

EPA Finalizes Rule Establishing Mandatory Reporting of Greenhouse Gas Emissions

On September 22, 2009, the Environmental Protection Agency (EPA) issued a final rule establishing an economy-wide system for mandatory reporting of greenhouse gas (GHG) emissions (Reporting Rule). Proposed in April 2009, the Reporting Rule is expected to apply to approximately 10,000 facilities across a broad spectrum of economic sectors, accounting for approximately 85% of GHG emissions in the United States. Facilities subject to the Reporting Rule are required to begin emissions monitoring in January 2010, and submit detailed annual reports to EPA beginning in 2011. The Reporting Rule does not require affected facilities to implement GHG emission controls or reductions.

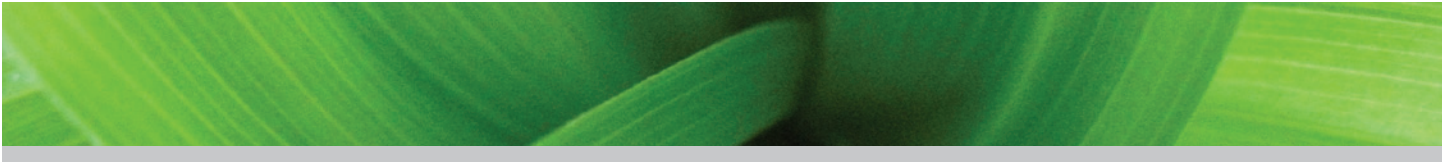
REQUIREMENTS

The major features of the Reporting Rule are as follows:

Coverage. Specific GHGs that must be reported under the Reporting Rule include carbon dioxide, methane, nitrous oxide, and fluorinated GHGs. The Reporting Rule generally applies to facilities that emit at least 25,000 tons CO₂-equivalent (CO₂-e) per year; however, some facility types (such as electric generating facilities and petrochemical facilities) are covered by the Reporting Rule regardless of their level of emissions. Although most facilities subject to the Reporting Rule are electric utilities or industrial installations, the Reporting Rule also reaches any non-industrial facility that operates a combustion device emitting at least 25,000 tons CO₂-e per year; large landfills and manure management systems; and other emitting facilities. The Rule also reaches upstream suppliers of fossil fuels and industrial gases that are GHGs. Examples of economic sectors affected by this rule include:

- Electric generating units;
- Petroleum refineries;
- Natural gas local distribution companies;
- Chemical manufacturers;
- Metal, glass, and paper manufacturers;
- Importers, exporters, and producers of fossil fuels and industrial gases that are GHGs

The final text of the Reporting Rule omitted some sectors, such as certain oil and natural gas facilities and coal suppliers, which were included in the proposed form of the rule. EPA is expected to address reporting from many of these sectors in future rulemakings.



Compliance Deadline. The Reporting Rule requires emissions monitoring to begin by January 1, 2010. Emission reports must be submitted annually to EPA by March 31 of each year, beginning in 2011. In order to provide affected facilities with time to install monitoring equipment and train personnel, EPA allows facilities to use “best available methods” to estimate emissions data during the first quarter of 2010.

Methodologies. The Reporting Rule prescribes a separate GHG monitoring and reporting methodology for each affected sector. In some cases, the Reporting Rule permits facilities to calculate emissions by using default emission factors and easily obtained production data. However, many affected facilities will be required to sample and test fuel, or install accurate devices to measure facility output and emissions.

Discontinuing Reporting. In order to encourage emission reductions and ensure that the reporting system only captures major facilities, the final Reporting Rule was amended to allow facilities to discontinue reporting when their reports show emissions of a) less than 25,000 tons CO₂-e for five consecutive years or b) less than 15,000 tons CO₂-e for three consecutive years.

Public Disclosure. Emissions data reported to EPA under the Reporting Rule will be made available to the public. Other data submitted to EPA (e.g., certain production and process data) may be protected under the agency’s procedures governing confidential business information. EPA has indicated that a future rulemaking will address the question of what information qualifies as “emissions data” for purposes of GHG reporting.

EPA Verification. In order to assure data quality, the Reporting Rule provides quality control and assurance measures for each affected sector, requires facilities to submit supporting data to EPA, and provides for EPA to verify emission figures

Recordkeeping. Facilities subject to the Reporting Rule must maintain certain emission-related records for a minimum of three years.

IMPLICATIONS

Although EPA has previously required reporting of GHG emissions from electric generation facilities, the Reporting Rule is significant because of its broad scope and high level of detail. The Reporting Rule adds an important new requirement for affected facilities, and also creates an opportunity for many facilities to identify major sources of emissions and potential emission reduction options. The data generated through the Reporting Rule is likely to influence future EPA regulations governing GHG emissions, as well as legislative efforts on climate change.

FOR ADDITIONAL INFORMATION

Van Ness Feldman has assisted clients through the development of the Reporting Rule, and continues to provide advice as affected facilities prepare to comply with this measure. The firm closely monitors congressional and executive branch developments on climate change and energy policy, and is in a strong position to provide expert analysis and advice on emerging legislation and regulatory activity, the surrounding policy and political debate, and the implications for your organization. If you would like more information, please contact Kyle Danish, Stephen Fotis, Doug Smith, or any member of the firm’s Climate Change practice at (202) 298-1800.

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