

**FARMERS:  
ALLIES IN CLIMATE SOLUTIONS**



**CITIZENS' CLIMATE LOBBY  
AGRICULTURE ACTION TEAM**

**The Agriculture Team Presents  
EICDA (HR 763) and Agriculture  
Frequently Asked Questions**

**FAQs**, both from volunteers and members of the public, generally fall into a few broad areas: the agricultural exemption, covered fuels, and border adjustments.

**NOTE:** For some of the hyperlinks, it may be necessary to manually enter the url as listed in the References at the end of this document.

## **Agricultural Exemption**

**Q:** How does the EICDA address agriculture?

**A:** The legislation addresses agriculture in two ways:

1. Fuel used on farms for farming purposes is exempted from the carbon fee.
2. The carbon fee shall not be levied upon non-fossil fuel greenhouse gas emissions that occur on a farm.

### **More info:**

1. The exemption for farm fuels is considered an extension of the fuel tax exemption that is already in place for agricultural fuels. It would not apply to other forms of energy such as electricity used on a farm. Although it will provide relief for farmers, in practice it would have little impact on total U.S. greenhouse gas emissions because agricultural fuel-generated emissions account for [less than 1 percent](#) of our total emissions [1].
2. The provision for non-fossil fuel emissions is actually a clarification added for emphasis rather than an exemption. Since the EICDA is focused on fossil-fuel emissions, it does not cover things like methane from livestock and manure and nitrous oxide from farming operations. Although this was implicit in the Carbon Fee and Dividend, the text of this bill makes it explicit that it is not regulating “farting cows.”

**Q:** Why does the EICDA address agriculture?

**A:** The original sponsors of the bill would have to give the definitive answer to this question. It is safe to say that the economic security of the people who grow our nation’s food is vital to the well-being of our country as a whole, in both an economic and human health sense. Farmers are price-takers not price-setters. They have little ability to pass increased operating costs onto consumers. This exemption will protect their bottom line and our food security.

Fuels used for agricultural purposes only account for 0.6% of national emissions. It is believed that the innovations spurred by this bill will spill over into agriculture and therefore decrease this already low percentage of emissions.

**Q:** How does EICDA deal with greenhouse gas emissions associated with the supply chain of agriculture products that do not occur on a farm?

**A:** The bill exempts only fuels used on the farm from the carbon fee.

**Q:** Can we access the analyses (mentioned by CCL staff) concluding that excluding agriculture fuels from the carbon fees would not meaningfully affect the overall reductions in greenhouse gas emissions resulting from EICDA?

**A:** If you look at "[Fast Facts: U.S. Transportation Sector Greenhouse Gas Emissions, 1990-2015](#)," you will see the first pie chart labeled: "Share of U.S. GHG Emissions by Sector, 2015," which shows that transportation accounts for 27% of US emissions [1]. On the following page is a table at the bottom right labeled: "U.S. Non-Transportation Mobile GHG Emissions by Gas, 2015." This table states that Agricultural Equipment accounts for 2.4% of the transportation sector emissions. The following calculation can be made:  $2.4\% \text{ of } 27\% = 0.648\%$ .

Thus, agricultural equipment accounts for just six tenths of one percent of total US emissions.

**Q:** Is the exemption for "other greenhouse gas emissions from agriculture" intended to apply primarily to methane associated with beef and emissions associated with hog manure pits?

**A:** Yes, this exemption applies to methane, from both ruminants and manure management, and nitrous oxide from excess nitrogenous fertilizer application. Basically all greenhouse gases released on farms that aren't produced by the burning of fossil fuels (or using flourinated gases) are not addressed by the EICDA.

**More info:**

To be clear, the situation is not that these "other greenhouse gas emissions from agriculture" are truly exempted, rather, it is that they are not even considered. In fact, they are unable to be considered by the mechanism utilized by the EICDA. Coal, oil, and natural gas all flow through supply systems in which their CO<sub>2</sub> content can be easily measured and a fee assessed. Agricultural emissions, on the other hand, do not flow through a pipeline or a railroad loading facility, but are dispersed across the landscape.

