



National Alliance of Forest Owners
Investing in the Future of America's Forests

September 27, 2010

Submitted via www.regulations.gov and mail

EPA Docket Center
Environmental Protection Agency
Mailcode: 2822T,
1200 Pennsylvania Avenue, NW
Washington, DC 20004
Docket EPA-HQ-OAR-2008-0508

Re: Mandatory Reporting of Greenhouse Gases, Proposed Rule; 75 Fed. Reg. 48,744 (August 11, 2010)

To Whom It May Concern:

The National Alliance of Forest Owners (“NAFO”) appreciates the opportunity to comment on the Environmental Protection Agency’s (“EPA’s”) proposed rule to amend specific provisions of the Mandatory Reporting of Greenhouse Gases Rule (“Reporting Rule”). See 75 Fed. Reg. 48,744 (August 11, 2010). NAFO understands that some of the proposed changes are intended to address EPA’s proposed settlement addressing the Utility Air Regulatory Group’s (“UARG’s”) petition for review of the Reporting Rule. NAFO submitted comments on that proposed settlement on August 19, 2010 and requests that EPA consider those comments in connection with this proposed rule. Consistent with the proposed settlement with UARG, the proposed rule would direct all source categories in subparts C through JJ to report, in aggregate, both conventional and biogenic emissions. See *id.* at 48782. In addition, units that use the methodologies in part 75 would not have to separately report biogenic carbon dioxide (“CO₂”) emissions, as required by the existing Reporting Rule. *Id.*

At the outset, NAFO notes that EPA’s notice of its proposed rulemaking fails to explain that its proposed revisions were also part of proposed settlements with UARG and others, which EPA recently circulated for public comment. See 75 Fed. Reg. 42,085 (June 20, 2010). The value of taking public comment on the proposed settlements is significantly undermined because EPA clearly failed to conduct any meaningful review of these comments before moving forward with the proposed rule. If EPA does not fully consider and respond to all of the comments it has received—on the proposed settlements and on the proposed rule—before taking final action, it risks acting in an arbitrary and capricious manner.

NAFO opposes the proposed rule’s change of the existing reporting program to require inclusion of biogenic CO₂ when reporting aggregate annual emissions and to

categorically exempt units using the part 75 methodologies from the requirement to separately report biomass emissions. As explained below, it would be inconsistent with and a reversal of established government precedent and policy for the Reporting Rule to treat biomass emissions identical to other emissions. As such, it is critical that any amendments preserve the existing Reporting Rule's separate reporting of fossil and biomass combustion. While NAFO supports a regulatory regime that facilitates the use of biomass, the proposed changes to the regulations are far broader than necessary to achieve this goal.

NAFO's mission is to protect and enhance the economic and environmental values of private forests through targeted policy advocacy at the national level. At the time of this submission, NAFO's members represent 75 million acres of private forests in 47 states. NAFO was incorporated in March 2008 and has been working aggressively since to sustain the ecological, economic, and social values of forests and to assure an abundance of healthy and productive forest resources for present and future generations.

Summary

Because the combustion of biomass is "carbon neutral," the government historically has not counted emissions of CO₂ from combustion of biomass when estimating carbon dioxide emissions. As explained below, NAFO is concerned that certain provisions in the proposed rule could be inappropriately construed to suggest that EPA is departing from this long-standing policy and treating biomass like all other fuels. In Section I, we explain why the government's past precedent and practice supports the distinction between biomass combustion and other fuels. In Section II, NAFO explains why EPA should preserve the existing Reporting Rule's requirement that biogenic CO₂ be separately reported. Any departure from this requirement should be clearly labeled as an exception to the general Reporting Rule requirements and crafted as narrowly as possible, based on a demonstrated need by the affected industry.

I. The Government Has Consistently Excluded CO₂ From Combustion Of Biomass When Estimating CO₂ Emissions.¹

It is well understood that when most fuels are burned for energy, they emit carbon dioxide. It is equally well established that carbon emitted in the combustion of biomass comes from carbon dioxide that was originally sequestered from the air by the biomass feedstock, thus resulting in a carbon neutral cycle. For this reason, the government historically has not counted emissions of carbon dioxide from combustion of biomass when estimating carbon dioxide emissions. This policy supports NAFO's recommendations below with respect to EPA's proposed rule.

A. EPA and other domestic and international organizations historically have recognized and affirmed carbon neutrality in reporting and other contexts.

