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Five Important Policy Riders to the Agriculture-FDA Spending Bill

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KEY TAKEAWAYS

Congress should stop egregious waste—such as paying farmers twice for revenue/price losses and turning school meals into a welfare program for the wealthy.

Legislators should promote transparency, e.g., by ensuring federal agencies are educating, not misleading, the public on tobacco harm reduction.

The 2020 agriculture spending bill gives Congress a chance to make commonsense, fiscally responsible changes that promote freedom and open government.

On June 4, 2019, the House Appropriations Committee approved the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies spending bill.[1] This bill provides $24.3 billion in discretionary funding for fiscal year (FY) 2020, which is an increase of over $1 billion compared to 2019 and is $6.8 billion *more* than the President's request.[2] Any new bill should reduce spending, not increase it, especially in light of the nation's $22 trillion debt.[3]

This *Issue Brief*, though, outlines five policy riders that should be included in the FY 2020 agriculture spending bill.[4] While nothing is easy to pass in Congress, these recommended riders would offer some specific and concrete changes Congress could make that are "low-hanging fruit." A common thread running through these reforms is that they should not be controversial.

Recommendations

Specifically, Congress should pass riders that would:

1) Prohibit the USDA from Issuing ARC or PLC Payments to a Farmer in the Same Year the Farmer Has Already Received a Crop Insurance Indemnity.

Taxpayers provide about $15 billion a year to agricultural producers, primarily to help the largest producers meet their revenue targets—as opposed to helping farmers when they experience actual crop losses.[5] Agricultural producers can receive support from the Agricultural Risk Coverage (ARC) or Price Loss Coverage (PLC) programs *and* the federal crop insurance program to cover price declines and revenue shortfalls in the same year.[6]

According to the Environmental Working Group, "for the 2014 and 2015 growing seasons, the ARC program paid out $10.4 billion and the PLC program paid out $2.7 billion. In the same years, the revenue-based crop insurance program paid out $10.7 billion for the same crops that received ARC and PLC payments."[7] This duplication or "double dipping" needs to be stopped.[8]

In years when farmers receive a crop insurance indemnity to help with revenue, the U.S. Department of Agriculture (USDA) should not also provide them an ARC or PLC payment. Taxpayers are already forced to generously and inappropriately insulate farmers from competing in the marketplace by helping them with price and revenue risk. It is duplicative, unnecessary, and wasteful to force taxpayers to also provide those same producers with more than one federal revenue-related payment in the same year.

2) Direct the USDA to Develop a Transparent and More Detailed Way for Americans to Learn Who Receives Farm Subsidies and What Farm Subsidies They Receive.

The USDA does have data and publications that help to get some sense of who receives farm subsidies.[9] However, there should be aggregate data readily available (including online) that detail the number of farmers who participate in crop insurance, receive indemnities, receive other farm bill assistance (such as ARC/PLC payments and conservation payments), *and* receive ad-hoc disaster assistance in a specific year.[10] The public should be able to know who is receiving these subsidies,[11] the characteristics of the subsidy recipients (e.g., farm household income and

wealth, commodities grown), the amount of the subsidies, and when these producers receive multiple payments in a year—as well as how often they receive multiple payments.

3) Direct the FDA to Issue a New Rulemaking Clarifying that the Produce Safety Rule Requires a Commodity-Specific Approach.

Congress, through the Food Safety Modernization Act,[12] directed the Food and Drug Administration (FDA) to develop risk-based regulations for the production and harvesting of certain fruits and vegetables (known as the Produce Safety Rule).[13] The FDA, however, has instead taken a one-size-fits-all approach to produce safety—regardless of whether there is a known or even a reasonable foreseeable risk of foodborne illness from specific types of produce. As a result, farmers who grow "non-risky" produce will have to unnecessarily comply with complex FDA regulations.

The FDA has argued that a commodity should still be subject to regulation even if it has never been associated with an outbreak of foodborne illness—because at some point in the future it may be implicated in an outbreak.[14] This is the opposite of a risk-based approach: It is regulation with complete disregard for risk.

