

# Maryland Farm Bureau's Government Relations Bulletin



# 3 – June 9, 2011

contact: Val Connelly or Kurt Fuchs  
(410)922-3426

## State Update

### **MD Transportation Authority Proposes Steep Hikes at Toll Facilities**

Last week, the Maryland Transportation Authority, the independent agency that owns, finances, operates, and maintains the state's toll facilities, formally proposed the most extensive package of toll increases in its history with the first round of hikes to take effect October 1<sup>st</sup> of this year. The breakdown of the toll increases as well as several other changes to commuter and *E-ZPass* programs is attached. Please take particular note of the significant increases to toll rates proposed for vehicles with 3 or more axles as this will surely increase the cost of moving agricultural products throughout the state.

The announcement triggered a 60-day public comment period during which MDTA will be conducting 9 public hearings across the state to present the plan and allow for public and private testimony. A schedule of the hearings is also included in the related attachment. We strongly encourage members to attend a public hearing and/or submit comments for the official record by **5 p.m. on August 1, 2011** by visiting [www.mdtamaryland.gov](http://www.mdtamaryland.gov); writing to MDTA Toll Comment, 2310 Broening Highway, Baltimore, MD, 21224; or attending a public hearing.

For more information please contact Kurt Fuchs via email at [kurtf.mdfb@verizon.net](mailto:kurtf.mdfb@verizon.net) or by calling 410-922-3426.

### **O'Malley Issues Executive Order for Marcellus Shale Initiative**

On Monday, Governor O'Malley issued an executive order creating the Marcellus Shale Safe Drilling Initiative to "assist State policymakers and regulators in determining whether and how gas production from the Marcellus Shale in Maryland can be accomplished without unacceptable risks of adverse impacts to public health, safety, the environment, and natural resources." The Initiative directs the Maryland Department of the Environment and the Department of Natural Resources to form an advisory commission whose initial task will be to determine an appropriate revenue source associated with gas production and develop standards of liability for potential damages caused by exploration and production. These initial recommendations are due to the Governor and the General Assembly by December 31, 2011. The advisory commission will also serve as a consultative body for the Departments as they undertake a study of the possible implications of natural gas exploration and extraction from the Marcellus Shale in Maryland. Notably absent from membership on the commission are any actual farmers or landowners from the impacted region.

Both MDE and DNR must also prepare draft reports, solicit public comment, and issue final reports on the Study: 1) No later than August 1, 2012 for establishing best practices for all aspects of gas

exploration and production in the Marcellus Shale in Maryland; and 2) No later than August 1, 2014 with a complete report addressing the nearly 2 dozen remaining study topics enumerated in the Executive Order.

There remains a de facto moratorium on exploration and production of natural gas in Maryland's portion of the Marcellus Shale formation due to MDE's reluctance to issue permits. During the 2011 General Assembly Session opposing bills that would have either lengthened the informal moratorium or spurred MDE to formulate regulations and issue permits did not succeed. Maryland Farm Bureau supports the ability of farmers and landowners to realize this aspect of their property's value through the safe and efficient extraction of a valuable natural resource and domestic energy source.

To view the entire Executive Order click the link below:

<http://www.governor.maryland.gov/executiveorders/01.01.2011.11.pdf>

### **June 27<sup>th</sup> Public Meeting on National Association of Soil Conservation Districts project called "Get farmers full credit for conservation practices in the Chesapeake Bay"**

The National Association of Conservation Districts (NACD) is hosting a meeting to present their progress on developing a protocol for gathering information on non-cost shared conservation practices within the Chesapeake Bay Watershed.

The meeting will be held on Monday, June 27, 2011, at the Baltimore County Agricultural Center, 1114 Shawan Road, Cockeysville, MD 21030. The meeting will start at 10AM and will end by 2PM, lunch will be provided.

If you are interested in attending the meeting please RSVP by June 22 to [rensor@howardcountymd.gov](mailto:rensor@howardcountymd.gov) or call 410-489-7987 (Howard Soil Conservation District).

