

September 9, 2011

The Honorable Debbie Stabenow
Chair
Committee on Agriculture, Nutrition and
Forestry
United States Senate
328-A Russell Senate Building
Washington, DC 20510

The Honorable Pat Roberts
Ranking Member
Committee on Agriculture, Nutrition and
Forestry
United States Senate
328-A Russell Senate Building
Washington, DC 20510

The Honorable Frank Lucas
Chairman
House Committee on Agriculture
U.S. House of Representatives
1301 Longworth House Office Building
Washington, DC 20015

The Honorable Collin Peterson
Ranking Member
House Committee on Agriculture
U.S. House of Representatives
1305 Longworth House Office Building
Washington, DC 20015

Re: Agriculture Regulatory Moratorium

Dear Chairmen Stabenow and Lucas and Ranking Members Roberts and Peterson:

On behalf of the more than two million farmers and ranchers who belong to farmer cooperatives, the National Council of Farmer Cooperatives (NCFC) asks that you, as part of your recommendations to the Joint Select Committee on Deficit Reduction, include a two-year moratorium on all discretionary, non-essential regulatory action that would have the effect of increasing the cost of agricultural production in this country.

Sound policy should always seek to avoid or minimize increasing the costs to U.S. agricultural producers of food, fiber and energy for consumers here at home and around the world. Given the country's current economic crisis and Congress' ongoing effort to reduce serious federal budget deficits, we feel extraordinary measures are called for to reduce the climate of uncertainty created by burdensome discretionary regulatory efforts, including those that are pending.

Many issues beyond those thought of as traditional agricultural policy have the potential to impact farmer co-ops and their farmer-members. These issues include environmental regulations, immigration and labor, food safety, access to international markets, financial services and tax policy.

While there are numerous moratorium proposals before Congress, we would like to offer a specific path forward to successfully establish a workable and comprehensive approach. In particular, given the task before the Joint Select Committee on Deficit Reduction and the Agriculture Committees, we think it

makes the most sense to pursue this moratorium as part of your deliberations and work within the context of the Select Committee's efforts. In this economic climate, even as reductions in farm program spending are being discussed and advanced, we believe it is important that the American farmer and rancher know the costs of production are not going to be increased due to discretionary, non-essential policy making in Washington.

We are aware you will be making recommendations for spending on agricultural programs, particularly in the context of the next Farm Bill. We also are aware you may be asked to agree to cuts to those programs. Given that reality, we request your assistance to ensure that, as funding support for agriculture decreases, the cost of bringing food, fiber and energy the American public does not increase.

We suggest the moratorium remain in force for a full two years or until such time as our economy is well down the road of a full recovery. The concept is simple – now is not the time to increase the economic burden on the American farmer, particularly if that burden is being imposed as a matter of policy, at the discretion of an executive branch agency.

The scope of the moratorium should include both rules and new regulatory interpretations that have the net effect of increasing costs to the agricultural community to produce American food, fiber, and energy. This would include both actions that are implemented directly by a federal agency and actions that would be implemented by a state or local government following the new rules issued by the federal agency (such as state implementation plans under the Clean Air Act or water quality standards under the Clean Water Act). The moratorium also should include all rules and new regulatory interpretations that have the net effect of increasing costs for the agriculture community, such as regulations implementing tax or health care measures.

To ensure that minor regulations and regulatory interpretations are not subject to the moratorium, we suggest that the moratorium apply to significant rules and guidance documents that are subject to review by the Office of Information and Regulatory Affairs (OIRA) of the White House Office of Management and Budget (OMB).

Of the significant rules and guidance documents subject to OMB review, the moratorium should be tailored to apply only to those actions that are taken at the discretion of an agency. Thus, actions that are subject to a legal deadline imposed by a statute or by a court would not be covered. However, out of court settlement agreements that have not been reviewed, adopted, or supervised by any court would be included in the moratorium.

To allow emergency actions to go forward, the legislation should exclude from the moratorium regulatory actions that the President determines are exempt from disapproval by Congress under the Congressional Review Act. The legislation should require the President to consult with the Department of Agriculture and the agency proposing the action before making that determination. The legislation also should require the President to submit to the Chairmen and Ranking Members of the House and Senate Appropriations Committees and Agriculture Committees a copy of the President's determination and the basis for that determination at least 60 days before the agency takes a final action that would otherwise be subject to the moratorium.

Finally, the legislation should provide a limited reach-back to capture rules that have been promulgated after a specific date or that have been promulgated but have not yet taken effect. While many regulatory actions are in response to statutory requirements, we've recently seen a host of regulations that extend beyond congressional intent. A prime example of this is the rule establishing Federal Numeric Nutrient Criteria for Florida Lakes and Flowing Waters that the Environmental Protection Agency (EPA) promulgated on January 26, 2010, but the criteria are not effective until March 6, 2012.

As evidenced by the President's recent withdrawal of the ozone national ambient air quality rule, agencies are taking discretionary actions that will impose billions of dollars in costs on the U.S. economy generally, including agriculture. There are many other planned discretionary actions that will harm the agriculture community or have the effect of creating great financial uncertainty in the sector such as the proposed rulemaking by the Grain Inspection, Packers and Stockyards Administration relating to the livestock industry. While not an exhaustive list, below are a few examples in the area of environmental regulation, but discretionary actions by all agencies would be covered:

1. EPA - Revisions to PM-10 NAAQS – would make the regulation of coarse particles like farm dust more stringent.
2. EPA - Revisions to livestock reporting requirements – EPA agreed in an out-of-court settlement to require livestock and poultry operations to submit, whether or not they are currently discharging, detailed information about their operations and to make that information available to the public in a searchable database available on the internet.
3. EPA – Revisions to the Concentrated Animal Feeding Operations (CAFO) Rule – EPA agreed in an out-of-court settlement to propose a rule by June 30, 2012, to increase the regulation of CAFOs and make it easier to subject small livestock operations to the mandatory requirements of the CWA.
4. EPA and Corps of Engineers Guidance on Identifying Waters of the United States under the Clean Water Act – draft guidance available for public comment May 2, 2011. Final draft not yet issued.

In order for us to have the safest, most abundant, and lowest-cost source of food and fiber in the world, the U.S. must ensure that public policy does not hurt the economic viability of farm and ranch families across the country. We look forward to working with you on this proposal and more broadly on the future of agricultural policy in the context of the farm bill and as you respond to the Joint Select Committee's request for recommendations. Thank you for your help protecting the American public from unnecessary regulations that will increase the cost of the food, fiber and fuel.

Sincerely,



Charles F. Conner
President & CEO