

## ENVIRONMENTAL

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## EPA Finalizes Greenhouse Gas Reporting Rule

On September 22, 2009, the U.S. Environmental Protection Agency (“EPA”) issued the Final Mandatory Reporting of Greenhouse Gases Rule (the “Final Rule”). The Final Rule, originally proposed on March 10, 2009, requires large sources of greenhouse gases (“GHG”) and suppliers to collect and report GHG emission data to the EPA beginning January 1, 2010. The purpose of the Final Rule is for policymakers to collect data on GHG emission sources with the goal of developing regulations and programs to reduce and restrict GHG emissions.

### Key Differences Between the Final Rule and the Proposed Rule

The Final Rule remains largely unchanged from the original proposal, with a few key exceptions including:

- **Applicability.** The Final Rule reduced the number of source and supply categories that need to report, including the following sources which do not have to report at this time: ethanol production; industrial landfills; oil and natural gas systems; wastewater treatment systems; suppliers of coal; and sulfur hexafluoride from electrical transmission equipment. An animal population threshold was also added in the Final Rule to determine applicability of manure management systems.
- **Monitoring and Measurement.** The Final Rule allows the use of best available monitoring methods in lieu of the methods established in the Final Rule for the period January - March 2010. The Final Rule also added monitoring options to reduce the need to install new monitors. In addition, the Final Rule reduced the frequency for sampling and analysis for specific source categories.
- **Exemptions.** The Final Rule exempts research and development activities, emissions from unconventional fuels, flares, hazardous wastes, and emergency equipment.
- **Exiting the Program.** The Final Rule added a mechanism for facilities and suppliers to cease annual reporting by reducing their GHG emissions or shutting down GHG emitting processes.

### Overview of Key Requirements of the Final Rule

The Final Rule applies to certain source categories, including suppliers of fossil fuels and industrial GHGs, facilities that emit over 25,000 metric tons of carbon dioxide equivalent (“CO<sub>2</sub>e”) annually and manufacturers of certain vehicles and engines. The Final Rule is expected to be applicable to approximately 10,000 facilities and to capture an estimated 85% of the total United States GHG emissions.

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The GHG emissions covered by the Final Rule are: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other fluorinated gases.

Among the facilities covered by the Final Rule are: electric generating units; petroleum refineries; natural gas local distribution companies; chemical manufacturers; metal, glass, and paper manufacturers; and importers, exporters, and producers of fossil fuels and industrial gases that are GHGs. In contrast to the proposed rule, the Final Rule omitted several sectors from its applicability, such as certain oil and natural gas facilities, coal suppliers and manufacturers of light-duty and passenger trucks. It is expected that EPA will issue future rules to cover those sectors omitted in the Final Rule.

Facilities and suppliers covered by the Final Rule are required to begin collecting emissions data on the covered GHGs on January 1, 2010 and to submit the first annual report to EPA by March 31, 2011. Facilities that already report emissions quarterly under existing programs, such as the Acid Rain Program, are required to continue to report GHG emissions quarterly and also to submit the annual report required by the Final Rule. In contrast to the proposed rule, the Final Rule does not require subsequent annual reports from facilities and suppliers that report less than 25,000 metric tons of CO<sub>2</sub>e for five consecutive years, less than 15,000 metric tons of CO<sub>2</sub>e for three consecutive years or that cease emissions of regulated GHGs.

Facilities are required to certify their GHG emissions data, which will then be verified electronically by EPA. EPA will also conduct targeted audits to ensure compliance with the Final Rule. The GHG emissions data reported to EPA will be available to the public, while other data, including quantities of materials used or other information used in calculating the GHG emissions, may be protected under EPA's procedures that govern confidential business information. Future rulemaking by EPA in 2010 is intended to clarify what information may be protected from public disclosure.

The EPA's web-based reporting system is currently under development. EPA has developed guidance documents and will be holding a series of webinars and meetings to provide information and training to GHG regulated facilities. EPA has also developed an on-line applicability tool to assist individual facilities in determining whether they are required to report GHG emissions to the EPA under the Final Rule.

#### Potential Impacts of Final Rule

The anticipated impacts of the Final Rule on regulated facilities are increased costs relating to reporting and compliance. While EPA estimates the costs to comply with the Final Rule will be minimal, the costs to those facilities that are not currently reporting such information could be significant. Moreover, regulated facilities may incur costs as penalties for failure to comply with the Final Rule. The Preamble to the Final Rule broadly cites the Clean Air Act's penalty provisions as authority for future enforcement actions. According to the Preamble, EPA may penalize those who fail to comply with monitoring, reporting, and recordkeeping requirements with fines up to \$32,500 per day, as well as other administrative, civil, and criminal measures.

Please contact us if you would like assistance with determining the applicability of the Final Rule to your facility, or implementing the Final Rule's reporting requirements. ■

*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.*