#### Agenda:

- 10-10:15 Welcome, Introductions - Rich Duesterhaus, NACD
- 10:15-11 Getting Farmers Full Credit for Conservation Practices in the Chesapeake Bay - Bob Ensor
- 11-11:30 Protocol and Verification Options Available for States - Bob Ensor
- 11:30-12:30 Lunch - 1 hour catered and funded by NACD
- 12:30-1:00 Decision Guidelines for State (may do during lunch) - Bob Ensor  
State Progress and Direction To-Date - State Representatives (invited)
- 1-2 Questions, Comments from the Audience - Bob Ensor

# National Update

## **A CDL Needed to Move Farm Machinery over the Road?**

The Federal Motor Carrier Safety Administration (FMCSA) recently issued a request for comments on *Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment*.

The Federal Motor Carrier Safety Administration (FMCSA) has published a request for public comments on the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to farmers and ranchers. The agency is seeking comment on the following issues:

- (1) How should FMCSA distinguish between intra- and interstate commerce when a Commercial Motor Vehicle (CMV) is operated within the boundaries of a single state?
- (2) Should FMCSA treat farmers with crop-share lease agreements as “for-hire” commercial carriers in new entrant safety audits?
- (3) Should implements of husbandry and other farm equipment be considered CMVs?

A copy of the draft is attached. The request was published on May 27, 2011, with comments due by June 30, 2011. FMCSA has requested that state Farm Bureaus, their members, and other agricultural stakeholders submit comments.

Many states have tried to categorize agricultural products as interstate commerce, which would result in many farmers and ranchers losing any exemptions they currently enjoy for intrastate commerce. Defining farm vehicle drivers and/or tractors or other farm implements as CMVs would also result in farmers and ranchers losing those exemptions. Without a strong response to this comment request Maryland’s agricultural trucking and transportation laws would undergo huge changes to the detriment of family farms and rural economies.

Thoughts to consider as you formulate your comments:

- During peak harvest and planting seasons, farmers would be subject to the hours of service requirements under a CDL, drastically limiting their ability to harvest and plant in a timely manner.
- Younger members of the family would be precluded from many tasks involving trucks and machinery. You must be at least 18 to apply for a CDL and 21 if transporting any hazardous materials.
- Cost – Not only would farmers most likely need to pay for CDL courses and licensing of their workers, but once they’ve received their CDL, many other industries with deeper pockets could lure them away.
- Cost – Commercial vehicle and trailer registration fees are significantly higher than those currently applied to agricultural vehicles. Two main reasons for this are CMVs are generally in use all year long and those businesses are more easily able to pass the cost along to their customer. Farmers operate these vehicles only seasonally and, in the vast majority of operations, cannot pass the increased costs of doing business on to the customer.

## **FMCSA Instructions for Comments:**

Submit comments identified by Federal Docket Management System Number *FMCSA-2011 0146* by any of the following methods:

Federal eRulemaking Portal: [http:// www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

- Fax: 1- 202-493-2251.
- Mail: Docket Management Facility, (M-30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room 12-140, Washington, DC 20590-0001.
- Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, FMCSA asks that you use only one of these four methods. All submissions must include the Agency name and docket number (FMCSA-2011-0146) for this notice. See the “Public Participation” in the attached document heading for instructions on submitting comments and additional information. Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>.

We have attached the full background paper released in conjunction with the comment request. If you have questions or would like assistance in submitting your comments please contact Kurt Fuchs via email at [kurtf.mdfb@verizon.net](mailto:kurtf.mdfb@verizon.net) or by calling 410-922-3426.

### **Expansion of EPA Authority Without Farmers’ & Ranchers’ Comments**

On May 2, 2011 The Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) proposed draft Guidance that would expand EPA’s Clean Water Act (CWA) regulatory authority. Most concerning for you – EPA and the Corps are seeking to implement this Guidance without formal input from farmers and ranchers, and other impacted groups!

The proposed Guidance would be used by the EPA and the Corps to reinterpret the term, “waters of the United States.” The impact on your farm or ranch could be far-reaching, burdensome and costly. EPA has indicated that this increased regulation will affect the implementation of all programs authorized under the Clean Water Act (CWA). The proposed Guidance is designed to expand EPA’s regulatory reach under the Clean Water Act. As such, this draft Guidance does not meet the requirements of the Administrative Procedures Act and appears to be in conflict with Supreme Court rulings in 2001 and 2006 that limited EPA’s authority.

