

FARMERS UNDERTAKE ENVIRONMENTAL LAND
STEWARDSHIP ACT

MARCH 6, 2014.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 311]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 311) to direct the Administrator of the
Environmental Protection Agency to change the Spill Prevention,
Control, and Countermeasure rule with respect to certain farms,
having considered the same, report favorably thereon without
amendment and recommend that the bill do pass.

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PURPOSE OF LEGISLATION

H.R. 311, the Farmers Undertake Environmental Land Stewardship Act, or the FUELS Act, directs the Administrator of the Environmental Protection Agency (EPA) to modify the Spill Prevention, Control, and Countermeasure (SPCC) rule with respect to certain farms. The bill directs the EPA Administrator to require certification of compliance with the SPCC rule by: (1) a professional engineer for a farm with an individual tank with an above-ground storage capacity greater than 10,000 gallons, an aggregate above-ground storage capacity of at least 42,000 gallons, or a history that includes a spill; or (2) the owner or operator of the farm (via self-certification) for a farm with an aggregate above-ground storage capacity greater than 10,000 gallons but less than 42,000 gallons and no history of spills. The bill exempts from all requirements of the SPCC rule any farm with an aggregate above-ground storage capacity that is less than or equal to 10,000 gallons and no history of spills. The bill excludes all containers on separate parcels that have a capacity that is less than 1,320 gallons from the aggregate above-ground storage capacity of a farm.

BACKGROUND AND NEED FOR LEGISLATION

Section 311 of the Clean Water Act (CWA) (33 U.S.C. § 1321) requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated to the EPA Administrator the authority to regulate non-transportation-related onshore facilities (in Executive Order 11548, which has been replaced by Executive Order 12777).

EPA originally published a Spill Prevention, Control, and Countermeasure (SPCC) rule, formally known as the Oil Pollution Prevention regulation (at 40 CFR Part 112), in 1973 under the authority of CWA section 311. The SPCC rule sets forth requirements for prevention of, preparedness for, and response to oil discharges at specific non-transportation-related facilities. To prevent oil from reaching navigable waters and adjoining shorelines, and to contain discharges of oil, facilities are required to develop and implement SPCC plans, which specify the procedures, methods, and equipment required to reduce the risk of oil spills.

EPA proposed revisions to the SPCC rule in the 1990s and finalized amendments in 2002. The amended SPCC rule included revised and expanded requirements for SPCC plans, outlined the requirements for various classes of oil, revised the applicability of the regulation, amended the requirements for completing SPCC plans, and made other modifications.

The obligations of farms to prepare, amend, and implement their SPCC plans have been in place since 1974. EPA revised the SPCC rule in July 2002 (which became effective in August 2002) and subsequently completed four additional amendments to the SPCC rule to tailor, streamline, and clarify requirements. On eight occasions following the 2002 Final Rule, EPA extended the compliance deadline for facilities, including farms, to update (or for new facilities to prepare) and implement a SPCC plan that complies with the revised requirements. EPA updated the SPCC rule in 2009 to expand regulation under the SPCC program, applying it to nearly all farms

and limiting a 2006 rule that reduced compliance requirements for small farms with oil storage of 10,000 gallons or less.

EPA established a final SPCC compliance deadline of November 2011 for most facilities; however, in response to widespread flooding in the Midwest in 2011, EPA, again, extended the deadline date for farms only for an additional 18 months (until May 10, 2013). EPA has begun enforcing the SPCC rule without any reductions in the regulatory burdens the rule imposes on farmers.

The SPCC program is intended to prevent oil spills into navigable waters and adjoining shorelines. The SPCC regulations apply to farms which: (1) store, transfer, use, or consume oil or oil products, such as diesel fuel, gasoline, lube oil, hydraulic oil, and crop oil; (2) store more than 1,320 U.S. gallons in aboveground containers or more than 42,000 U.S. gallons in completely buried containers; and (3) could reasonably be expected to discharge oil to navigable waters or adjoining shorelines.

Under the SPCC regulations, any farm that meets the applicable criteria is covered by the SPCC rule, and must prepare and implement an SPCC plan. The regulations require that farmers: (1) use containers suitable for the oil stored; (2) identify contractors or other local personnel who can help clean up an oil spill; (3) provide overflow prevention for oil storage containers (such as high-level alarms); (4) provide effective, sized secondary containment for bulk storage containers (such as an earthen dike, remote impoundment, or double-walled tank); (5) provide effective, general secondary containment to address the most likely discharges from oil transfers or mobile refuelers (such as sorbent materials, drip pans, or curbing); and (6) periodically inspect and test pipes and containers. Completed SPCC plans must be kept on site, and reviewed and amended when changes are made to the farm or every five years.

These mandated infrastructure improvements, along with the necessary inspection and certification by a specially licensed professional engineer, can cost many farmers tens of thousands of dollars, and compliance costs could reach more than \$60,000. (See University of Arkansas, Division of Agriculture, Impact of Proposed Changes to SPCC Rule for US Farmers: A Preliminary Analysis (July 2012). For the entire Nation, H.R. 311 could save farmers collectively billions of dollars. (See *id.*)

H.R. 311, the FUELS Act, requires that EPA revise the SPCC regulations. The SPCC exemption level would be adjusted upward from 1,320 gallons of oil storage to an amount that would reduce the regulatory burdens on small farms—10,000 gallons. All small containers on separate parcels that have a capacity that is less than 1,320 gallons would be excluded from a farm's aggregate above-ground storage capacity.

