



**American Feed Industry Association's Government Action Team**  
**G.A.T. NEWSLETTER**  
*An inside look at industry-related issues before the government*

**June 6, 2011**

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*The Senate has been on a one week recess while the House has remained in DC, both chambers will be in session the week of June 6.*

**Ag Approps OK'd by Full Committee; Floor Fight Looms over Cuts, Amendments**

**Ag Approps OK'd by Full Committee; Floor Fight Looms over Cuts, Amendments**

The full House Appropriations Committee this week approved the ag/FDA subcommittee's FY2012 spending package, but the depth of the cuts and several controversial amendments already signal a floor fight over the bill. The bill appropriates \$17.25 billion in discretionary spending and \$108.2 billion in mandatory spending, 14% lower than last year and 23% less than recommended by President Obama. Democrats are highly vocal in their opposition to cuts in Women, Infant, Children (WIC) nutrition and other food assistance programs, as well as cuts to FDA's overall spending level. An amendment by Rep. Rosa DeLauro (D, CT), former chair of the subcommittee, to increase WIC funding by \$147 million, offset by a reduction to an international cotton program, passed on a voice vote.

**FDA Wants Comments on Food Safety Prevention Plan Criteria**

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FDA funding was cut by \$285 million, an 11.5% drop compared to FY2011, a move critics says will undermine not only food safety oversight, but homeland security programs. Ag groups generally say the bill cuts too deep too quickly, particularly as the industry ramps up

<p><b>Approval Process, Raises Concerns</b></p>	<p>to 2012 Farm Bill development. But livestock and poultry groups signaled strong support for an amendment to withhold funding from the Grain Inspection Packers &amp; Stockyards Administration (GIPSA) to implement its controversial rule to rewrite contractual arrangements between meat processors and producers. Over 50 environmental groups and individual producers sent a letter to the committee denouncing cuts in conservation programs, which they say total over \$1 billion. Similar criticism was leveled at</p>
<p><b>E-Verify Mandate Plan Opposed; AZ Immigration Law Upheld</b></p>	<p>elimination of the USDA Biomass Crop Assistance Program, a major effort by the department to find alternative non-food/feed crop feedstocks for biofuels.</p>
<p><b>Sensenbrenner Investigates EPA E15 Decision, Impact on Engines</b></p>	<p>A separate and highly controversial amendment eventually accepted by the committee was offered by Rep. Denny Rehberg (R, MT) that requires any money spent by FDA on a rule, regulation or guidance “intended to restrict the use of a substance or a compound” must be based upon “hard science,” including risk assessments, epidemiological studies that show the substance is more harmful than beneficial, and not on “consumer behavior.” The language originated in the tobacco industry and mirrors a House resolution introduced earlier this year by Rep. Stephen Fincher (R, TN). Rehberg, in explaining the broader restriction, said “a key concern” is efforts by FDA to ban the use of antibiotics in livestock and poultry feed when “there is no scientific data” to support the action. FDA said the amendment would restrict its ability to ensure the safety of several products under its authority. Committee sources say the amendment may be stripped from the bill before it reaches the House floor because it is nongermane to agency spending.</p>
<p><b>Senate Finance Asks ITC to Investigate U.S., Brazil Export Competition</b></p>	<p></p>
<p><b>Bill to Speed Biotech Approvals Introduced</b></p>	<p></p>
<p><b>First Senate Farm Bill Field Hearing Reveals Michigan Needs</b></p>	<p></p>
<p><b>Enviro Lawsuit Exclusions Sought by Ag Groups</b></p>	<p><i>Other amendments and provisions of note:</i></p> <ul style="list-style-type: none"> <li>• Farm Program Payments – The committee accepted an amendment by Rep. Jeff Flake (R, AZ) , who said farm program payments have “entered the realm of the</li> </ul>

absurd," which would withhold payments to any individual earning more than \$250,000 per year, drastically slashing the current limit of \$500,000 in adjusted gross income (AGI) from off-farm earnings or \$750,000 AGI from on-farm sources.

- **Contracts with Corporations** – An amendment prohibiting the government from entering into contracts or agreements with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months was offered by Rep. McCollum (D, MN). The amendment was accepted on a voice vote.

