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Air and Radiation Docket and Information Center
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**Re: Regulating Greenhouse Gases Under the Clean Air Act;
Proposed Rule Docket ID No. EPA-HQ-OAR-2008-0318**

Thank you for providing Texas Cattle Feeders Association with the opportunity to comment on the Environmental Protection Agency's July 11, 2008 Advanced Notice of Proposed Rulemaking (ANPR) on Regulating Greenhouse Gases (GHGs) under the Clean Air Act (CAA). Texas Cattle Feeders Association strongly opposes any effort to regulate greenhouse gases under the CAA.

It is clear from the ANPR and Agency comments that the potential regulation of GHGs under the Clean Air Act would be economically devastating to American businesses, including cattle feeders. As the Department of Energy stated in its comments, the regulation of stationary sources under the Clean Air Act "would likely dramatically increase the price of energy in this country" and would increase costs of energy use by sources such as "schools, hospitals, apartment buildings and residential homes." The Department of Commerce pointed out that for the first time many small commercial establishments like churches, hotels, and hospitals would be regulated by the EPA.

Our Nation's food supply would also be affected negatively by high energy and transportation costs, placing significant economic hardship on agricultural producers and everyday consumers. For example, the production methods and equipment used by the agricultural sector to grow the food that feeds U.S. consumers and the rest of the world involves complex technology dependent on the consumption of all forms of energy. In addition to increased energy costs, the ANPR points out that many agricultural producers would be required to get individual CAA permits for the first time. The USDA estimates that cattle producers with 50 head of cattle or more would be required to get such permits. Some of the increased costs associated with the proposed regulation would be passed on to everyday consumers further increasing the cost of food, but much of it would have to be borne by producers themselves. The costs of permitting alone would put many producers out of business. Simply put, costs associated with GHG regulation under the CAA cannot be afforded by our agricultural producers or everyday consumers.

In addition, regulation of GHGs under the CAA must be rejected because the CAA is fundamentally ill-suited for GHG regulation. Indeed, Congress never intended to regulate GHGs under the CAA. The CAA was originally intended to regulate traditional air pollutants from major emitters on a state or regional level. While it has made strides toward cleaning up criteria and other pollutants, it is not adequately equipped to address global climate change. The CAA imposes a command and control regulatory program that would impose untenable burdens, expenses and restrictions on industry, families, and our Nation as a whole if used to attempt to control GHG emissions. In addition, such a decision would provide the EPA with unprecedented control over every sector of the U.S. economy. According to the U.S. Chamber of Commerce, regulation of GHGs under the CAA would require the issuance of Prevention of Significant Deterioration (PSD) permits for over one million commercial sector sources, nearly 200,000 industrial-manufacturing sources, and more than 17,000 agricultural sector sources. As President Bush observed in April 2008: "Decisions with such far reaching impact should not be left to unelected regulators and judges. Such decisions should be debated openly [and] made by elected representatives of the people they affect." NCBA agrees wholeheartedly with this sentiment. If GHGs are to be regulated in the United States, such regulation must be thoughtfully considered and voted on by Congress. Allowing the EPA to regulate GHGs under the CAA when it was never intended to regulate such emissions would be irresponsible and economically devastating. Texas Cattle Feeders Association urges the Administrator to reject this approach.

I. Congress Never Intended to Regulate Greenhouse Gases Under the Clean Air Act

There is very clear evidence that Congress never intended to regulate GHGs under the CAA. In fact, the legislative history of the 1990 CAA Amendments shows that Congress specifically declined to approve proposals that would have required or specifically authorized regulatory limits on CO₂ or other GHG emissions for global climate change purposes. In S. Rep. No. 101-228, at 98-100, 644-45 (1989), *Leis. Hist.* at 8338, 8438-405 the text of the provision requiring regulation of CO₂ emissions from motor vehicles was set out; *id.* at 5410 Senator Lieberman expressed concern that this section was eliminated from the committee bill without substitute; *id.* at 5189-90 Senator Chafee noting that he "gave up something" in "connection with carbon dioxide emissions;" *id.* at 5849 Senator Gore expressing concern that his efforts to include CO₂ measures were rejected; *id.* at 5942 Senator Baucus describing how the Senate compromised by agreeing "there should be no carbon dioxide [provision]," which would be "a deal breaker."