A new rule should amend the existing Produce Safety Rule to clarify that the agency will only regulate those fruits and vegetables for which there is an actual risk of foodborne illness. The best way to determine if a fruit or vegetable poses a risk is to examine whether there has been an outbreak.[15] This approach provides a clear and objective way for the agency to determine which commodities should be covered by the rule.

4) Direct the FDA to Correct Inaccurate or Misleading Information and Ensure Its Messaging Is Consistent with the Agency's Embrace of Tobacco Harm Reduction.

According to the Centers for Disease Control and Prevention, "cigarette smoking is the leading preventable cause of death in the United States."[16] Yet instead of embracing e-cigarettes and other alternative products that can help change this,[17] the FDA has taken actions that make it more difficult for smokers to quit smoking. This includes constant and generally one-sided messaging that creates a negative connotation regarding e-cigarettes.

Data show that about half of American adults incorrectly think nicotine is the main substance in cigarettes that causes cancer.[18] Further, American

adults increasingly think that using e-cigarettes is as harmful, or more harmful, than smoking cigarettes (as many as two-thirds of adults).[19] This disturbing misinformation is arguably largely caused by government messaging and generates a disincentive for cigarette smokers to switch to less harmful alternatives.

The FDA should review any information it disseminates, including on its web site, and correct information that could be contributing to this misinformation. When disseminating information regarding tobacco products, the agency should be making it a priority to educate smokers about the benefits of switching from combustible cigarettes to less harmful alternatives—while still warning of any risks connected to youth usage of such alternative products.

The FDA has embraced tobacco harm reduction (a strategy that recognizes reducing the harm from the delivery of nicotine is not an all-or-nothing choice between smoking combustible cigarettes and quitting).[20] In its July 2017 tobacco regulatory plan, the FDA announced that a "key piece of the FDA's approach is demonstrating a greater awareness that nicotine—while highly addictive—is delivered through products that represent a continuum of risk and is most harmful when delivered through smoke particles in combustible cigarettes."[21]

The agency's messaging should reflect its own stated approach on tobacco harm reduction. This should include consistently clarifying the different levels of risk across tobacco products and making it perfectly clear that certain types of products are less harmful than combustible cigarettes.

5) Prohibit Funding for the Community Eligibility Provision.

The Community Eligibility Provision (CEP)—part of the Healthy, Hunger-Free Kids Act of 2010—makes it possible for students, *regardless of family income*, to receive free school meals.[22] This provision thus turns welfare on its head by expanding free school meals to students who are not low-income and who could very well come from wealthy families. It is essentially a backdoor approach to a universal free school meal program.[23]

A fundamental tenet of federal means-tested welfare programs is that recipients are low income. The CEP creates the absurd situation where this USDA means-tested welfare program does not even look at the means of the welfare recipients.

Under the community eligibility provision, if 40 percent of students in a school, group of schools, or school district are identified as eligible for free meals because they receive benefits from another means-tested welfare

program like food stamps, then *all* students can receive free meals. By being able to group schools together (including schools in wealthy areas), it is possible that a school could provide free meals to all students without having a single low-income student enrolled.[24]

Legislators should not be promoting programs that increase dependence on government. Nor should they be pushing a policy that transfers taxpayer dollars from lower-income households to higher-income households to help pay for school meals that the households could pay for on their own. By passing this policy rider, Congress would be bringing some common sense back to school meals without impacting the eligibility of low-income students to receive free and reduced-price meals.[25]

Conclusion

Spending bills are not merely about numbers but are a reflection of policy preferences. Congress should stop egregious waste and duplication—such as paying farmers twice for revenue and price losses or turning school meals into a welfare program for the wealthy. Legislators should promote transparency, e.g., through directing the USDA to provide more detailed farm-subsidy data to the public and ensuring federal agencies are educating, not misleading, the public on critical issues like tobacco harm reduction.

The FY 2020 agriculture spending bill gives Congress a chance to make these commonsense changes. These changes are fiscally responsible, regardless of ideology. They promote freedom and open government, not government control. Legislators should embrace these ideals.