- **Horse Slaughter** - The committee accepted an amendment by Rep. Jim Moran (D, VA) to prohibit USDA from spending money to inspect horses for slaughter for human consumption, action he took at the behest of the Humane Society of the U.S. (HSUS) and PETA.

- **Sunscreen** - The report language directs FDA to finalize by Dec. 31 a 2007 proposed rule requiring ultraviolet B and A testing and labeling for over-the-counter sunscreen. "Given the importance of this rule to protecting Americans against skin cancer, the Committee is concerned that FDA has not issued a final rule."

- **Menu Labeling** - The report language states that there is concern about the FDA menu labeling proposed rule covering establishments that are not in the business of selling food to be immediately consumed or that do not prepare food on site. "The Committee urges FDA to use the proposed alternative definition in the rule that would encompass only establishments where the primary business is the selling of food for immediate consumption or selling food that is prepared and

processed on the premises." Stakeholders have debated whether retail food establishments like grocery stores, movie theaters and convenience stores should be covered by menu labeling provision.

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### **FDA Wants Comments on Food Safety Prevention Plan Criteria**

FDA is seeking public comment on the criteria by which companies which grow, process, store and distribute food and feed products will identify hazards and prepare food safety plans to prevent those hazards from impacting human or animal health. Under the Food Safety Modernization Act (FSMA), companies are required to have preventative control plans written and available for FDA inspection. While the law stipulates current Good Manufacturing Practices (cGMPs) qualify as preventative controls, companies required to register with FDA under FSMA must also evaluate hazards, and specify how a facility will monitor its efforts and prevent hazards from impacting product integrity, and what steps it will take to correct problems that do arise. FDA is concerned that myriad manufacturing processes and the enormity of defining "preventative controls" for all segments of the industry may be overly complex without industry input. It's also concerned about the impact on small businesses.

Comments are being accepted through August 22 on the May 27 announcement, and the request can be found by going to [www.fda.gov](http://www.fda.gov) and following links to FSMA implementation.

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### **Trade Pacts Caught in TAA Standoff**

While the White House acceded to demands by

members of both political parties on both sides of Capitol Hill that all three pending free trade agreements (FTA) – Panama, Colombia and South Korea – be submitted as a package, the Administration demand for a commitment from House and Senate leadership to renew and expand expired Trade Adjustment Assistance (TAA) has created a political standoff on ratification of the treaties. Complicating the debate over TAA renewal is a Senate Republican decision this week to block executive branch nominees until the President formally submits all three FTAs to Congress, arguing TAA will be dealt with separately. This GOP action will delay President Obama's nomination of sitting Secretary of Commerce Gary Locke to be U.S. ambassador to China following Ambassador John Huntsman's resignation, and nomination of the former head of Edison International and a co-founder of the Natural Resources Defense Council (NRDC) John Bryson to be Locke's replacement at Commerce.

TAA is a 50-year-old program providing retraining, extended unemployment and health care payments for U.S. workers whose jobs are eliminated or their hours or wages are reduced due to U.S. export agreements. Portions of the TAA expired in February after an unsuccessful attempt in the House to renew the program, with critics arguing TAA must be scaled back during efforts to curb spending and reduce deficits. The White House estimates the cost of TAA at \$7.2 billion over 10 years. TAA supporters argue it's Congress' duty to protect U.S. workers and help them meet the challenges of global competition.

Nearly all of U.S. agriculture supports the three FTAs. Supporters argue the three FTAs must be ratified as soon as possible or the U.S risks losing valuable overseas markets to competing international trade pacts. The most lucrative potential market of the three is Korea, valued at over \$11 billion -- \$1 billion of which is

estimated to come from increased beef sales – but a Korea-European Union (EU) bilateral agreement is effective July 1, 2011. A Colombia-Canada FTA will also take effect shortly, further disadvantaging U.S. exporters.

Once formally submitted, “fast track” treaty authority requires Congress to act on the treaties within 90 days. Neither chamber can amend the treaty; it must ratify or reject the agreement. While the law granting the President trade promotion authority expired on July 1, 2007, treaties submitted before that date are covered, including Panama, Colombia, and Korea, all of which the U.S. signed before the deadline.

