



House Agriculture Committee Testimony
June 11, 2009
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National Milk Producers Federation

Mr. Chairman, Ranking Member and members of the committee: thank you for the opportunity to testify on agriculture's views on H.R. 2454, the American Clean Energy and Security Act of 2009. My name is Ken Nobis and I am a dairy farmer from St. John's, Michigan and I also serve as the Treasurer for the National Milk Producers Federation (NMPF). NMPF develops and carries out policies that advance the well being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers on Capitol Hill and with government agencies, and I am offering this testimony on their behalf.

H.R. 2454, introduced by Representatives Waxman and Markey, is a very complex legislative proposal. Our organization appreciates the fact that the bill's authors do not regulate agriculture under the cap-and-trade system they propose in the bill. NMPF supports the concept of cap-and-trade as long as agriculture is not a cap industry. However, supporting cap-and-trade does not equal supporting all climate change legislation. This is why it is critical that before this bill becomes law, Congress must address a number of concerns. My testimony today will focus on the specific context of offsets and allowances from which we view this bill and climate change policies overall and the changes we would like to see in H.R. 2454.

The Dairy Farm Economic Crisis

It has been a very difficult year for dairy farmers. And we have greatly appreciated all of your help and support as farm level milk prices headed sharply lower creating tremendous economic stress and pressures in the dairy farming community. The price that farmers were receiving for bottled milk was down nearly 50% from last winter. Current prices received by farmers do not even cover the cost of feed. The reason farm prices have declined so drastically is due to the slowdown in the US and global economy with the end result of a precipitously drop in U.S. exports . The problems in the global economy and the effects on consumers' buying habits are adding to that downward pressure.

Dairy Farmer's GHG Commitment

Despite these severe economic challenges, dairy farmers and their cooperatives have maintained their deep commitment to reducing their GHG emissions on farm and throughout the dairy chain. Our industry has voluntarily committed to an action plan to

reduce the carbon footprint of fluid milk by an additional 25% by 2020. Work is underway throughout the dairy industry to help achieve this goal. We are looking at farm practices ranging from dairy feed systems, efforts to reduce enteric methane production, to farm energy audits, and addressing barriers to methane digesters. At the processing level, practices being examined include items like non-thermal UV technology as an alternative to heat-based pasteurization, increased energy efficiencies in dairy plants, improved transportation systems, as well as product packaging and delivery systems.

Dairy Sector's Strong GHG Performance Historically and Today

There have been inaccurate perceptions that animal agriculture is a significant contributor to U.S. greenhouse gas emissions. In fact, the modern dairy sector has improved its performance on GHG emissions dramatically over the last 60 years and any effort to return to the production systems that prevailed in the 1940s would have a disastrous effect on our industry's GHG performance.

EPA has reported that animal agriculture is responsible for approximately 2.5% of US GHG emissions, about half of which is enteric fermentation (1.7% of total).¹ As these statistics show, modern US livestock agriculture is a very small portion of US emissions. Manure methane and nitrous oxide emissions from dairy cows, as reported in the EPA Inventory, are only about 0.3% of total US emissions of all GHGs on a CO₂ equivalent basis. The emissions from all livestock are only about 0.8%.²

Research conducted recently at Cornell University and published in the Journal of Animal Science explores these questions and finds that the most efficient and environmentally friendly way to raise dairy cows and produce milk is definitely not the use of the dairy farm systems that prevailed before the advent of modern commercial farming. The article, entitled "The environmental impact of dairy production: 1944 compared to 2007," found that:

Modern dairy practices require considerably fewer resources than dairying in 1944 with 21% of animals, 23% of feedstuffs, 35% of the water, and only 10% of the land required to produce the same 1 billion kg of milk. Waste outputs were similarly reduced, with modern dairy systems producing 24% of the manure, 43% of CH₄, and 56% of N₂O per billion kg of milk compared with equivalent milk from historical dairying. The carbon footprint per billion kilograms of milk produced in 2007 was 37% of equivalent milk production in 1944."

¹ Environmental Protection Agency (EPA), 2008. "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006. EPA, Washington, DC. Calculated from statistics provided in tables ES-2 and 6-1.

² The other .2% of emissions associated with livestock production comes from nitrous oxide.

