

U.S. EPA Proposes Mandatory Greenhouse Gas Emission Reporting Rule

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On March 10, 2009, U.S. EPA released its long-awaited proposed rule for mandatory reporting of greenhouse gas (GHG) emissions. This rule provides the first clear indication of the potential scope of the Obama Administration's plans for regulating GHGs. The proposed rule, which was Congressionally mandated in an appropriations bill signed by President Bush in late 2007, would require the first annual GHG emission report to be submitted on March 31, 2011, covering emissions for the calendar year beginning January 1, 2010. EPA estimates that its rule will cover 85-90% of total U.S. GHG emissions, from approximately 13,000 facilities, at a cost of 4 cents per metric ton of reported emissions.

The proposed rule, if adopted as drafted, would require the following industries to report their emissions:

- Suppliers of fossil fuels and industrial GHGs
- Vehicle and engine manufacturers
- Any emitter of a minimum of 25,000 metric tons annually of GHGs

- Other specified sources, with different, lower or no GHG thresholds

The GHGs covered by the proposed rule are: carbon dioxide (CO₂); methane (CH₄); sulfur hexafluoride (SF₆); nitrous oxide (N₂O); perfluorocarbons (PFC); hydrofluorocarbons (HFC); and other fluorinated gases, including nitrogen trifluoride (NF₃) and hydrofluorinated ethers (HFE). All GHGs will be measured and reported in CO₂ equivalents (CO₂e), based on a conversion table supplied in Table A-1 to the proposed rule.

Reporting Methodology for Stationary Sources

The reporting methodology for stationary sources varies depending upon the industry sector, but generally are at the facility, rather than corporate, level. Facilities already required to report and collect data regarding one or more GHG, such as those facilities regulated under the Clean Air Act Acid Rain Program, would report GHG emissions based on direct measurements of emissions from each facility. Facility-specific

calculation methods will be used for other sources. The proposed rule provides those calculation methods by industry sector, with sectors defined by their NAICS code, starting at Subpart C.

Reporting Threshold Calculation for Stationary Sources

Unless otherwise addressed, any stationary facility that meets the annual emissions threshold of 25,000 tons of CO₂e, in total, must report all GHGs for which there are methods to measure data. Notably, EPA's threshold is higher than the 10,000 ton-CO₂e threshold specified in the 110th Congress' Lieberman-Warner bill. A facility may develop capacity-based thresholds, if feasible. Those facilities in the Acid Rain Program, typically electricity generators and oil refineries, are expected to use capacity-based thresholds. Some facilities will have no threshold or thresholds different from 25,000 tons of CO₂e. The threshold applicable to each source category is provided in the section of the proposed rule entitled "§ 98.2 Do I Need to Report?". EPA also provides tables

summarizing the threshold triggers in its Fact Sheet for the proposed rule's General Provisions, at: www.epa.gov/climatechange/emissions/downloads/GeneralProvisions.pdf

All suppliers of fossil fuels, *i.e.*, producers, importers, and exporters, would be required to report the total volume of fuel placed in the economy that year and the emissions associated with complete oxidation of that fuel. EPA recognizes that counting emissions from both suppliers and combustion sources will lead to double-reporting of GHG emissions. However, EPA seeks to obtain this information from both "downstream" and "upstream" sources in order to have a broad database for future policy decisions. (See March 10, 2009, pre-Federal Register publication of proposed rule (Draft), pp. 93-95.)

Suppliers of industrial GHGs, *i.e.*, fluorinated gases, N₂O, and CO₂, would be required to report the annual volume they place in the economy and the emissions associated with a complete release of their products. Suppliers are subject to a threshold of a volume of gases potentially releasing 25,000 tons of CO₂e, annually.

Reporting by Mobile Sources (Vehicle and Engine Manufacturers)

Most mobile source manufacturers already are required to measure and report CO₂ under U.S. EPA and California regulations. Under the proposed rule, these requirements would be expanded to include not only CO₂, but CH₄, N₂O, and HFCs for new engines and vehicles. Emissions would be reported annually, at a rate such as grams/mile, which would make it similar to current reporting requirements.

Small manufacturers, as already defined for each mobile source category in 40 CFR Parts 1033 through 1065, would be exempt from reporting requirements.

The proposed rule currently does not require that industries or state/local governments with vehicle fleets report their in-use emission data. However, EPA seeks public comment on whether such data should be mandatorily reported. (See Draft, p. 753.)

Reporting Procedures and Liability

Except for those facilities already required to report a GHG emission more often, such as those reporting GHGs pursuant to the Acid Rain Program, reporting would be once a year. The beginning of the reporting schedule would be adjusted if the rule is not finalized in time. All reporting would be to a central EPA registry, with electronic forms to be provided by EPA. As in most other EPA reporting regimens, no third-party verification of data would be required. The facility's or supplier's owner/operator will be required to certify the data's accuracy. EPA would be entitled to bring an enforcement action for non-compliance, including inaccurate reporting or failure to report.

Record Retention

A facility or supplier subject to this rule would be required to maintain, for five years, records with the following information:

- The annual GHG emission reports
- A list of all units, operations, processes, and activities for which GHG emissions are calculated

- The data used to calculate GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type
- Documentation of process used to collect the data for GHG emission calculations
- GHG emission calculations and methods used
- All emission factors used for GHG emissions calculations
- Facility operating data or process information used for GHG emission calculations
- Names and documentation of key facility personnel involved in calculating and reporting GHG emissions
- A log book documenting any procedural changes to the GHG emission accounting methods and any changes to the instrumentation critical to GHG emission calculations
- Missing data computations
- A written quality assurance performance plan
- All other data specified in any applicable subpart of the rule

Finalizing the Rule

The proposed rule, when finalized, will be codified at 40 CFR Part 98. Comments on the proposed rule must be submitted 60 days after the Draft's publication in the Federal Register. Public hearings will be held on April 6 and 7, 2009, in Washington, D.C., and on April 16, 2009, in Sacramento, California. The Draft and comprehensive information on the proposed rule can be found at: www.epa.gov/climatechange/emissions/ghgrulemaking.html

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