



## **NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

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### **NCBA Fact Sheet**

**Re: The EPA has determined in a final rule that all large CAFOs, including operations with 1,000 head of beef cattle or more, must notify state and local emergency response officials about ammonia and hydrogen sulfide emissions from their operations if they emit 100 pounds or more of these substances during any 24 hour period. Telephone notifications must be made no later than January 20, 2009, and a written report must be submitted within 30 days thereafter, to avoid severe penalties. Smaller AFOs and ranching operations are not required to submit notifications.**

**BACKGROUND.** Since their inception, it was presumed that the air emission reporting provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Emergency Planning and Community Right to Know Act of 1986 (EPCRA) did not apply to agricultural operations. Citizens' suits in Missouri, California and other areas called this presumption into question.

Over the past six years, NCBA has aggressively pursued legislative and administrative clarifications of what agricultural operations were required to do under each of these laws. In particular NCBA sought an exemption from reporting requirements under the CERCLA and EPCRA laws. These laws were passed to assure that emergency responders would know of releases of "hazardous substances" requiring cleanup. "Hazardous substances" under these laws include ammonia and hydrogen sulfide, both of which may be emitted by cattle feeding operations. NCBA argued to lawmakers and administration officials that beef cattle operations were not the types of facilities that should report emissions of these substances because they are naturally occurring, low level, continuous, are spread over a wide area, dissipate rapidly, and are not containable. There is no feasible emergency response to these emissions.

**FINAL RULE REQUIRES LIMITED REPORTING.** Last month, the U.S. Environmental Protection Agency published a final rule agreeing with NCBA that air emissions from concentrated animal feeding operations (CAFOs) did not need to be reported under the CERCLA law. However, EPA did require that large CAFOs, which have 1,000 head of cattle or more, must notify state and local emergency response officials about ammonia and hydrogen sulfide emissions from their operations under the EPCRA law.

**On or before January 20, 2009, any beef cattle operation with a capacity of 1,000 head or more that emits 100 pounds or more of ammonia or hydrogen sulfide during any 24-hour period must report these emissions by a telephone call to state and local emergency**

responders. A written report must be submitted within 30 days after the telephone call was made. Failure to make the telephone call by January 20, 2009 or submit a follow-up written report could subject cattle producers to severe penalties of \$25,000 per day, as well as potential criminal liability for knowingly failing to report. Because of the legal uncertainty surrounding whether cattle operations were required to report these releases at all, we believe it is reasonable to rely on the January 20, 2009 effective date of the EPA Final Rule as the basis for now being required to report these emissions.

**The following 3 steps must be taken by all beef cattle feeding operations with 1,000 head of cattle or more that meet the 100 pound threshold:**

1. **Immediate telephone calls (no later than January 20, 2009)**, to your state emergency response committee (SERC) and your local emergency planning committee (LEPC). Contact your NCBA state affiliate organization for LEPC and SERC contact information. Below is a suggested script for making these calls:

“Hello, this is [your name]. I am the person in charge of [name of feeding operation]. I am calling to make an initial continuous release notification report under Section 304 of the Emergency Planning and Community Right to Know Act for an animal feeding operation, pursuant to the EPA Final Rule effective January 20, 2009.

The name and location of this facility is [name and address]. Its corporate affiliation is [name] and address is [address]. The hazardous substances I am reporting are ammonia and hydrogen sulfide.

While there is a question about whether beef cattle feeding operations should be required to report these emissions since they come from naturally occurring manure, urine and flatulation, I am reporting them to be cautious as a continuous release as allowed for by the EPA Final Rule.

A written report will be submitted to you within 30 days from today.”

2. **Complete and Send a Written Notification, within 30 days after the above telephone calls** (on or before February 19, 2009 if telephone calls were made on January 20, 2009), to the same state and local emergency planning officials as you called. Maintain a record of the mailing so that you can verify the report was sent (certified mail return receipt requested, UPS, FedEx, etc).

NCBA has worked with land grant universities to quickly get a good faith estimate of ammonia and hydrogen sulfide emission rates that can be used for this notification. EPCRA requires that a “lower bound” and an “upper bound” emission level be reported. These levels can be established by multiplying an emission rate by the expected lowest number of head of cattle in a large CAFO during the year (lower bound), and by

multiplying the emission rate by the highest number of head of cattle currently permitted for the CAFO (upper bound). Research has shown that emission rates for ammonia during winter months are lower than emission rates during summer months. Research has also shown that emission rates for hydrogen sulfide are lower during dry weather conditions and higher in wet conditions. Therefore, the lower rate should be used when calculating the lower bound, and the higher rate should be used when calculating the upper bound. Because no officially adopted emission factors are currently available to use for this purpose, the final rule allows reports to reflect “good faith estimates.” Attached is a suggested cover letter and reporting form that may be used for the Written Notification. A worksheet for calculating emission estimates is also attached. If your estimated emissions of either ammonia or hydrogen sulfide do not equal the 100 pound threshold, simply put an “N/A” (for “not applicable”) in the appropriate box on the form.

3. **Annually review your operations to determine whether there are any changes** which would increase emissions above the upper bound range that you submitted in the Written Notification described above. If so, you will need to report a statistically significant increase in emissions. Also, if you become aware of information during the year before the annual review that would increase your emissions above the upper bound estimate, you would need to report that immediately as a statistically significant increase. Any statistically significant increase in emissions would require telephone and written notification of the same entities listed above. An example of a type of activity that would cause an emission increase is an increase in the maximum number of cattle permitted at a large CAFO.

The EPA also claims that “certain other hazardous substances, such as nitrogen oxide and certain other volatile organic compounds may also be released from animal waste.” If additional scientific information becomes available showing that cattle operations may exceed reportable quantities of other substances, NCBA membership will be notified.

**INFORMATION SESSION.** NCBA and state affiliates continue to explore avenues to lessen the impact of this and other regulations on concentrated animal feeding operations. To that end, NCBA and state affiliates are providing this fact sheet and attached information. In addition, NCBA will present an information Webinar on these new reporting requirements on **Thursday, January 15, 2009 at 4 pm Eastern time.**

To RSVP for the webinar please visit: <https://cc.callinfo.com/r/1ommerir3y9tk>

To ensure we have enough lines, **please RSVP by 12:00 PM (noon) Eastern Standard Time on Wednesday, January 14<sup>th</sup>.**