Not surprisingly, the dairy sector's total carbon footprint has also been dramatically reduced. Total GHG emissions for the dairy sector in 1944 was 194 million metric tons in CO2 equivalents. By 2007 this had been reduced by 41%, to 114 million metric tons. The article closes with, "Contrary to the negative image often associated with 'factory farms,' fulfilling the requirement for dairy products of the US population while improving environmental stewardship can only be achieved by using modern agriculture techniques." Modern US dairy farming is a tremendous example of how the world can produce the goods and services needed by people, in this case the very food we eat, and doing so while producing less GHGs per calorie of food.

Dairy producers and the entire dairy chain are committed to meeting these goals. It is from our dairy sector's commitment to continuing this record of GHG performance while helping feed the US and the world and helping our businesses thrive that we offer the following comments on H.R. 2454.

1. **The bill must establish a strong role for USDA.** Currently, H.R. 2454 empowers EPA alone to establish, audit and implement all the offsets standards and protocols with no involvement from USDA. This is simply unacceptable. It is USDA that has the technical understanding of the various practices that can generate offsets and has done research on how to measure GHG reductions or sequestrations coming from these practices. It is USDA that has the relationships with ranchers and farmers to facilitate the implementation of the program. And, it is USDA, not EPA that has the infrastructure to manage such a program – with county extension offices across much of the country. We understand that there is a necessary role for EPA to play in overseeing the environmental integrity of the offsets program, but equally important is the role that USDA should be given in helping to set the standards for measuring and verifying agricultural offsets.

USDA is best positioned to create technical standards and protocols for GHG emissions reductions and sequestration from the agricultural and forestry sectors. Nearly all of the scientific data and documentation behind existing agricultural and forestry standards used by carbon registries is grounded in work conducted by USDA scientists or their land grant university partners. Thirteen of USDA's Forest Service scientists shared in the Nobel Peace prize for the UN Intergovernmental Panel on Climate Change report connected to their forestry work. USDA's Natural Resource Conservation Service, Cooperative State Research, Education, Farm Service Agency and Extension Service, Economic Research Service and Agricultural Research Service have done similar work for agricultural practices that reduce GHG emissions and

sequester carbon, such as methane capture and conservation tillage. USDA's work is already part of the only comprehensive set of GHG inventory methods in the DoE's 1605(b) Program. USDA also has the institutional resources, administrative structure, and established relationships in place to engage farmers and ranchers across the country. USDA has tens of thousands of employees working with agricultural producers on various conservation issues. The relationships that USDA has with farmers and ranchers allow it to have the trust necessary to create, administer as well as drive higher levels of participation in the offset program. Indeed, their field assets, technical expertise and the level of trust that USDA has developed make it uniquely positioned. For these reasons § 2709 of the 2008 Farm Bill gave USDA the authority to create technical standards to facilitate participation in emerging carbon, water or other ecosystem service markets.

Since EPA will be charged with administering the overarching cap-and-trade system, we would expect EPA to review the integrity of the offset program. In that regard, EPA can periodically review the standards, protocols and verifications systems established by USDA to ensure that they are being successfully implemented into the larger cap and trade system.

2. **The bill's requirement for additional "performance standards" must be clarified so that CAFOs are not included in "back-door" climate regulation.** Section 811 of H.R. 2454 tasks EPA to set standards for regulatory compliance measures that would be required of some uncapped sectors. The criteria listed for this section could include some of the larger CAFOs in the livestock industry and would therefore remove these operations from being able to provide offsets and would instead require measures such as digesters to reduce their emissions as part of the performance standard for their category. While enteric emissions from animals are not counted, nothing is mentioned about methane or nitrous oxide emissions from manure or from combustion processes. It needs to be made clear that emissions from all agricultural and livestock activities are not regulated – either directly by the climate emissions cap, or indirectly by the performance standards.
3. **The bill should shorten the time allowed for setting up offsets program standards.** Section 732(a) of the Waxman-Markey bill creates an offset program via regulation "Not later than 2 years after the date of enactment of this title". As written, it is probable that regulations establishing an offset program will not be in place when the cap-and-trade system takes effect.

Having regulations in place early will allow the necessary infrastructure to develop to establish a carbon market that can complete transactions and trades. Agricultural and forestry offset projects are currently being created across the country and in other countries under voluntary private and State or regional carbon markets. The Clean Development Mechanism (CDM) in the Kyoto Protocol, the Chicago Climate Exchange (CCX), the Regional Greenhouse Gas Initiative (RGGI), and California's Climate Action Review Board (CARB) all are examples of systems with existing carbon protocols and markets, providing ample precedent from which a federal program can be crafted. Further, under the 2008 Farm Bill USDA has been charged with establishing protocols for carbon and other ecosystem service markets. The government of Canada is establishing a carbon offset program (to include agricultural and forestry offsets) in 2010, and the carbon trading program in 2012, to ensure the availability of offsets at the start of the system.

