



Statement of the American Farm Bureau Federation

**TO THE ENERGY AND POWER SUBCOMMITTEE
OF THE HOUSE ENERGY AND COMMERCE COMMITTEE
REGARDING IMPACTS OF GREENHOUSE GAS REGULATION**

June 19, 2012

**Presented By:
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**SUMMARY OF TESTIMONY OF CARL SHAFFER
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Farmers and ranchers are adversely affected economically by EPA regulation of greenhouse gases in two major ways:

1. Costs incurred by utilities, refiners and manufacturers to comply with greenhouse gas regulations will be passed along to their customers, including farmers and ranchers, resulting in higher costs of production. Farmers and ranchers generally cannot pass those costs on to their consumers.

2. Many farmers and ranchers will be required to obtain Title V operating permits under thresholds required by the Clean Air Act. The Department of Agriculture estimates that approximately 90 percent of the livestock industry is above the Clean Air Act thresholds required to be permitted. Many other farms and ranches would be subject to New Source Review and Prevention of Significant Deterioration construction permits when the regulations are fully implemented.

The Clean Air Act provides little flexibility to deviate from the statutory permitting requirements. EPA efforts to “tailor” or phase in these regulatory requirements do not alleviate these costs. Large emitters will still pass their costs down to consumers. The rule does not exempt agriculture from the permitting requirements—it only delays permitting for farmers. Court challenges to the tailoring rule could make permitting requirements immediately applicable to farmers and ranchers, if the rule is overturned.

Mr. Chairman, Ranking Member and members of the Committee. My name is Carl Shaffer. I am President of the Pennsylvania Farm Bureau and a member of the Board of Directors of the American Farm Bureau Federation. Farm Bureau represents farms of all sizes, spanning virtually all commodities grown and sold in the United States. I own and operate a farm in Columbia County, Pennsylvania, where I raise soybeans, corn and wheat. I am pleased to offer this testimony on the potential impacts to agriculture resulting from the regulation of greenhouse gases (GHGs).

Thank you for the opportunity to testify today on the potential impacts to agriculture resulting from the regulation of greenhouse gases.

Agriculture and forestry are a unique economic sector with regard to greenhouse gases, in that the agriculture and forestry sector has the potential to sequester more carbon than it emits—in other words, agriculture and forestry are, or can be, net sinks for greenhouse gases. The most recent inventory of greenhouse gases shows that agriculture and forestry emitted approximately 6.3 percent of U.S. greenhouse gas emissions in 2010. The same sectors also sequestered an equivalent of about 12 percent of greenhouse gas emissions, thereby becoming a net sink. Under EPA's endangerment finding, which grants the agency the authority to regulate greenhouse gases (a decision being challenged in the courts), the Clean Air Act does not recognize the valuable contributions that agriculture and forestry provide in greenhouse gas sequestration. Moreover, regulation of forestry and agricultural emissions could also negatively affect the sequestration opportunities that these sectors provide.

In its December 15, 2009 endangerment finding, the Environmental Protection Agency (EPA) stated that six greenhouse gases “endanger” public health and safety, thereby triggering

regulation under the Clean Air Act. On January 2, 2011, EPA regulations went into effect regulating greenhouse gas emissions from light duty motor vehicles. Once EPA classified greenhouse gases as a “regulated pollutant,” its authority extended to regulation of stationary sources as well. These sources include not only power plants and refineries, but also farms and ranches.

The Clean Air Act mandates certain regulatory programs for stationary sources that emit regulated pollutants at specified levels. The New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs require that any “major” stationary source obtain a permit before building or modifying any facility that would increase emissions of regulated pollutants. Title V of the Clean Air Act requires that “major sources” of pollution obtain permits as a condition of continued operation.