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### **USDA Unveils *MyPlate***

The USDA unveiled the federal government’s new food icon this week, MyPlate, which emphasizes the fruit, vegetable, grains, protein and dairy food groups. Secretary of Agriculture Tom Vilsack said, “MyPlate is an uncomplicated symbol to help remind people to think about their food choices in order to lead healthier lifestyles. This effort is about more than just giving information, it is a matter of making people understand there are options and practical ways to apply them to their daily lives.”

MyPlate will replace the MyPyramid image as the government’s primary food group symbol consistent with the 2010 Dietary Guidelines for Americans. MyPyramid will remain available to interested health professionals and nutrition educators in a special section of the new website. Later this year, USDA will unveil a “go-to” online tool that consumers can use to personalize and manage their dietary and physical activity choices.

For more information, visit [www.ChooseMyPlate.gov](http://www.ChooseMyPlate.gov).

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## **House Panel Reviews FDA Medical Device Approval Process, Raises Concerns**

House Panel Reviews FDA Medical Device Approval Process, Raises Concerns Appearing before the House Oversight and Government Reform Health Subcommittee, FDA Center for Devices and Radiological Health Director Jeff Shuren defended the agency's record on approval times and safety for medical devices while citing the need for additional resources.

Shuren said FDA is meeting 95% of its agreed upon goals related to approval time of medical devices, but the program is under strain. He acknowledged that inadequate predictability has caused problems and FDA reviewers need to have a better understanding of cutting edge technologies. Republicans questioned these statistics, saying that while FDA cites approval time goals are being met, the total review time has been lengthening.

In response to questions by the panel about the type of criticism he's heard about FDA from industry, Shuren said industry would like more interactions with the FDA prior to filing and during the review process. While Shuren agreed this would be beneficial, he said FDA is currently limited in resources and staffing. He also said industry has expressed a strong desire for FDA to stand behind advice provided to industry during meetings with the agency, but did not comment on this criticism.

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## **E-Verify Mandate Plan Opposed; AZ Immigration Law Upheld**

Rep. Lamar Smith (R, TX), chair of the House Judiciary Committee, announced plans last week to introduce legislation this month requiring all U.S. employers to use the federal E-Verify on-line system to verify the legal status of prospective employees, action that immediately drew fire from ag groups who fear their worker pools will dry up. In a related development, the U.S. Supreme Court last week upheld an Arizona law that penalizes businesses which knowingly hire illegal immigrant workers.

Smith's E-Verify mandate intention came on the heels of the Supreme Court decision, with Smith saying, "American jobs should be preserved for Americans and legal workers." Smith said the E-Verify system is successful and "well-liked" by the 250,000 employers estimated to be currently using the system. Ag interests said E-Verify and other "solutions" to the illegal immigration problem in the U.S. fail to recognize the need for a reliable, stable workforce for agriculture. Opponents of the Arizona law contended immigration is solely a federal responsibility, but the high court rejected that argument and said federal immigration laws give the states authority to impose sanctions on employers who hire illegal immigrants. The U.S. Chamber of Commerce, which brought the action, said the decision does not give states or local governments "a blank check to pass any and every immigration law."

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## **Sensenbrenner Investigates EPA E15 Decision, Impact on Engines**

A bill introduced earlier this year to block EPA from implementing a decision to increase the Renewable Fuel Standard (RFS)-mandated ethanol blend rate in gasoline from 10% to 15% authored by Rep. James Sensenbrenner (R, WI), was followed up this week by a Sensenbrenner “survey” sent to major automobile companies to see if the EPA “E15” decision will lead to damaged engines that increase costs to consumers. Sensenbrenner said the EPA decision failed to answer several questions on engine damage, fuel efficiency and consumer cost, saying “people in southeast Wisconsin already have to deal with the consequences of the EPA-imposed reformulated gas, which uses E10...why do we think increasing the allowable blend would be any better?”