Biomass CO₂ neutrality has been the foundation of American policy. As the EPA has concluded, there is "[s]cientific consensus . . . that the CO₂ emitted from burning biomass will not increase total atmospheric CO₂ if this consumption is done on a sustainable basis."² Consistent with this conclusion, in its most recent GHG inventory, EPA did not include emissions from the combustion of wood biomass in its national emissions totals because it "assumed that the carbon . . . released during the consumption of biomass is recycled as U.S. forests and crops regenerate, causing no net addition of CO₂ to the atmosphere."³ Similarly, the Department of Energy's (DOE's)

¹ In a stark and unannounced reversal of this established policy, EPA's recent Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule would count CO₂ emissions from combustion of biomass toward the applicability thresholds that it announces for the PSD and Title V permitting programs of the Clean Air Act. See 75 Fed. Reg. 31,514 (Jun. 3, 2010). The Tailoring Rule is thus the one exception to the government's consistent practice of not counting such emissions. NAFO has requested EPA reconsider the Tailoring Rule and has also petitioned for review of the rule in the United States Court of Appeals for the District of Columbia Circuit. See *NAFO et al., v. EPA*, Case No. 10-1209 (filed Aug. 2, 2010). In addition, EPA has announced a Call for Information to gather further information regarding carbon neutrality. As indicated in NAFO's Petition for Reconsideration, EPA at a minimum must reconsider those provisions applicable to biomass while it studies the issue further.

²Environmental Protection Agency Combined Heat and Power Partnership, *Biomass Combined Heat and Power Catalog of Technologies*, 96 (Sept. 2007), available at www.epa.gov/chp/documents/biomass_chp_catalog.pdf.

³ EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2008* at 3-10 (April 15, 2010), available at http://www.epa.gov/climatechange/emissions/downloads10/US-GHG-Inventory-2010_Report.pdf.

Voluntary Reporting of Greenhouse Gases Program, authorized by Section 1605(b) of the Energy Policy Act of 1992, provides for exclusion of combustion of biomass fuels.⁴

The international GHG accounting methods developed by the United Nation's Intergovernmental Panel on Climate Change also recognize that biogenic carbon is part of the natural carbon balance and will not add to atmospheric concentrations of carbon dioxide. Similarly, the European Union directive on carbon trading specifies that biomass is considered to be carbon neutral.

Therefore, a strong consensus exists that treating combustion of biomass as carbon neutral is scientifically sound. NAFO's recommendations below on the proposed rule are consistent with and supported by this longstanding government policy.

B. The combustion of forest biomass is carbon neutral.

The proper EPA policies recognizing carbon neutrality are based on near-universal recognition that greenhouse gases emitted in combustion of fuels derived from biomass should be excluded from greenhouse gas regulations because production and combustion of such fuels does not increase atmospheric carbon dioxide levels. As EPA is aware, growing plants absorb significant amounts of carbon dioxide from the atmosphere. Forests, in particular, sequester massive amounts of carbon dioxide. The process of sequestration and storage is a natural by-product of tree growth. Through the process of photosynthesis, trees take up carbon dioxide from the air and in the presence of light, water, and nutrients, release oxygen and manufacture carbohydrates that are used for metabolism and growth of above and below ground organs. All plant materials are ultimately derived from this carbon dioxide, which is drawn from the atmosphere.

When plant biomass materials, such as biofuels made from forest biomass, are burned, the carbon dioxide emitted contains the same carbon that was sequestered by the plant feedstocks. Thus, the combustion of biofuels does not result in net carbon dioxide emissions. All carbon dioxide emitted is a product of carbon dioxide absorbed, making the carbon dioxide released back to the atmosphere a net zero with respect to the natural carbon cycle.

⁴ See DOE, *Technical Guidelines: Voluntary Reporting of Greenhouse Gases (1605(b)) Program* (January 2007) at 77 ("Reporters that operate vehicles using pure biofuels within their entity should not add the carbon dioxide emissions from those fuels to their inventory of mobile source emissions because such emissions are considered biogenic and the recycling of the carbon is not credited elsewhere.").

In this manner, biofuels from forest biomass are fundamentally different from conventional fuels. Once coal, natural gas, or oil is extracted and combusted, it cannot be replaced. In contrast, the sustainable forest management practiced by the United States forest products industry ensures that there is no temporal imbalance between biogenic CO₂ emissions and CO₂ sequestration and thus no effect on the atmospheric GHG inventory. Indeed, as EPA is aware, carbon stocks in United States forests have been, and continue to, increase. Thus, the forest bioenergy industry is truly carbon dioxide neutral.

II. EPA Must Reconcile the Proposed Rule with Existing Positions and Precedent Regarding Carbon Neutrality.

Above all, EPA must ensure that any changes to the Reporting Rule are consistent with the government's longstanding policy that there are significant distinctions between biomass and fossil fuel emissions and that biomass emissions are not counted when estimating CO₂ emissions.