In fact, the only provisions related to GHG emissions in the 1990 CAA Amendments were expressly deemed "non-regulatory." For example, Section 103(g), 42 U.S.C. §7403(g) creates a research program to address emissions of pollutants, including CO₂, and deeming the provision to be "nonregulatory" in nature; Section 602(e), 42 U.S.C. §7671a requires publication of the global warming potential of listed substances and expressly states the provision shall not be construed to be the basis for regulation under the CAA.

According to the ANPR, the EPA contemplates regulating agricultural GHGs under three CAA programs: National Ambient Air Quality Standards, New Source Performance Standards, and Hazardous Air Pollutant Standards. Each of these programs is discussed separately below.

II. National Ambient Air Quality Standards

The National Ambient Air Quality (NAAQS) program is the cornerstone of the CAA. The NAAQS controls six "criteria pollutants" that have been demonstrated to endanger public health and welfare: sulfur dioxide, nitrogen dioxide, particulate matter, carbon monoxide, ozone and lead. If GHGs were to be regulated under this program, GHGs would be added as criteria pollutants. For each of these pollutants, the NAAQS are set at levels designed to protect public health with an adequate margin of safety and to protect the public welfare, i.e. the environment. Areas that do not meet the NAAQS are known as "nonattainment" areas; areas that do meet the NAAQS are known as "attainment" areas. NAAQS are reviewed and revised as appropriate every five years.

Each state has primary responsibility for ensuring that emissions from sources within its borders comply with the NAAQS. This is achieved through the establishment of State Implementation Plans (SIPs) addressing the control of criteria pollutants. All SIPs must contain enforceable emission limitations, provisions for developing ambient air quality data, preconstruction and review of major new stationary sources, air quality modeling, provisions prohibiting emissions that contribute to nonattainment in another state, enforcement provisions, monitoring and emission data, among other provisions. Nonattainment area SIPs must include the following additional provisions: application of all reasonably available control technology (RACT) for existing sources as expeditiously as practicable, annual incremental reductions of emissions of nonattainment pollutants, current inventory of actual emissions, quantification of new emissions, permits for new and modified major stationary sources, and contingency measures if the area fails to make reasonable further progress in emission reductions. SIPs must be revised within three years of the issuance of a new NAAQS. If a SIP is deficient, it must be corrected within 18 months of the discovery of the deficiency, or the EPA must either cut off federal highway funds or require additional emission offsets. These sanctions apply only in nonattainment areas.

If EPA issues an endangerment finding for CO₂, regulation under the NAAQS is inescapable. Given the nature of GHG emissions, EPA acknowledges in the ANPR that it would likely have to assess air quality on a national scale. In other words, the entire U.S. would either be in attainment or nonattainment. Whether the entire U.S. is in attainment or nonattainment will depend on the NAAQS level set by the Administrator. Would atmospheric GHG levels have to be reduced to pre-industrial levels to assure no adverse impact related to anthropogenic sources? If this level were chosen, all of the U.S. would be in nonattainment, and it is predicted that much of our industry would move to other countries. On the other hand, if the level were set above current levels, the U.S. would be in attainment until the NAAQS level for GHGs is reached.

If the entire country were designated nonattainment, every state would be required to develop a SIP that includes all elements listed above. The purpose of the SIP is to reduce CO₂ and ensure that its levels in the state's ambient air meet the NAAQS. But attaining the NAAQS may be extremely difficult given the fact that other states and indeed other countries throughout the world affect levels of GHGs within a state's boundary. It can hardly be argued that sanctions would be justified against states that do not meet the CO₂ NAAQS when any particular state is only partially responsible for the level of CO₂ within its boundary.

If, on the other hand, EPA sets the NAAQS above existing CO₂ levels, all areas would be in attainment and no reduction measures would be required to be taken, although the ambient air could not be deteriorated by new or expanding sources. Stationary sources would be subject to Prevention of Significant Deterioration (PSD) requirements (see below). PSD permitting for new and modified operations would require BACT for GHG controls.

If agricultural operations were regulated under the NAAQS for GHG emissions, most, if not all would not be able to comply, due to financial constraints and lack of technological solutions. In the past, the focus of the NAAQS has been on typical industrial sources that can utilize engineering or chemical solutions to control pollutants. However, emissions from agriculture are primarily due to biological processes that are not easily re-engineered. Indeed RACT for agricultural sources may not exist or may be cost prohibitive. The consequence of this reality is that many cattle operations would not be able to comply without selling off their herds to meet established emission limits. Selling off herds means going out of business in the cattle industry.