Another mechanism will need to be developed, possibly within the farm bill, to address emissions from land use, livestock digestion, manure handling and fertilizer application. A popular idea within the Citizens' Climate Lobby Agricultural Action Committee is to reward farmers who employ regenerative land and livestock practices, which sequester carbon, rather conventional agricultural practices, which commonly release greenhouse gases. A verifiable mechanism to do that has not yet been determined, but the 2018 Farm Bill allocates money for a [soil carbon pilot program](#), which includes development of verifiable soil carbon metrics. [2]

**Q:** Is the exemption for “other greenhouse gas emissions from agriculture” intended to apply to nitrous oxide emissions resulting from synthetic fertilizer and other possible greenhouse gases associated with CAFO-generated manure lagoons?

**A:** Yes. Neither [nitrous oxide released from soil](#) [3], due to bacterial metabolism of excess nitrogen fertilizer, nor greenhouse gases associated with manure lagoons are covered by the EICDA.

**More info:** The free-market effect of the EICDA will help. Because nitrogen fertilizer manufacture is energy intensive and uses natural gas as feedstock, it will become more expensive due to the carbon fee. Farmers will respond to that price signal and improve the timing and application rates of nitrogen as well as turn to crop rotation and regenerative practices that will drive down fertilizer use and the subsequent production of nitrous oxide by bacterial metabolism of excess fertilizer.

## Covered Fuels

**Q:** How will farmers get the rebate of carbon fees on “covered fuel” used on farms, or for farm purposes?

**A:** Covered fuels include diesel, gasoline, and propane or natural gas. Farmers are already exempted from current [federal fuel taxes on dyed diesel and gasoline](#) [4]. Under HR 763, exemptions for diesel and rebates for gasoline would be administered in the same way as the current exemptions.

### More Info:

According to the text of HR 763, SEC. 9901. DEFINITIONS

*(g) Covered Fuel.—The term ‘covered fuel’ means crude oil, natural gas, coal, or any other product derived from crude oil, natural gas, or coal which shall be used so as to emit greenhouse gases to the atmosphere.*

Diesel intended for farm use is dyed at the refinery, no tax is levied on it, and it is delivered directly to farms. The point of dyed diesel is that, if necessary, authorities can test the fuel to prove that farmers are using it only for the approved uses. H.R. 763 stipulates that no additional carbon fee will be added to dyed diesel fuel.

Currently, farmers are exempted from federal fuel taxes on gasoline and un-dyed diesel, and they can receive a rebate . . . “the Secretary of the Treasury shall pay to the end purchaser of the gasoline the amount determined by multiplying the number of gallons used by the tax rate in place on the date when the fuel was purchased.”

For gasoline (and un-dyed diesel), the carbon fee stipulated by H.R. 763 will be added to federal fuel taxes at the refinery, and the total amount paid (taxes plus fee) will be rebated to the farmer who buys it. Since the carbon fee is assessed at the refinery, the exemption for both fuels could be treated the same way as for the federal tax exemption. And that’s how the EICDA reads.

**Q:** What is the timing of refunds to farmers for fuel used, i.e. how long would they have to wait for reimbursement?

**A:** We are assuming the method will follow [US Code 6420](#) [5].

For dyed diesel there is no need for a refund since the purchase price will already reflect the absence of the fee.

For gasoline used on a farm for farming purposes, repayment of the federal tax paid is obtained by claiming a credit against income tax liability. There is no waiting for reimbursement, you simply file a claim and the credit is put towards a reduction in income tax.

**Q:** How is the carbon refund calculated?

**A:** According to the system already in place under [U.S. code 6420](#) [5] to rebate farmers for the gas tax, the amount is determined by multiplying the number of gallons used by the tax rate in place on the date when the fuel was purchased.

**Q:** How is the fee portion of the fuel price determined?

**A:** The exact method of pricing and how the farmers are refunded will be decided in the rule making process. The legislative text just stipulates that this must happen, but it does not stipulate exactly how—which is standard procedure.