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### **Senate Finance Asks ITC to Investigate U.S., Brazil Export Competition**

Sens. Max Baucus (D, MT) and Orrin Hatch (R, UT), chair and ranking member of the Senate Finance Committee, asked the International Trade Commission (ITC) to study the competitiveness of the U.S. in global markets when U.S. interests come up against Brazilian competition. “Brazil’s global exports of agricultural products have grown substantially over the last decade, largely in beef, pork, poultry, soybeans and corn, all products exported in significant amounts by the U.S.,” the committee wrote in an April 26 letter to the ITC. “This growth has altered the competitive landscape in global markets and resulted in declining market share for U.S. agricultural exports in certain countries and products.”

The investigation will cover 2006-2010, and focus on meat, grains, oilseeds and their products, with the report due back to the Hill by March 26, 2012. The ITC

will hold a public hearing in Washington, DC, July 20. The final report is supposed to cover “U.S. and Brazilian participation in global export markets for meat, grain, oilseeds and their products, particularly in the European Union, Russia, China and Japan and markets with which Brazil has negotiated trade agreements.”

The committee also wants the ITC to look at “a description of the competitive factors affecting the agricultural sector in Brazil in such areas as cost of production, transportation and marketing infrastructure, technology, exchange rates, domestic support and government programs related to agricultural markets; a description of Brazilian multinational agribusiness firms and their effects on global food supply chains; a description of the principal trade measures affecting U.S. and Brazilian exports of meat, grain and oilseeds and their products in major third country export markets, including sanitary and phytosanitary measures and technical barriers to trade, and a quantitative analysis of the economic effects of preferential tariffs negotiated under Brazil’s free trade agreements on U.S. and Brazilian exports of meat, grain and oilseed products, as well as the economic effects of selected non-tariff measures on U.S. and Brazilian exports of meat, grain and oilseed products in major third-country export markets.”

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### **Bill to Speed Biotech Approvals Introduced**

A bill that would give the federal government 180 days to approve or reject an application for approval of a genetically engineered plant variety was introduced this week by Rep. Stephen Fincher (R, TN). While the bill only applies to plant varieties under the authority of USDA’s Animal & Plant Health Inspection Service (APHIS), if successful, the bill could also impact FDA’s

authority to approve genetically engineered animals. In addition to the six months allowed for approval, USDA would get an additional 60 days, if needed, to ensure the safety of the environment and that compliance is met. Fincher said his bill is necessary because the time it takes for an APHIS approval has dramatically increased in recent years, in part due to litigation brought by opponents of biotechnology.

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### **First Senate Farm Bill Field Hearing Reveals Michigan Needs**

The first Senate Agriculture Committee 2012 Farm Bill field hearing, held this week on the campus of Michigan State University, didn't yield any policy bombshells, but gave an insight into how Michigan agriculture wants the new farm bill to evolve. Convened by the Committee Chair Debbie Stabenow (D) who hails from Michigan, a broad coalition of Michigan agriculture groups, including producer organizations and the Michigan Agri-Business Assn., told the hearing its key issues include protecting the "income safety net" and crop insurance; a Conservation Reserve Program (CRP) "early-out" with no producer penalty; maintaining a "robust" sugar policy; continuation of energy title programs; updated dairy supports, and support for federal food programs. Several specialty crop representatives also made their needs known, and overall, little time was spent on traditional farm program discussion.

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### **Enviro Lawsuit Exclusions Sought by Ag Groups**

A little-known provision of federal law allowing environmental groups which bring suit against the federal government to collect legal fees and costs if the

suit is successful would be restricted under a bill introduced by Rep. Cynthia Lummis (R, WY) and Sen. John Barasso (R, WY). Supported by nearly 40 agricultural groups, the bill would amend the Equal Access to Justice Act (EAJA), a law originally designed to facilitate private citizens to seek legal actions against the deep pockets of the federal government. The ag groups, led by the National Cattlemen's Beef Assn., the American Sheep Industry Assn. and the Public Lands Council, contend well-heeled environmental groups have "hijacked" the law, and "abused EAJA to advance their agenda to ultimately end grazing and other activities on federal lands." The bill would prohibit any organization with a net worth over \$7 million for filing for EAJA payments, and would require EAJA filers to show a "direct and personal interest" in the legal action to qualify for the payments.

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