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Endnotes

1. News release, "Appropriations Committee Approves Fiscal Year 2020 Agriculture-Rural Development-FDA Funding Bill," U.S. House of Representatives, June 4, 2019, https://appropriations.house.gov/news/press-releases/appropriations-committee-approves-fiscal-year-2020-agriculture-rural-development (accessed June 7, 2019).
2. "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill 2020," H.R. Rep No. 116-XXX, 116th Congress, 1st Sess., https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY2020%20Ag%20Draft%20Report.pdf (accessed June 7, 2019).
3. U.S. Department of the Treasury, "Daily Treasury Statement," June 6, 2019, https://www.fms.treas.gov/fmsweb/viewDTSFiles?dir=w&fname=19060600.pdf (accessed June 10, 2019).
4. For a detailed look at many more policy riders and ways to achieve major budget savings, see "Blueprint for Balance: A Federal Budget for Fiscal Year 2020," Heritage Foundation *Special Report*, https://www.heritage.org/blueprint-balance.
5. Daren Bakst, ed., "Farms and Free Enterprise: A Blueprint for Agricultural Policy," Heritage Foundation *Special Report*, September 21, 2016, https://www.heritage.org/agriculture/report/farms-and-free-enterprise-blueprint-agricultural-policy, and Daren Bakst, "What You Should Know About Who Receives Farm Subsidies," Heritage Foundation *Backgrounder* No. 3306, April 16, 2018, https://www.heritage.org/agriculture/report/what-you-should-know-about-who-receives-farm-subsidies.
6. Vincent H. Smith and Eric J. Belasco, "Farm Subsidies Need Reform. Congress Can Start by Ending 'Double Dipping'," American Enterprise Institute, March 8, 2018, http://www.aei.org/publication/farm-subsidies-need-reform-congress-can-start-by-ending-double-dipping/ (accessed June 12, 2019).
7. Anne Weit Schechinger and Craig Cox, "Double Dipping: How Taxpayers Subsidize Farmers Twice for Crop Losses," Environmental Working Group, November 14, 2017, https://www.ewg.org/research/subsidy-layer-cake#.WsPfPOSWy70 (accessed June 11, 2019).
8. To learn more about the "double dipping" issue and other important reforms, see Daren Bakst, "Significant—and Necessary—Farm Subsidy Reforms for the Next Farm Bill," Heritage Foundation *Issue Brief* No. 4839, April 7, 2018, https://www.heritage.org/agriculture/report/significant-and-necessary-farm-subsidy-reforms-the-next-farm-bill.
9. See, e.g., U.S. Department of Agriculture, Economic Research Service, "America's Diverse Family Farms: 2017 Edition," December 2017, https://www.ers.usda.gov/webdocs/publications/86198/eib-185.pdf?v=43083 (accessed April 11, 2018).
10. This data should also enable the public to easily mix and match the numbers to draw a wide range of comparisons.
11. This recommendation is not intended to direct the USDA to disseminate any personally identifiable information about subsidy recipients.
12. The Food Safety Modernization Act of 2011, Public Law No. 111–353.
13. Food and Drug Administration, "Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; Final Rule," *Federal Register*, Vol. 80, No. 228 (November 27, 2015), pp. 74353–74672, https://www.federalregister.gov/ documents/2015/11/27/2015-28159/standards-for-the-growing-harvesting-packing-and-holding-of-produce-for-human-consumption (accessed June 11, 2019).
14. See, e.g., "With regard to comments asking that we start by regulating only commodities that have been associated with an outbreak, …we note in the QAR [Qualitative Assessment of Risk] that 'new' commodities are associated with outbreaks on a regular basis, which means that a history of outbreaks is not appropriate as a basis for determining the regulatory status of various commodities." U.S. Food and Drug Administration, "Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; Final Rule," *Federal Register*, Vol. 80, No. 228 (November 27, 2015), p. 74369, https://www.federalregister.gov/d/2015-28159/p-291 (accessed June 10, 2019).
15. Daren Bakst and Jeremy Dalrymple "The FDA Needs to End Its Improper One-Size-Fits-All Approach to Produce Safety," Heritage Foundation *Issue Brief* No. 4959, May 15, 2019, https://www.heritage.org/agriculture/report/the-fda-needs-end-its-improper-one-size-fits-all-approach-produce-safety (accessed June 7, 2019).
16. Centers for Disease Control and Prevention, "Health Effects of Cigarette Smoking," https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm (accessed June 11, 2019).
17. One of the biggest FDA obstacles is its deeming rule published in 2016 that will effectively ban many vaping products currently on the market. Products that were not on the market as of February 15, 2007 (including e-cigarettes), known as the predicate date, have to submit a costly and burdensome pre-market tobacco product application. Many companies that are selling products that could help Americans quit smoking are small businesses, and they will likely not be able to afford the cost and burden of going through this process. Congress should ensure that e-cigarettes are able to get approved through a timely and realistic process as well as identify changes so that many of these products will not effectively be banned. See, e.g., Food and Drug Administration, "Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products," *Federal Register*, Vol. 81, No. 90 (May 10, 2016), pp. 28973–29106, https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the (accessed June 10, 2019); Daren Bakst and Jeff Stier, "Rethinking Tobacco Policy: The Federal Government Should Stop Blocking Alternatives to Smoking," Heritage Foundation *Issue Brief* No. 4657, February 24, 2017, https://www.heritage.org/sites/default/files/2017-02/IB4657.pdf; and Jim McDonald, "The Deeming Rule: A Brief History and Timeline of the FDA's Vaping Regulations," February 11, 2019, https://vaping360.com/rules-laws/fda-deeming-regulations-timeline/ (accessed June 12, 2019).

