPA moves forward, those regulations would not include an economy wide cap and trade program or other market mechanisms that allow for flexibility in meeting the assigned emissions target. Instead, there would likely be a combination of various command and control policies targeting major emitters. This means that EPA would be in charge of telling entities how to comply with reducing their emissions rather than empowering these companies to find the most cost-efficient means themselves. There would be no guarantee that agriculture would be allowed an exemption from regulation and there would be no offsets market for agriculture since this option would require additional authority.

EPA recognizes that the Clean Air Act was not intended to deal with regulating GHG emissions and it would prefer to have legislation work through the details. However, should the pending legislation fail to become law, EPA's finding of endangerment obligates the agency to resort to command and control method to regulate emissions without the flexibility measures included in House passed legislation.

Economic Impact of a Command and Control Approach

In a command and control approach, EPA would implement a regulatory program with policies that would impose mandates requiring certain practices, standards or products deemed necessary to reduce GHG emissions. While such programs could decrease greenhouse gas levels, the system would rely on the judgment of government and not the market to determine the approach. In fact, the Clean Air Act and judicial decisions have made clear that EPA is not allowed to take economic and technological feasibility into account when setting these types of standards. Research shows that command and control policy can raise costs tenfold for consumers as regulation raises costs for certain products, which creates higher prices, but leaves no room for participants and other players to generate income to offset these costs.