**More Info:** Our fee is applied upstream, wherever the fossil fuel first appears, at the mine, wellhead, pipeline, port. The impact on the eventual price of refined products like diesel or gas depends on how much of the fee is passed on to the consumer. It is not a tax on the end product, like the federal tax on gasoline. The price of diesel, red or not, will reflect the effect of the upstream fee. So that price will be higher because of the fee. While we assume the Department of Treasury will follow US code 6420, there will have to be some differences since we expect our fee to be placed upstream.

**Q:** How is farm use measured? How often do farmers have to report?

**A:** Farmers report the amount of fuels used when submitting income tax forms.

**Q:** Do we know whether the term "derivative" covers synthetic fertilizers and pesticides, which are made from fossil fuels? See below. The question has come up about whether the carbon fee part of the prices of these supplies would be refunded.

**A:** The term “derivative” means materials made from fossil fuels. It does not refer to synthetic fertilizers and pesticides. It would include kerosene and propane.

**More Info:** Manufacturing for both synthetic fertilizers and pesticides is a highly energy-intensive process, but the most commonly used [inputs](#) [6] for the manufacture of pesticides are various industrial chemicals that are not derived from fossil fuels, e.g, elemental chlorine, hydrogen cyanide; so fertilizers and pesticides would not be considered fossil fuel derivatives.

The bill exempts (A) FUEL. If any covered fuel or its derivative is used on a farm for a farming purpose, the Secretary shall pay (without interest) to the ultimate purchaser of such covered fuel or its derivative, the total amount of carbon fees previously paid upon that covered fuel or its derivative, as specified by rule of the Secretary. For most farms, the derivatives of interest would be kerosene or propane, which are derived from oil and/or natural gas.

## **Border Adjustments**

**Q:** Are there agriculture products and chemicals that are considered to be “carbon-intensive” and thus subject to the border adjustment?

**A:** Maintaining the global competitiveness of American agricultural and other products is very important, which is why this policy includes a border carbon adjustment. Determining which specific products will require a border adjustment to maintain fair competition is up to the Treasury Department. They will almost certainly include energy intensive products like aluminum, steel, and cement. Most agricultural commodities are unlikely to require an adjustment because costs for energy are not a major component of production costs, but, if needed, one can be added to ensure fairness.

**More Info:** The bill refers to the border adjustment applying to carbon-intensive products, but never defines how these are to be determined. This means that the status of products will be determined by the executive branch after the bill is passed.

There are usually two criteria that are used to determine whether a carbon border adjustment will be assessed: energy intensity and trade exposure (EITE). If we look at the 2009 cap and trade bill (HR 2454), it established eligibility criteria, including energy expenditures exceeding 5% of the value of their output and requiring exports/imports to be 15% of the market, or an energy intensity of 20% regardless of export/import status.

The following [ag- and forestry-related industries fit these criteria](#): [7] nitrogenous fertilizer manufacturing, malt manufacturing, wet corn milling, rendering and meat byproduct processing, cellulosic organic fiber manufacturing, noncellulosic fiber manufacturing, newsprint mills, paperboard mills, other paper mills, pulp mills, reconstituted wood product processing, petrochemical and other organic chemical manufacturing, yarn spinning mills.

Note that there are no primary agricultural products listed. The new methodologies use emission-intensity (ratio of GHG emission to \$ value). The EPA probably did not have emission-intensity available in 2009, but the analyses with emission-intensity also do not detect primary agricultural products.

## **Additional Topics**

### **CAFOs (Combined Animal Feeding Operations)**

**Q:** Are CAFOs considered “farms”? If they are not “farms,” then does the greenhouse gas emissions exemption apply to them?

**A:** By the definition in [Section 6420 of the US Code](#) [5] it looks like CAFOs would be considered farms.

**More Info:** The USDA uses the U.S. Environmental Protection Agency ([EPA definition of AFOs](#) [8] as agricultural enterprises where animals are kept and raised in confined situations. A CAFO is an EPA term for a large concentrated AFO. A CAFO is an AFO with more than 1000 animal units . . . confined on site for more than 45 days during the year; but any size AFO that discharges manure or wastewater into a natural or man-made ditch, stream or other waterway is defined as a CAFO, regardless of size. CAFOs are regulated by EPA under the Clean Water Act in both the 2003 and 2008 versions of the "CAFO" rule.