- 4. The bill must recognize and reward the avoided emissions efforts undertaken by agricultural leaders to reduce GHG emissions and/or sequester carbon.** Significant numbers of agricultural and forestry landowners have already undertaken actions that reduce GHG emissions or sequester carbon. These early actors should be eligible for compensation for the on-going GHG emissions reductions or carbon sequestration that they achieve. The reason this is so important is because the greenhouse gas reductions and sequestration performed by early actors is not required by law and can be undone if the current bill's perverse incentive is not corrected. In order to maintain these avoided emissions – or emissions that could otherwise be emitted, there must be compensation. Since these actions will likely not qualify as offsets, they should be paid for out of the allowances or auction revenue of the bill. Currently, the bill has a very limited recognition of early actors. In previous climate legislation, 5% of the overall allowances were designated to the agriculture industry. If restored, this provision could create the necessary funding to reward early actors and continue the important avoided emissions of the livestock and agricultural sectors.

Congress must recognize and reward the early efforts undertaken by agricultural leaders to reduce GHG emissions and/or sequester carbon. Significant numbers of agricultural and forestry landowners have already undertaken actions that reduce GHG emissions or sequester carbon. Changes in management taken by these early actors include, but are not limited to, switching to or maintaining zero tillage (“no-till”), using new technology to

capture methane for improved animal waste management, and afforesting or reforesting buffers or larger ecosystem landscapes. These early actors should be eligible for compensation for the on-going GHG emissions reductions or carbon sequestration that they achieve within the offset program, if they qualify under all other offset protocols

The treatment of early actors is vital to agriculture's participation in a climate change system. Producers across the American landscape have been engaged in innovative efforts to sequester carbon using a variety of techniques. These producers should be allowed to participate in the offset program being created by Congress under a cap-and-trade regime. The central purpose of any offset program is to encourage the widespread adoption of conservation or other practices that reduce GHG emissions or sequester carbon and which in turn reduces, and potentially reverses global warming impacts, as well as provides cost containment for the entire cap-and-trade system. Agricultural producers who have already begun to experiment with GHG emissions reductions and carbon sequestration practices, techniques and projects are critical emissaries to promote and ensure widespread adoption of these practices. In fact, these early actors often are the leaders of agricultural organizations and their leadership is needed to constructively engage their organizations and their membership on climate change policy. Thus, by rewarding early actors we support constructive political engagement by agriculture and we create a core group of emissaries who will encourage offset projects.

Allowing early actors' projects to be eligible does NOT automatically result in offset credits being issued for previous reduction activities. Early actor projects, like any other project, would have to comply with all other offset protocols for the practice, technique or project type that they are engaged in. Thus even if a producer adopted a practice in 2002, if that producer does not meet other offset protocols he will not be eligible to provide offset credits. Further, early actors will not be paid for GHG emissions reductions or carbon sequestered retroactively. Instead, they will be paid for future GHG emissions reductions or carbon sequestration. As an example, if a producer began no till in 2002 and his soil is projected to reach saturation in 25 years then that producer will only be paid for carbon sequestered between the date any cap-and-trade system starts and 2027.

- 5. The agricultural sector should be provided with an allocation of allowances, or a portion of allowance auction revenues.** While climate
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change legislation will impose higher input costs (such as fuel and fertilizer) for agriculture as a sector, producers have an extremely limited ability to pass higher costs along to downstream purchasers. Agricultural producers are typically price takers in economic terms and in such a situation an allowance allocation, or the proceeds of an allowance auction, could serve to smooth the transition for producers, especially those that are not in a position to capture potential offset credit benefits. Small producers for example are less likely to be in a position to generate offset credits—it may be a simple matter of the amount of credits that they could generate not warranting the cost of changing the practice or the cost of compliance to verify the offset credits themselves. Allowance set asides, or the proceeds from an allowance auction, should be used to smooth the transition for at-risk agricultural producers as we establish a new carbon reduction system.