#### **ACTION REQUEST: WE NEED YOUR MESSAGES TODAY:**

Send your messages to EPA and the Corps by the deadline of July 1, 2011. To craft and send your and email message, log onto the AFBF Cap Wiz site <http://capwiz.com/afb/home> . If you prefer to write and mail your comments, please send them to:

*Water Docket  
Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460*

*Attn: Docket ID No. EPA-HQ-OW-2011-0409  
RE: Comments on the U.S. EPA and U.S. Army Corps of Engineers Guidance Regarding  
Identification of Waters Protected by the Clean Water Act, Docket No. EPA-HQ-OW-2011-0409*

The issues that concern farmers in the proposed guidance include:

- The Guidance expands the scope of the definition of “traditional navigable waters.” My understanding of these waters is that they had to be capable of transporting interstate commerce among states. The Guidance now changes this classification for a water body if it can support “one-time recreational use.” That goes too far, is vague and has no relationship to definitions that have been around for decades.
- The Guidance does not require a hydrological connection between a wet area and a traditional navigable water. If there is no hydrological connection, how could the agencies possibly conclude that a wet area meets the same standard as “navigable water”?
- The current regulations and previous Guidance documents say nothing about ditches, but with this Guidance, the agencies assert CWA jurisdiction over many roadside and agricultural ditches. That will clearly impact what farmers can do on their land, not just in filling and maintaining ditches, but impact the ability to use crop protection strategies.
- The Guidance allows the agencies to “aggregate” the contributions of all similar waters within an entire watershed. Also, the Guidance defines tributaries to essentially mean any channel that has evidence of flow. There is no end to the potential to add hundreds of tributaries, wetlands, and non-wetland waters that could be regulated.

The EPA and Corps are moving to implement CWA authority. It is critical that they hear from you on this matter. Now is the time for farmers and ranchers, like you, to tell them you will be impacted and they should listen to you.

### **Court Decision Gives AFBF ‘Seat at Table’ in Pesticide Lawsuit**

A June 3 decision by the U.S. District Court for the Northern District of California allowing the American Farm Bureau Federation and other agricultural groups to intervene in a major lawsuit over pesticide use and the Endangered Species Act gives the groups a “seat at the table” in settlement discussions, according to Ellen Steen, AFBF’s general counsel.

“The court’s decision in the lawsuit, Center for Biological Diversity v. Environmental Protection Agency, gives Farm Bureau and the other groups a voice in the lawsuit and allows us to object to any agreement that would limit the ability of farmers to use crop protection products,” Steen said.

On June 3, AFBF, National Agricultural Aviation Association, National Association of Forest Owners, National Corn Growers Association, National Cotton Council, National Council of Farmer Cooperatives, National Potato Council, Oregonians for Food and Shelter, USA Rice Federation and Washington Friends of Farms and Forests Families filed the motion to intervene in the lawsuit. Other interested parties, such as Croplife America were also granted intervention and will take part in settlement discussions.

The CBD lawsuit seeks to impose use restrictions, or even outright bans, on hundreds of pesticides based on alleged risk to threatened or endangered species and “critical habitats” protected under the Endangered Species Act. CBD alleges that EPA violated the ESA by failing to consult with the Fish & Wildlife Service and National Marine Fisheries Service over the potential effects of 381 EPA-registered pesticides on 214 threatened and endangered species in 49 states and Puerto Rico.

## Policy Development for 2012

Last week we published the first Policy Development issue for discussion. The topic was Funding Infrastructure Projects. This week's topic is Rural Health Care. Please take some time to discuss both of these topics with your family, friends and your county Farm Bureau. Your suggestions for policy positions will be valuable as your county Farm Bureau drafts its policy resolutions over the next few months.

### Rural Health Care

#### Issue:

Nearly 50 million rural Americans face the challenge of not having access to adequate health care on a daily basis. In order for America's farmers to thrive in supplying food, fuel and fiber to the world, rural communities need access to health care and increased technology. Rural communities need programs that will bring and keep health care providers and health care facilities to small towns.