Under the proposed rule, EPA would amend 40 C.F.R. § 98.3(c)(4)(i)-(iv) to require the applicable source categories to annually report “[a]nnual emissions (including biogenic CO₂) aggregated for all GHG” See 75 Fed. Reg. at 48782. This amendment thus comingles both conventional and biogenic CO₂ emissions and is a direct reversal of the existing regulatory requirement, which requires separate reporting of conventional and biogenic CO₂. Not only would the proposed rule direct entities to include biomass emissions when reporting their aggregate annual emissions, the regulation would state that “[u]nits that use the methodologies in part 75 of this chapter to calculate CO₂ mass emissions are not required to separately report biogenic CO₂ emissions, but may do so as an option.” *Id.* Other proposed changes—to Sections 98.33(a)(5), 98.33(e), 98.36(d)(1)(ii) and (ix), 98.36(d)(2)(ii), and 98.36(d)(2)(iii)—would similarly adjust the requirements for units using part 75 methodologies so that separately reporting annual CO₂ emissions from the combustion of biomass would be optional. See *id.* at 48790, 48792, 48797, 48798.

The regulations should not mandate the combined reporting of biogenic and conventional emissions. Such a requirement is flatly inconsistent with established government policies, regulations, and recognition of carbon neutrality of biomass emissions. Specifically, NAFO objects to the proposed rule's requirement that biogenic CO₂ be included without segregation, as directed by the proposed amendment to 40 C.F.R. § 98.3(c)(4)(i). Doing so would not only be inconsistent with carbon neutrality principles, it would make it impossible for EPA to make accurate estimates of aggregate

fossil fuel emissions as the reported annual emissions would include an unknown quantity of biogenic emissions. Moreover, by making it optional for *all* reporters using part 75 methodologies to separately report biogenic emissions, the proposed rule would likely result in a substantial underreporting of biomass combustion.

EPA should preserve the distinction between conventional and biomass combustion. To the extent situations arise making it difficult for the separate reporting of biomass emissions by some units under existing calculation methodologies, EPA should add flexibility to the calculation process to reduce the reporting burden to manageable levels rather than eliminate all reporting obligations. Exceptions from biomass reporting should only be considered as a last resort, if at all.

In the event EPA elects to exempt certain units from the requirement to separately report biomass emissions, it should be set out as an *exception* to the overall Reporting Rule requirements. In addition, the exception should be drawn narrowly so that it only applies to units that have demonstrated there is a legitimate need. Some of the proposed amendments would affect not only units reporting under subpart D of the Reporting Rules (*e.g.* electric generating units) but also units in other direct emitter source categories. See *e.g.* proposed 40 C.F.R. § 98.3(c)(4)(ii) (making separate reporting of biogenic emissions optional for all “[u]nits that use the methodologies in part 75”). As such, EPA’s proposed changes to the Reporting Rule will have ramifications that affect not only electric generating units, but numerous other categories of sources. NAFO believes such a far-reaching rule change is inappropriate as these other source categories have not been a part of the development of the proposed settlement that is the impetus for the proposed rule changes and certainly have not demonstrated a need to be exempt from the established policy of separately reporting biogenic and fossil fuel emissions.

NAFO thus urges EPA to avoid any exemption from biomass reporting by adjusting the calculation methodologies. However, if EPA rejects this solution, it should narrowly tailor any final rule to address only provisions affecting the specific settling parties, and only to the extent they have demonstrated a legitimate need for special treatment under the Reporting Rule.

NAFO also recommends that EPA further clarify that any adjustments to the regulations do not reflect any change in government policy regarding the treatment of biogenic emissions. In other words, NAFO requests that EPA confirm that the proposed rule does not change the well established significant distinctions that repeatedly have been recognized between biogenic and non-biogenic emissions, and that the only

reason certain units may be allowed (as a last resort) to include biogenic emissions in their annual reporting of emissions is that they have demonstrated it is necessary to eliminate significant administrative and financial burden.

In addition, NAFO urges EPA to confirm that the proposed rule would not change, in any way, the fact that the Reporting Rule does not include biogenic CO₂ in its reporting thresholds. Indeed, the proposed changes to the regulations (discussed above) relate only to the Reporting Rule's requirements for annual reports. Biogenic emissions would still not be considered when entities conduct a threshold analysis to determine if the Reporting Rule's requirements are triggered in the first place.

Conclusion

NAFO appreciates the opportunity to provide its views on the proposed rule and hopes its comments will assist EPA in finalizing changes to the Reporting Rule that adhere to longstanding practice and precedent. We are standing by to answer any questions or provide any further information regarding these comments.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Tenny', with a long horizontal flourish extending to the right.

David P. Tenny
President and CEO
National Alliance of Forest Owners