



Environmental and Utilities Legal Update

EPA Proposes Rules for Mandatory Nationwide Reporting of Greenhouse Gas Emissions

On March 10, 2009, the U.S. Environmental Protection Agency (EPA) released its proposed requirements for reporting greenhouse gas (GHG) emissions. The proposal, if adopted, would regulate a broad array of industrial and commercial facilities: according to EPA, the proposed rule would apply to approximately 13,000 facilities representing 85 to 90 percent of GHG emissions in the United States. Equally significant, the proposed rule would constitute the first broad-based federal mandate regarding GHG and is an important first step towards a national climate change program.

The proposal was required by a provision in an omnibus appropriations act enacted by Congress in December 2007. The act directed EPA to develop an economy-wide mandatory GHG reporting program by June 2009 but provided little detail.

What GHGs Are Covered?

The proposed rule would require reporting of several kinds of GHGs: carbon dioxide (CO₂), methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons (HFCs), perfluorochemicals (PFCs) and other fluorinated gases.

Who Must Report?

In general, the proposed rule designates several triggers for reporting, depending on the types of GHG emission sources at a particular facility:

1. A facility would be subject to reporting if, starting in 2010, its annual GHG emissions from all stationary fuel combustion sources (e.g., boilers, stationary engines, process heaters, and stationary turbines) at the facility are at least 25,000 metric tons of carbon dioxide equivalents (mtCO₂e). (CO₂e is a measurement by which non-CO₂ GHGs are equalized to CO₂ on the basis of relative global-warming potential). If the total maximum heat input capacity for all stationary fuel combustion equipment at the facility is less than 30 million British Thermal Units per hour (MMBTU/hr), the facility would be presumed to emit less than 25,000 mtCO₂e and would not be subject to reporting.
2. In addition, a facility that contains one or more sources in any of several dozen categories of GHG sources would be required to report GHG emissions from all source categories at the facility for which the proposed rule provides calculation methodologies (which are discussed further below). Approximately twenty of these source categories - including petroleum refineries and cement production facilities - would automatically subject a facility to reporting because EPA presumes that most, if not all, of these source categories emit more than 25,000 mtCO₂e per year. Other source categories - such as industrial landfills, food processing, and electricity generation - would trigger reporting only if the aggregate of

emissions from all of the source categories present at the facility meet or exceed the threshold of 25,000 mtCO₂e per year.

3. Manufacturers of new motor vehicles and engines (including passenger vehicles, locomotives, aircraft engines, and other nonroad engines and equipment) would also be subject to reporting.
4. Beyond the direct emitters, suppliers of fossil fuels and industrial GHGs would be subject to reporting. Suppliers include producers, importers and exporters. Such facilities would be required to report the volume of fuel or GHGs placed in the economy and the GHG emissions associated or potentially associated with this volume.

In addition to a reporting duty, the requirements of the proposed rule also address emissions calculations, monitoring, data quality assurance, protocols for dealing with missing data, and recordkeeping.

Reports would be made annually, with the first reports due no later than March 31, 2011, covering emissions in calendar year 2010 (except for motor vehicle and engine manufacturers, which would begin reporting in 2012 for model year 2011).

How Would GHG Emissions Be Calculated and Reported?

The proposed rule sets out an array of source-specific methodologies for calculating and reporting GHG emissions. These methodologies generally include elements drawn from existing voluntary and state-level mandatory programs and protocols, including those of the Climate Registry, EPA's voluntary Climate Leaders program, the Regional Greenhouse Gas Initiative (RGGI), the California Air Resources Board (CARB), and the World Resources Institute (WRI). The proposed methodologies also include unique features and key differences from existing programs. Notable features of the proposed methodologies include:

- Facilities that already collect non-GHG emissions data by means of a continuous emissions monitoring system (CEMS) for various Clean Air Act programs (such as the Acid Rain Program, New Source Performance Standards, and National Emission Standards for Hazardous Air Pollutants) would be required to collect and report GHG emissions using the CEMS. Facilities without a CEMS could either install a CEMS to measure GHG emissions directly, or use the default calculation methods specified in the proposed rules for each source category.
- Facilities would report both the total GHG emissions from the facility (expressed as mtCO₂e) and the mass emissions for each GHG from each source category at the facility. The reports would also include process operating data that influence the level of emissions.
- Subject to certain exceptions, entities that own or operate multiple facilities would report at the facility level rather than company-wide. The exceptions are vehicle and engine manufacturers, fossil fuel importers and exporters, and local natural gas distribution companies.
- The proposed rule would not require third-party verification of the emissions data being reported, as required under many existing reporting protocols. Instead, reporters would self-certify their emissions data (as under various Clean Air Act reporting programs) and provide supporting data with the emissions report for EPA to verify.
- The proposed rule does not require facilities to report "indirect" emissions associated with electricity purchased from another party. The proposal seeks public comments on a

requirement for facilities to report their electricity purchases, but not associated "indirect" emissions.

- The proposed reporting duty would be "once in, always in": Once a facility triggers a reporting threshold, it would be required to submit annual reports in all subsequent years, regardless of actual emissions in those years. However, the proposal is seeking comment on whether to allow a facility to discontinue reporting if its emissions are below the threshold for three consecutive years.

Structure of the Proposed Rule

The proposed rule, which would be codified in a new Part 98 in Title 40 of the Code of Federal Regulations, is organized around the source categories that drive applicability determinations. After providing general provisions applicable to all facilities, the proposed rule includes subparts that set out emission monitoring, calculation, and reporting protocols specific to each of several dozen source categories and, in some cases, subcategories.

If a particular facility includes sources that fall in multiple source categories, the facility would be subject to the requirements applicable to each source at the facility. For instance, a food processing facility would be covered by the requirements in Subpart M - Food Processing. However, the facility may also contain sources subject to requirements for stationary combustion units (Subpart C), industrial landfills (Subpart HH), and wastewater treatment (Subpart II). Thus, a food processor would consult each applicable subpart of the rule to calculate the emissions from each unit or process present at its facility for which source category requirements have been developed.

What's Next?

The proposal may currently be found at

<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

Once published in the Federal Register, the public will have 60 days to submit written comments to EPA. In addition, EPA has scheduled public hearings on April 6 and 7 in Arlington, Virginia and on April 16 in Sacramento, California. Affected parties should review the proposed rule, compare the requirements to any existing programs in which they are participating, and understand what steps would be necessary to be in a position to comply if the proposed rule is adopted without significant revision. In addition, interested parties should consider whether to submit comments regarding provisions that may be particularly complex or burdensome.

Robinson & Cole is currently advising a number of clients regarding the proposed rule as well as the challenges and opportunities from emerging climate change programs at federal, regional, state and local levels. We stand ready to apply our experience and insights to your operations and strategic planning, particularly in these challenging economic times. If you would like to discuss how these issues may impact your business, please contact any of these attorneys in our Environmental and Utilities Practice Group:

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