18. See, e.g., Erin Keely O'Brien et al., "U.S. Adults' Addiction and Harm Beliefs About Nicotine and Low Nicotine Cigarettes," *Preventive Medicine*, Vol. 96 (March 2017), pp. 94–100, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5328980/ (accessed June 12, 2019), and Jim McDonald, "Americans Mistakenly Believe Nicotine Causes Cancer," March 9, 2018, https://vaping360.com/beliefs-nicotine-cancer/ (accessed June 12, 2019).
19. See, e.g., Jidong Huang et al., "Changing Perceptions of Harm of e-Cigarette vs Cigarette Use Among Adults in 2 U.S. National Surveys From 2012 to 2017," March 29, 2019, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2729471 (accessed June 12, 2019), and Fontem Ventures, "U.S. Smokers Don't Believe Vaping Is Less Harmful Than Smoking," June 14, 2018, https://www.eurekalert.org/pub_releases/2018-06/fv-usd061418.php (accessed June 12, 2019).
20. News release, "FDA Announces Comprehensive Regulatory Plan to Shift Trajectory of Tobacco-Related Disease, Death," U.S. Food and Drug Administration, July 28, 2017, https://www.fda.gov/news-events/press-announcements/fda-announces-comprehensive-regulatory-plan-shift-trajectory-tobacco-related-disease-death (accessed June 12, 2019).
21. Ibid.
22. U.S. Department of Agriculture, Food and Nutrition Service, "National School Lunch Program: Community Eligibility Provision," September 6, 2016, http://www.fns.usda.gov/school-meals/community-eligibility-provision (accessed June 12, 2019).
23. To learn more about the CEP, see Rachel Sheffield and Daren Bakst, "Child Nutrition Reauthorization: Time for Serious Reform, Not Tinkering," Heritage Foundation *Issue Brief* No. 4570, May 26, 2016, http://www.heritage.org/research/reports/2016/05/child-nutrition-reauthorization-time-for-serious-reform-not-tinkering; Jonathan Butcher and Vijay Menon, "Returning to the Intent of Government School Meals: Helping Students in Need," Heritage Foundation *Backgrounder* No. 3399, March 22, 2019, https://www.heritage.org/education/report/returning-the-intent-government-school-meals-helping-students-need; and Rachel Sheffield and Daren Bakst, "Welfare for the Wealthy? Congress Should Immediately Stop Pushing Universal Free School Meals," Heritage Foundation *Issue Brief* No. 4658, February 24, 2017, https://www.heritage.org/welfare/report/welfare-the-wealthy-congress-should-immediately-stop-pushing-universal-free-school.
24. Ibid.
25. Ibid.