The agricultural sector faces unique challenges in dealing with the impacts of climate change as it begins to impact our nation and world. Agricultural producers experience and are impacted by climate and weather changes perhaps more than any other sector; for most farmers and ranchers changes in moisture, temperature, and alterations in the growing season directly impact the ability to produce the food and fiber our nation and world need. As such, allocating allowances or allowance revenues for research into adaptation is vital. New seeds, new technologies and new techniques will be needed for the farmer and rancher of the future to produce the same vast quantities of food that we enjoy today. As global populations continue to expand, the American producer will be called upon to produce even more, and government aided research efforts into adaptation can help achieve that objective

Farmers and ranchers are creative and innovative. As carbon markets develop, new techniques, practices and technologies for reducing GHG emissions and for sequestering carbon will be developed, yet funding could be vital to bridge the development phase for producers. Allowance allocations, or the proceeds of an allowance auction, could serve to encourage the development of these yet to be discovered carbon sequestration or emissions reduction methods—allowances could in effect serve as a bridge as data is collected and verified. Eventually, after an appropriate developmental phase, some of these techniques could be certified as accredited offsets, and thus would no longer require allowance funding.

6. Offset eligibility and compensation should be based on whether a project, technique, or practice sequesters carbon, or otherwise reduces

greenhouse gases (GHG) from a date certain. Use of the BAU methodology in the Waxman/Markey bill will limit the amount of GHG emissions reductions or carbon sequestration by agriculture and forestry. The central purpose of the legislation is to reduce or eliminate as much CO₂ as possible, yet by using a BAU methodology to determine project eligibility limits the amount of low cost offsets that will be provided. Section 734(a)(1) requires that offset projects conform to a standard methodology that will determine whether the offset project is BAU for an industry. The text further provides that the government can change baselines, perhaps significantly, on a regular basis. This unnecessarily creates a high level of uncertainty for agricultural producers and investors regarding whether offset projects they are undertaking or about to undertake will qualify for offset credits. Uncertainty in turn will dampen the level and scale of participation in an offset program, and hence the success of the offset program, which is an important component of cost-containment in a cap-and-trade system.

By applying this type of updated BAU test for additionality the draft also ensures that the “hardest” or least likely projects or producers (i.e., those least likely to participate at modest prices and early stages of a program) will never participate. Rather than actively ignoring or omitting the “hardest” projects/least environmentally sensitive producers, an offset program should specifically strive to reach this population. Further, the logic of this type of BAU methodology devalues carbon emission reductions overtime. Projects that produce real, verifiable GHG reductions should receive credit.

To give one example: currently there are approximately 125 methane digester systems across the country, accounting for less than 1% of all dairy, hog, and beef cattle operations. Congress should enact a statute that incentivizes the installation of more digesters – striving for 100% penetration, for instance -- rather than deciding that at 50% market penetration the practice is considered BAU and will no longer receive offset credits. Thus digesters installed when market penetration is at 45% are just as valuable to GHG impacts as digesters installed at 95% market penetration (and perhaps more so, if early reductions have already been achieved, and we are seeking the latter, “harder” reductions); each of these digesters should receive just compensation for the emissions reductions delivered—actual tons of GHG destroyed—and not be dependent on when they were built in relation to each other.

Currently the Waxman/Markey bill changes baselines over time unfairly moving the goal posts and limiting project investments. Rather than

recurrently changing baselines as established in the bill, producers and investors need a static baseline to make production and investment decisions. USDA should be charged with determining the normal activity baseline for each offset project type using a historical or temporal baseline. Once USDA sets that baseline, offset projects can be judged against the baseline to determine whether a proposed action is additional vis-à-vis the temporal baseline. Such a baseline system will ensure certainty to producers (offset providers) and buyers.

7. **Global Implementation of Climate Change Legislation.** It is critical that the United States negotiates quickly a comprehensive implementation of GHG reductions around the world. Although we support the concept of cap-and-trade we remain concerned about the potential costs to the economy from unilateral action by the United States. There are a number of important agricultural exporters around the world that could gain competitive advantage if careful consideration is not given to the application of these reductions throughout the world.

These are the dairy industry's top recommendations for realizing the ag offset opportunities promised by H.R. 2454. We urge this committee to take on the role of champion for the agriculture industry in this matter as it has so often in other ag-related legislation. Our industry is strongly concerned that should the underlying bill pass without these important corrections, there will not be a workable offsets title for America's livestock and farming sectors.

We cannot emphasize enough how important it is for this committee to submit language that improves the existing bill and clarifies the issues we have raised today. There are some who would advise standing on the sidelines and opposing this effort entirely. We believe that this risks for too much for the livestock and row crop producers of America.

The bill at hand is flawed, but there are opportunities to craft a real market opportunity from it. The alternative could be outright regulation or costly energy and input increases with no way of recovering additional revenue if the agriculture sector as a whole takes a pass on getting involved in this issue.

We urge this committee to proactively engage in making the Waxman-Markey bill better for agriculture.