The Clean Air Act establishes in statute certain threshold levels for stationary sources that trigger application of certain regulatory programs. For purposes of the NSR and PSD programs, stationary sources are considered “major sources” subject to Clean Air Act requirements if they emit, or have the potential to emit, more than 250 tons of a regulated pollutant per year. The Clean Air Act defines any stationary source emitting, or having the potential to emit, more than 100 tons of a regulated pollutant as a “major source” required to obtain an operating permit pursuant to Title V.

For many regulated pollutants the statutory thresholds are high enough to encompass only the largest emitters. For greenhouse gases, however, the situation is different. There are literally millions of sources that qualify as “major sources” of greenhouse gas emissions under Title V—a fact admitted by EPA.

The regulation of greenhouse gases under the Clean Air Act will ultimately result in a number of unintended consequences that EPA may not be able to mitigate through regulation.

Farmers and ranchers receive a double economic jolt from the regulation of GHGs from stationary sources. First, any costs incurred by utilities, refiners, manufacturers and other large emitters to comply with GHG regulatory requirements will be passed on to the consumers of those products, including farmers and ranchers. As a result, our nation's farmers and ranchers will be faced with higher input fuel and energy costs, to grow food, fiber and fuel for America and beyond. To a large degree, farmers and ranchers cannot pass along these increased costs of production to their buyers.

EPA is phasing in the application of its greenhouse gas regulations through promulgation of a "Tailoring Rule," under which the permitting requirements of NSR/PSD and Title V will apply to the largest emitters first, with application to smaller emitters coming at some unspecified later time. But even with this phased in approach, farmers, ranchers and other small entities are already adversely affected by greenhouse gas regulations through paying higher fuel and energy costs.

Secondly, farmers and ranchers will face the distinct possibility of direct regulatory costs resulting from the regulation of GHGs by EPA. For the first time, many farm and ranch operations will in all likelihood be subject to direct NSR/PSD construction permit and Title V permit requirements under the Clean Air Act.

Fully implemented, the EPA greenhouse gas regulatory programs will require thousands of farms and ranches to obtain costly and burdensome permits. In its proposed tailoring rule, EPA itself estimated that there are more than 37,000 farms and ranches that emit between 100 tons and 25,000 tons of greenhouse gases per year and would thus likely be subject to permitting

requirements under Title V. (We suspect the numbers may be higher than these estimates.) In the final tailoring rule, EPA estimated the average cost to obtain a Title V permit was more than \$23,000. Using EPA's own numbers, just the expense of obtaining Title V operating permits will cost the agricultural sector more than \$866 million. That does not include the expense of yearly fees under Title V nor any costs that might be incurred for NSR/PSD permits.

Without action, animal agriculture would be one of the hardest hit sectors from greenhouse gas regulation.

As part of its Advance Notice of Proposed Rulemaking (ANPR) on possible regulation of greenhouse gases, EPA included comments from several government agencies from the inter-agency review. In a letter sent to the Office of Management and Budget, dated July 9, 2008, the U.S. Department of Agriculture (USDA) stated the following:

If GHG emissions from agricultural sources are regulated under the Clean Air Act, numerous farming operations that currently are not subject to the costly and time-consuming Title V permitting process would, for the first time, become covered entities. Even very small agricultural operations would meet a 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. *Federal Register, page 44377*

USDA derived these figures using its Simplified Emissions Inventory Tool developed as part of the Voluntary Reporting of Greenhouse Gases Program at the Department of Energy.

By any standard of measurement, these are "very small agricultural operations" that would become subject to burdensome permitting requirements under Title V. USDA National Agricultural Statistics Service (NASS) statistics for 2010-2011 show that 99 percent of dairy production would meet the minimum threshold level. Similarly 97.3 percent of hog production

is from operations with more than 500 hogs. NASS figures also show that 72 percent of beef cows are in herds larger than 50, and would thus meet the Clean Air Act Title V threshold for regulation.