#### Background:

Approximately 17 percent of the U.S. population lives in rural communities. In order to have adequate health care, individuals need access to sufficient medical facilities. In particular, rural residents face a geographical challenge in accessing medical facilities. Studies have shown that under emergency health situations, rural residents have longer travel times for services than urban residents. This is problematic for individuals with acute symptoms that need to be treated immediately.

Rural residents face disparities in health care access as compared to urban residents. One disparity is access to physicians. In 2007, rural counties had on average 1.2 doctors for every 1,000 residents compared with three doctors for every 1,000 residents in urban counties. Furthermore, urban counties had more than three times as many specialists (1.1 specialists for every 1,000 residents compared with only 0.3 specialists for every 1,000 residents in rural counties.). In 2010, approximately 10 percent of physicians practiced in rural America, despite the fact that nearly 17 percent of the population lived in rural communities. Access to highly trained physicians is important in obtaining high-quality care. It is imperative that doctors, physician's assistants and nurse practitioners have the proper training and technology to serve the rural community in providing the best possible health care.

Today, the National Health Service Corps provides scholarships and loan repayment programs to increase primary care service to rural communities. The scholarships provide medical students an opportunity to pay tuition, fees and receive a living stipend. After graduating, the recipient is required to work between two and four years in a high-need Health Professional Shortage Area as a primary care provider. The loan repayment program allows current practicing primary care physicians to receive \$60,000 to repay student loans in exchange for two years of service in a high-need area. The loan recipient is allowed to apply for additional years, which provides the following payments: \$175,000 for five years and total debt forgiveness for six or more years.

A Critical Access Hospital (CAH) is a hospital that is certified to receive cost-based reimbursement from Medicare. The reimbursement that CAHs receive is intended to improve financial performance and thereby reduce hospital closures. As of September 2010, there are 1,320 certified Critical Access Hospitals located throughout the United States. There is a discrepancy with the amount of funding CAHs receive between rural and urban communities, which needs to be addressed. It is estimated that Medicare and Medicaid account for approximately 60 percent of rural hospital revenues. With both programs under budget pressure from a state and federal level, this may result in declining revenues for rural hospitals.

In order to provide doctors, physician's assistants and nurse practitioners with the most up-to-date training and improve efficiency, the use of technology in the form of telemedicine, broadband and medical facilities is essential. One responsibility the Telecommunications Act of 1996 gave to the Federal Communications Commission (FCC) was to increase access to telecommunications and advanced services to rural health care facilities. From this act, the FCC created the Universal Service Fund (USF) in 1997 to meet this responsibility. The USF provides reduced rates to rural health care providers for telecommunications and broadband services so that they pay no more than their urban counterparts for the same or similar service. The continuation and support of the USF is important to further improve the overall access of health care to rural communities. The word "rural" as defined by the USDA is any location beyond the urbanized periphery surrounding a city of 50,000 or more. In essence, USDA can administer its Rural Development programs to communities with populations of up to, but no greater than, 50,000 people.

Questions:

1. What role should the federal government have in further promoting access to health care to rural America?
2. What policies need to be implemented to expedite the process of securing more grants and loans for better healthcare medical facilities to rural America?
3. What programs need to be improved to increase access to health care services for rural residents?
4. How can current or new policies attract more doctors, physician's assistants and nurse practitioners to rural America?

Farm Bureau Policy:

153 - Health and Health Insurance

Lines 36-40: We support: (1) Greater use of non-physician providers; (2) Efforts to train additional family physicians who intend to practice in rural areas; and (3) Government incentives for medical and mental health services in rural areas.

Lines 138-139: We support: (10) Equitable Medicare payments to rural hospitals and physicians.

161 - Rural Communications

Lines 7-8: We support continuation of the Universal Service Fund (USF) to maintain affordable communication services in rural America.

463 - Rural Development

Lines 1-3: We support the important work of USDA Rural Development to improve the quality of life and increase economic opportunity in rural America.

Please submit your thoughts on this policy development issue to your county Farm Bureau. If you would like to share your thoughts with us too, we will be happy to send them with your county Farm Bureau President and our Legislative Affairs Committee. You may review Maryland Farm Bureau's current policy by logging on to our website at [www.mdfarmbureau.com](http://www.mdfarmbureau.com). The policy can be found on the homepage and under the Government Affairs tab.