Most of the environmental problems come from [CAFOs classified](#) [9] as medium and large, which are relatively few. Dairies are typically medium or large CAFOs.

**Q:** Since analyses have shown that CAFOs have a huge carbon footprint “off” the farm, and beef, pork, or poultry produced by CAFOs are important exports, would these products be considered to fit the definition of a “carbon-intensive product”?

**A:** Rendering and meat byproduct processing is considered to be energy (and therefore carbon)-intensive.

### **Forestry**

**Q:** Is the lumber industry included in agricultural exemptions? Logging interests are concerned about increases in diesel fuel costs.

**A:** The farm exemption does not include forestry.

**More info:** EICDA refers to the IRS Code of Federal Regulations Section 6420(c), [5] which defines a farm as:

*“Farm. The term ‘farm’ is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry.”*

Further, the IRS, in the Code of Federal Regulations at 48.6420-4(b), has interpreted the “trade or business of farming” so as to exclude forestry:

*“A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. **A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming.**”* [10] (For an even more detailed description see ref [11]: *“(f) Gasoline used in planting, cultivating, or caring for trees”* for an even more detailed description).

**Note from National CCL:** Besides this interpretation, your conversations with local logging connections will be critical for continuing the conversation. If you are interested, it would be powerful feedback to understand from their vantage point what they see as essential to help transition from diesel to electric. How much extra do they anticipate that the carbon fee will cost (as compared to the excise tax if they are paying it)?



## References

- [1] Fast Facts: US Transportation Sector Greenhouse Gas Emissions 1990-2015, July 2017, <https://nepis.epa.gov/exe/ZyPDF.cgi?Dockey=P100s7NK.pdf>
- [2] Praise for Farm Bill Soil Carbon Pilot Project, <http://agwired.com/2018/12/14/praise-for-farm-bill-soil-carbon-pilot-program/>
- [3] Climate Change and Agriculture Fact Sheet Series: Management of Nitrogen Fertilizer to Reduce Nitrous Oxide (N<sub>2</sub>O) Emissions from Field Crops, [https://www.canr.msu.edu/uploads/resources/pdfs/management\\_of\\_nitrogen\\_fertilizer\\_\(e3152\).pdf](https://www.canr.msu.edu/uploads/resources/pdfs/management_of_nitrogen_fertilizer_(e3152).pdf)
- [4] Ohio State University, Tax Bulletin, Fuel Tax—Credits and Refunds for Farmers [https://farmoffice.osu.edu/sites/aglaw/files/site-library/Tax Bulletin - Fuel Tax 0.pdf](https://farmoffice.osu.edu/sites/aglaw/files/site-library/Tax%20Bulletin%20-%20Fuel%20Tax%200.pdf)
- [5] Cornell Law School, Legal Information Institute, 26 U.S. Code § 6420. Gasoline used on farms <https://www.law.cornell.edu/uscode/text/26/6420>
- [6] EPA, National Service for Environmental Publications, Source Assessment: Pesticide Manufacturing Air Emissions, Overview and Prioritization <https://nepis.epa.gov/Exe/ZyNET.exe/9101Y8ME.txt?ZyActionD=ZyDocument&Client=EPA&Index=1976%20Thru%201980&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C76THRU80%5CTXT%5C00000036%5C9101Y8ME.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=6>
- [7] The Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries [https://www.epa.gov/sites/production/files/2016-07/documents/interagencyreport\\_competitiveness-emissionleakage.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/interagencyreport_competitiveness-emissionleakage.pdf)
- [8] USDA Natural Resources Conservation Service, Animal Feeding Operations <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsanimals/livestock/afo/>
- [9] EPA, Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs [https://www3.epa.gov/npdes/pubs/sector\\_table.pdf](https://www3.epa.gov/npdes/pubs/sector_table.pdf)
- [10] Internal Revenue Service, Treasury Pt. 48 PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES, page 238 <https://www.gpo.gov/fdsys/pkg/CFR-2018-title26-vol18/pdf/CFR-2018-title26-vol18-part48.pdf>
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