III. New Source Performance Standards

The CAA also requires that new and modified sources that contribute significantly to air pollution that endangers public health or welfare must meet standards that reflect the “degree of emission reduction achievable” through the best technology that the EPA determines has been “adequately demonstrated.” These New Source Performance Standards (NSPS) can be met as design, equipment, work practice, or operational standards where numerical emission limitations are not feasible. CAA §111(h)(1). Once set, NSPS serve as the minimum level of control that must be achieved by new sources. Under this program the EPA rather than individual states determine which industries or operations are regulated, emission reductions that must be achieved, and all control technologies and other compliance requirements. The EPA theorizes in the ANPR that it could use a cap-and-trade program in lieu of plant by plant standards of performance to regulate GHG emissions. However, the recent D.C. Circuit Court’s vacature of the Clean Air Interstate Rule invalidates that theory.

The EPA finds that the NSPS program offers the best alternative for regulating GHG emissions from stationary sources. Regulation of agriculture under this program would be very problematic. Levels of GHG emissions from agriculture is largely dependent on forces beyond the control of any government entity, but especially beyond the control of a federal entity. These forces include Mother Nature, and variations in the digestive tracts of ruminant animals, among many others. The thought of EPA issuing standards of performance for GHGs at each location is mindboggling. Different technologies and approaches for each farm or ranch would be limitless. As the U.S. Chamber of Commerce suggested in its comments, “the Federal government and states may be forced to create a new NSPS ‘police force’ to handle all the new regulation” under this program. Such an approach is clearly unworkable in the agricultural sector.

IV. Prevention of Significant Deterioration

The Prevention of Significant Deterioration (PSD) program would be triggered as soon as GHGs become regulated pollutants under the CAA. Under this program, before an owner/operator can construct a “major” new source or undertake a major modification of an existing source in an attainment area, he must obtain a permit under the PSD program.

Major sources are defined as either a source in one of 28 listed categories that emits at least 100 tons per year of an air pollutant, or any other source with the potential to emit 250 tons per year of an air pollutant. In order to obtain such a permit, the owner or operator of the new or modified source must show that he will comply with air quality levels that will not deteriorate air quality, and will use best available control technology (BACT) for regulated pollutants. Given the fact that science has shown that smaller-sized entities can easily emit these levels of GHGs, the U.S. Chamber of Commerce has estimated that this program would regulate for the first time 260,000 office buildings, 150,000 warehouses, 92,000 health care facilities, 71,000 hotels and motels, 51,000 food service facilities, 37,000 churches, and 17,000 farms. Currently, the EPA does not process a large number of PSD permits because few facilities emit enough of a regulated pollutant to cross the threshold. But if GHGs were regulated under the CAA, all of a sudden, over one million new permits would have to be issued. This process is slow and expensive. New construction or expansion projects for every sector of the economy would have to be put on hold for what are likely to be very long periods of time. Given the fact that technologies to control GHG emissions from agriculture are largely unavailable, compliance with this program may not be achievable under many circumstances, and any new technologies may be cost prohibitive for agricultural producers.

In addition, once a source is classified as a major source for one pollutant, it is considered a major source for all other regulated pollutants. As a result, these new sources may now be required to install BACT not only for GHGs, but also for the other criteria pollutants that they emit. This burden on the economy would be so huge that economic development throughout the country would likely stop.

V. The Title V Program

Title V of the 1990 CAA Amendments require each state to develop and implement a comprehensive operating permit program for most sources of air pollution. The purpose of the program is to consolidate into a single permit all of the federal regulations applicable to a source in order to facilitate source compliance and enforcement. However, Title V reaches a larger segment of society because it applies to all sources that emit 100 tons per year of a regulated air pollutant. A source subject to the Title V program must detail in permit its application how the source plans to comply with all applicable requirements including emission estimation, monitoring, reporting, recordkeeping, and control requirements. The permits are subject to public notice and comment. There is also a Title V citizen suit provision that would give activist groups the ability to challenge every Title V permit and bring our economy to halt.