The bill also would allow farmers to self-certify compliance if their oil storage facilities exceed the exemption level of 10,000 gallons. If a farmer's aggregate above-ground storage capacity exceeds 42,000 gallons, a professional engineer must certify the SPCC plans for the farm. The bill requires a farmer to be able to demonstrate that he or she has no history of oil spills, or to fully comply with the SPCC rule.

HEARINGS

No hearings were held on H.R. 311.

LEGISLATIVE HISTORY AND CONSIDERATION

On January 18, 2013, Representative Rick Crawford of Arkansas introduced H.R. 311, a bill to direct the Administrator of the Environmental Protection Agency to change the Spill Prevention, Control, and Countermeasure rule with respect to certain farms.

On October 29, 2013, the Committee on Transportation and Infrastructure met in open session to consider H.R. 311, and ordered the bill reported favorably to the House by voice vote with a quorum present.

In the 112th Congress, the Committee on Transportation and Infrastructure ordered a virtually identical bill (H.R. 3158) reported favorably to the House by voice vote. H.R. 3158 passed the House of Representatives under suspension of the rules by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no record votes taken in connection with consideration of H.R. 311, or ordering the bill reported. A motion to order H.R. 311 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 311 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 6, 2013.

Hon. BILL SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 311, the Farmers Undertake Environmental Land Stewardship Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 311—Farmers Undertake Environmental Land Stewardship Act

H.R. 311 would have no significant net impact on the federal budget, CBO estimates. The bill would, require the Environmental Protection Agency (EPA) to modify the Spill Prevention, Control, and Countermeasure (SPCC) rule, which regulates oil discharges into navigable waters and adjoining shorelines. A portion of the SPCC rule, effective as of September 23, 2013, requires certain farmers to develop an oil spill prevention plan that is certified by a professional engineer. Those plans could involve certain infrastructure changes to reduce the possibility of oil spills. Such plans apply to farms that store more than 1,320 gallons of oil products in aboveground containers or more than 42,000 gallons of oil products in buried containers that could reasonably be expected to discharge oil into waters of the United States.

Enacting H.R. 311 would ease some compliance requirements for farmers, depending on the capacity of oil product containers located on a farm and whether a farm has previously experienced any spills. Specifically, under the bill, certification of compliance with the EPA rule by a professional engineer would only be required if the farm has an individual tank with a storage capacity greater than 10,000 gallons, has an aggregate storage capacity greater than or equal to 42,000 gallons, or has previously experienced a spill. However, an owner or operator of a farm could provide self-certification with the SPCC rule if the farm has an aggregate storage capacity greater than 10,000 gallons, but less than 42,000 gallons, and has no history of spills. Farms with an aggregate capacity of less than or equal to 10,000 gallons and no history of a spill would be exempt from all requirements of the SPCC rule.

Based on information from EPA, CBO estimates that implementing and enforcing the SPCC rule as it pertains to farmers under current law will cost \$2 million over the next five years. Enacting this bill would exempt the majority of farms from complying with the rule and also would require EPA to amend the SPCC rule for farms and develop guidance and outreach material to educate affected stakeholders. CBO expects that the resources necessary to support the existing rule over the next five years would instead be used to implement H.R. 311.

Pay-as-you-go procedures do not apply to H.R. 311 because enacting the bill would not affect direct spending or revenues.

H.R. 311 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to direct the Administrator of the Environmental Protection Agency to change the Spill Prevention, Control, and Countermeasure rule with respect to certain farms.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 311 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that H.R. 311 directs the completion of one specific rule making within the meaning of section 551 of title 5, United States Code. The bill directs the EPA Administrator to change the Spill Prevention, Control, and Countermeasure rule, promulgated by EPA under part 112 of title 40, Code of Federal Regulations, with respect to certain farms.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 311 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104-1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1. Short title

Section 1 provides the short title of the bill. The Act may be cited as the “Farmers Undertake Environmental Lands Stewardship Act” or the “FUELS Act”.

Section 2. Applicability of Spill Prevention, Control, and Countermeasure Rule

Section 2(a) requires the Administrator of the Environmental Protection Agency to implement the Spill Prevention, Control, and Countermeasures rule with respect to any farm such that certification of compliance with the rule shall be made by a professional engineer for a farm with (1) an individual tank with an above-ground storage capacity greater than 10,000 gallons, (2) an aggregate above-ground storage capacity greater than or equal to 42,000 gallons, or (3) a history that includes a spill. Self-certification by the owner or operator of a farm shall be required for a farm with (1) an aggregate above-ground storage capacity greater than 10,000 gallons but less than 42,000 gallons, and (2) no history of spills. The rule shall exempt from all requirements of such rule any farm (1) with an aggregate above-ground storage capacity of less than or equal to 10,000 gallons, and (2) no history of spills.

Section 2(b) requires that, for purposes of calculating the aggregate above-ground storage capacity of a farm, all containers on separate parcels that have a capacity that is less than 1,320 gallons shall be excluded.

Section 3. Definitions

Section 3 defines the following terms used in the bill: Administrator, Farm, Gallon, and Spill Prevention, Control, and Countermeasures rule.

The term “Administrator” means the Administrator of the Environmental Protection Agency. The term “farm” has the meaning given such term in section 112.2 of title 40, Code of Federal Regulations. The term “gallon” refers to a United States liquid gallon. The term “Spill Prevention, Control, and Countermeasure rule” means the regulation promulgated by EPA under part 112 of title 40, Code of Federal Regulations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 311 makes no changes in existing law.