Title V is generally administered by the states, and permit fees vary from state to state. EPA establishes a “presumptive minimum rate” for states to use as a guide if they so choose. The “presumptive minimum rate” through September, 2012 is \$45.55 per ton over the 100 ton threshold up to a maximum of 4,000 tons as set by the Clean Air Act. Thus, if a state imposes Title V fees on livestock producers and if it applies the “presumptive minimum rate,” the resulting annual cost to livestock producers would be \$182.20 per dairy cow, \$91.10 per beef cow and \$22.75 per hog, up to a maximum total possible cost of \$182,200.

These costs would pose a significant burden to livestock producers. A provision in the FY12 Interior and Related Agencies Appropriations Bill excluded greenhouse gas emissions resulting from the natural biological processes of livestock from regulation. There is no assurance that a similar provision will be in place for FY 2013 or beyond.

Agricultural facilities will also be adversely affected by the application of greenhouse gas regulations to the NSR and PSD programs. A study done for the United States Chamber of Commerce entitled “A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant,” Mills, Sept. 2008, estimates there are approximately 17,000 agricultural facilities that emit more than 250 tons of CO₂ per year and thus qualify as “major sources” for NSR/PSD purposes. The report states that about 3,400 oil seed and grain farms would be regulated, as well as about 1,400 greenhouses and nurseries, and 1,100 poultry and egg facilities. Other farm types

that would be subject to NSR/PSD include fruit and tree nut operations, vegetable and melon facilities, and livestock facilities that emit CO₂.

NSR/PSD will apply to these facilities only when they apply to build or renovate their facilities. The EPA estimates the average cost for an agricultural source to apply for and obtain a PSD permit to be \$59,000.

As mentioned above, stationary sources of greenhouse gas emissions have been subject to EPA regulation under the Clean Air Act since January 2, 2011. Agricultural facilities have not yet been required to obtain Clean Air Act permits because EPA issued its “tailoring rule” under which the largest GHG emitters would be permitted first, and permit requirements for others would be phased in over a period of time. For example, under the tailoring rule, only those entities emitting more than 100,000 tons of greenhouse gases per year are currently required to obtain Clean Air Act permits for greenhouse gas emissions.

While the tailoring rule has thus far deferred permitting requirements for thousands of agricultural facilities, we have two major concerns with the tailoring rule.

First, the tailoring rule at its fullest can only defer the permitting requirements for smaller emitters, not exempt small emitters completely. The Clean Air Act clearly and specifically defines “major sources” as those emitting more than 100 tons or 250 tons of regulated pollutants per year, and these thresholds cannot be changed through regulation. Only Congress can change these thresholds. So even though the direct costs that we have described above may not yet have occurred, they will eventually be incurred by farmers and ranchers.

There is little or no flexibility in the Clean Air Act to deviate from these requirements. Although the EPA administrator has expressed an intention not to regulate livestock emissions,

for example, there is nothing in the statute granting the administrator the authority to exempt them from regulation. Intention and compliance with the law are often two different considerations.

Secondly, the tailoring rule is one of several greenhouse gas rules that are being challenged in court. Oral argument was heard on all of the rules in late February in the Court of Appeals for the District of Columbia. A decision on the legality of these rules is expected in the near future. A ruling overturning the tailoring rule would immediately subject any stationary source emitting more than 100 tons of greenhouse gases per year to the requirements of Title V, and any stationary source emitting more than 250 tons per year immediately subject to the NSR/PSD permitting requirements. All of the direct costs described above would suddenly come into play should the tailoring rule be overturned.

Even with the tailoring rule, farmers and ranchers are paying higher fuel and energy costs resulting from the regulation of utilities, refineries, manufacturers, and other upstream input providers. The costs that those upstream entities incur to comply with the greenhouse gas regulations are passed down to farmers and ranchers.

Farm Bureau appreciates the efforts of this Committee and the full House for passing H.R. 910, the Energy Tax Prevention Act, to prevent this burdensome impact to agriculture. We encourage the Senate to take similar action.

Thank you for the opportunity to testify. I look forward to your questions.