While agricultural sources are currently generally not required to obtain Title V permits, there is concern that regulation of GHGs under the CAA may for the first time trigger such regulation. The USDA estimates that “even very small operations would meet the 100 tons per year emissions threshold. For example, dairy facilities with over 25 cows, beef cattle operations of over 50 cattle, swine operations with over 200 hogs, and farms with over 500 acres of corn may need to get a Title V permit.” Given the fact that America currently has over 2,000,000 farms, it would be virtually impossible to permit a majority of them. The amount of paperwork, time delays, and new technology needs would be insurmountable. In addition, most of America’s agricultural producers simply would not be able to afford the regulatory compliance costs that would be imposed on them under such a program, and they would be forced to go out of business.

VI. Agriculture Operations Should Not Be Regulated Under A Climate Change Program

The fact is, agriculture is a minor source of GHGs overall and should not be regulated under any climate change program. Instead, it should be considered a solution to the climate change problem. The agricultural sector can provide important sources of soil carbon sequestration and renewable energy sources.

According to the EPA, in 2006, greenhouse gas emissions from the entire agriculture sector represented only 6.4% of total greenhouse gas emissions in Tg CO₂ Eq in the United States. *Inventary of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006*, U.S. Environmental Protection Agency, April 15, 2008. Methane and nitrous oxide are the primary greenhouse gases emitted by the agricultural sector. *Id.* at ES-13.

In the agricultural sector, enteric fermentation is the largest anthropogenic source of methane emissions in the United States, followed by manure management in anaerobic digesters. In 2006, methane emissions from enteric fermentation were only 1.8% of total greenhouse gases produced in the United States in Tg CO₂ Eq. and methane from manure management was only .6%. *Id.* data derived from table on page ES-5.

Nitrous oxide is produced by biological processes that occur in soil and water and by anthropogenic sources, including by agricultural activities such as fertilization, application of livestock manure, retention of crop residues, irrigation, tillage practices, etc. According to the EPA, nitrous oxide emissions from agricultural soil management on croplands and grasslands accounted for 3.8% of total greenhouse gas emissions in Tg CO₂ Eq. in the US in 2006. Nitrous oxide emissions resulting from the land application of manure accounted for only .2% of total greenhouse gas emissions; and such emissions from manure management accounted for only .2%. See *Inventary* data derived from tables on pp. ES-5, 6-9.

On March 28, 2008, the EPA released its *National Water Program Strategy: Response to Climate Change* for comment. In Chapter III, entitled National Water Program: Climate Change Response Actions, EPA describes the contribution agriculture makes to nitrous oxide emissions and states "Agricultural producers have the potential to reduce nitrous oxide releases by expanding the use of manure, biosolids or other organic residuals." Because manure provides this important benefit, EPA's National Water Program will "encourage the use of organic residuals in row-crop and animal agriculture operations." p. 32. The availability of manure as a fertilizer is only possible because of the existence of concentrated animal feeding operations which generate manure.

According to the US EPA, in 2006, land use, land use change, and forestry activities resulted in a net carbon sequestration offset of approximately 14.8 percent of total US CO₂ emissions, or 12.5% of total US greenhouse gas emissions. The EPA attributes mineral soil carbon sequestration "to the conversion of cropland to permanent pastures and hay production, a reduction in summer fallow areas in semi-arid areas, an increase in the adoption of conservation tillage practices, and an increase in the amounts of organic fertilizers (i.e. manure and sewage sludge) applied to agricultural lands." *Id.* at ES-13,14. Again, the application of manure as an organic fertilizer on agricultural lands is only possible because of the existence of concentrated animal feeding operations which generate manure.

It is clear from EPA's data that the agricultural sector is a relatively minor emitter of greenhouse gases and should not be subject to climate change regulation. Instead, agricultural operations should be used as an important source of carbon offsets that may be used to enable regulated industries to comply with any cap set by climate change legislation.

VII. Conclusion

The regulatory changes envisioned in the ANPR are sweeping, even breathtaking. If such a vast expansion of regulation in the United States is to be brought about, it must be a legislative effort, not a purely regulatory effort. Texas Cattle Feeders Association agrees with Administrator Johnson that the Clean Air Act is "an outdated law . . . ill-suited for the task of regulating global greenhouse gases." Texas Cattle Feeders Association urges the EPA to reject GHG regulation under the Clean Air Act, and to refrain from regulating agricultural sources under any GHG reduction program. Instead, agricultural operations should be used as an important source of carbon offsets that may be used to enable regulated industries to comply with any cap set by climate change legislation.

Sincerely,

A handwritten signature in black ink that reads "Ross Wilson". The signature is written in a cursive, flowing style.

Ross Wilson
President & CEO