

ENVIRONMENTAL

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New Greenhouse Gas Reporting Rule Proposed by EPA

The Consolidated Appropriations Act of 2008 (H.R. 2764), which was signed by George W. Bush on December 26, 2007, included a simple one paragraph directive to the United States Environmental Protection Agency (“EPA”) to publish a final rule within 18 months (by June 26, 2009) that would “require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.” The proposed rule is considered by the EPA to be an important foundation for the adoption of a federal program to limit greenhouse gas (“GHG”) emissions through a market based cap-and-trade program.

Accordingly, on March 10, 2009, the EPA Administrator signed a 1400 page proposed rule and preamble that would implement a comprehensive national system for reporting emissions of GHGs. The proposed rule, which is being promulgated under the Federal Clean Air Act, applies to about 13,000 facilities that account for 85-90% of GHG emissions in the United States. The reporting requirements would cover emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases.

Specifically, the new monitoring and reporting requirements would apply to the following entities: (1) facilities that contain any of the source categories listed in the proposed regulation; (2) facilities that emit 25,000 metric tons carbon dioxide equivalent or more per year in combined emissions from stationary sources; (3) suppliers of fossil fuels and certain industrial chemicals; and (4) in a deviation from reporting rules that currently exist, manufacturers of motor vehicles and engines.

The monitoring required by the proposed rule is a combination of direct emission measurement and facility-specific calculations. The proposed rule would require facilities that are already required to collect and report data using continuous emissions monitoring systems (“CEMS”) under other federally enforceable programs (e.g., acid rain program, new source performance standards) to use CEMS to directly measure and record emissions of GHGs. Facilities that do not currently have CEMS installed would have the choice to either directly measure GHG emissions or to use facility-specific GHG calculation methods that could include: a mass balance; measurement of the facility’s use of fuels; and raw materials, or additives combined with site-specific measured carbon content of these materials. For the sources that supply fuels or industrial GHGs, this option would require reporting of production, import, and export data.

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Regulated facilities would be required to begin collecting GHG emission data by January 1, 2010, with the first annual reports due to EPA in 2011 for the calendar year 2010 (except for vehicle and engine manufacturers, which would begin reporting for model year 2011 and would submit their first annual reports in 2012). Reporting would generally be at the facility level.

EPA estimates the cost to comply with the reporting requirements to the private sector to be \$160 million for the first year and \$127 million per year for subsequent years. Thus, EPA's expected average compliance cost for regulated facilities is approximately \$12,000 for the first year and \$9,000 per year thereafter.

The proposed rule is open for public comment until May 10, 2009 and EPA will be holding public hearings on April 6 and 7, 2009. Companies that will be impacted by this proposed rule should consider submitting comments to EPA. Please contact us if you would like assistance with such comments. ■

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If you require further information on this proposed rule and its impact on your organization, please contact any of the Environmental Practice Area members listed on the front of this Alert.