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March 17, 2009

## PROPOSED MANDATORY GREENHOUSE GAS REPORTING RULE

EPA has initiated a watershed event in the effort to control earth-warming greenhouse gas (GHG) emissions — one that will likely usher in profound and far-reaching effects on all sectors of the economy that emit significant GHGs. The action delivers on a promise the Obama campaign and administration made to the American people to distinguish themselves from the prior administration and more seriously address a problem they believe may cause serious worldwide effects for current and future generations.

In response to the December 26, 2007 FY08 Consolidated Appropriations Act ("Act"), EPA has proposed a rule that requires mandatory reporting of GHG emissions from large sources in the United States. See <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. The Act requires a final rule by June 2009. The purpose of the rule is to collect emissions data to inform future policy decisions. The proposal does not require control of GHG, but requires only that sources above certain threshold levels monitor and report emissions. Moreover, it is not meant to be a registry tracking individual projects or reductions, and is not intended to replace the Inventory of U.S. Greenhouse Gas Emissions and Sinks ("Inventory"). The Inventory is the annual U.S. GHG inventory that is submitted to the United Nations as a requirement under the United Nations Framework Convention on Climate Change. The proposed rule focuses on "bottom-up" data and individual sources, in contrast to the Inventory, which is a "top-down" assessment of national GHG emissions.

EPA proposes that suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions submit annual reports to EPA. The 25,000 threshold is equivalent to emissions of annual energy use of about 2,200 homes. The gases covered by the proposed rule are carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF<sub>6</sub>), and other fluorinated gases including nitrogen trifluoride (NF<sub>3</sub>) and hydrofluorinated ethers (HFEs).

Public comments are due 60 days following publication in the Federal Register and can be submitted to:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov)
- Fax: 202-566-1741
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention: Docket ID No. EPA-HQ-OAR-2008-0508, 1200 Pennsylvania Avenue, NW, Washington, DC 20460
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. Deliveries are only accepted during the Docket's normal hours of operation which are federal government work days from 8:30 AM to 4:30 PM. Special arrangements should be made for deliveries of boxed information.
- It is important to reference the Docket number EPA-HQ-OAR-2008-0508 in submitting comments.

Two public meetings will be held: April 6 and 7, 2009 at EPA Potomac Yard Conference Center, Arlington, VA, and April 16, 2009 at Sacramento Convention Center, Sacramento, CA. An EPA hotline for general and administrative questions about the proposal can be accessed at 1-877-GHG-1188.

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## Sectors That Must Report

The proposed rules will require reporting by and impose other obligations on owners and operators of the following facilities:

### Listed Source Categories

A facility that contains any of the source categories listed below in any calendar year starting in 2010. For these facilities, the GHG emission report would cover all sources in any source category for which calculation methodologies are provided in proposed 40 C.F.R. part 98, subparts B through JJ.

- Electricity generating facilities that are subject to the Acid Rain Program, or that contain electric generating units that collectively emit 25,000 metric tons of carbon dioxide-equivalent (CO<sub>2</sub>e) or more per year (a CO<sub>2</sub>e is a GHG multiplied by its global warming potential)
- Adipic acid production
- Aluminum production
- Ammonia manufacturing
- Cement production
- Electronics – Semiconductor, microelectromechanical systems (MEMS), and liquid crystal display (LCD) manufacturing facilities with an annual production capacity that exceeds any of the thresholds listed in this paragraph – Semiconductors: 1,080 m<sup>2</sup> silicon, MEMS: 1,202 m<sup>2</sup> silicon, LCD: 235,700 m<sup>2</sup> LCD
- Electric power systems that include electrical equipment with a total nameplate capacity that exceeds 17,820 lbs (7,838 kg) of SF<sub>6</sub> or PFCs
- HCFC-22 production
- HFC-23 destruction processes that are not colocated with a HCFC-22 production facility and that destroy more than 2.14 metric tons of HFC-23 per year
- Lime manufacturing
- Nitric acid production
- Petrochemical production
- Petroleum refineries
- Phosphoric acid production
- Silicon carbide production
- Soda ash production
- Titanium dioxide production
- Underground coal mines that are subject to quarterly or more frequent sampling by MSHA of ventilation systems
- Municipal landfills that generate CH<sub>4</sub> and N<sub>2</sub>O in amounts equivalent to 25,000 metric tons CO<sub>2</sub>e or more per year
- Manure management systems that emit CH<sub>4</sub> and N<sub>2</sub>O in amounts equivalent to 25,000 metric tons CO<sub>2</sub>e or more per year

### Stationary Fuel Combustion Units, Miscellaneous Use of Carbonates, and Other Source Categories

Any facility that emits 25,000 metric tons CO<sub>2</sub>e or more per year in combined emissions from stationary fuel combustion units, miscellaneous use of carbonates and all of the source categories listed below that are located at the facility in any calendar year starting in 2010. For these facilities, the GHG emission report would cover all source categories for which calculation methodologies are provided in proposed 40 C.F.R. part 98, subparts B through JJ of the rule.

- Electricity Generation
- Electronics – Photovoltaic Manufacturing
- Ethanol Production
- Ferroalloy Production
- Fluorinated Greenhouse Gas Production
- Food Processing

- Glass Production
- Hydrogen Production
- Iron and Steel Production
- Lead Production
- Magnesium Production
- Oil and Natural Gas Systems
- Pulp and Paper Manufacturing
- Zinc Production
- Industrial Landfills
- Wastewater

### Facilities Meeting Three Conditions/Stationary Fuel Combustion Sources

Any facility that in any calendar year starting in 2010 meets all three of the conditions listed in this paragraph. For these facilities, the GHG emission report would cover emissions from stationary fuel combustion sources only. For 2010 only, the facilities can submit an abbreviated emissions report according to proposed 40 C.F.R. 98.3(d).

- The facilities do not contain any source in any source category designated in the above two paragraphs;
- The aggregate maximum rated heat input capacity of the stationary fuel combustion units at the facility is 30 mmBtu/hr or greater; and
- The facility emits 25,000 metric tons CO<sub>2</sub>e or more per year from all stationary fuel combustion sources.

### Coal, Petroleum, Natural Gas and GHG Suppliers

Any supplier of any of the products listed below in any calendar year starting in 2010. For these suppliers, the GHG emissions report would cover all applicable products for which calculation methodologies are provided in proposed 40 C.F.R. part 98, subparts KK through PP.

- Coal
- Coal-based liquid fuels
- Petroleum products
- Natural gas and national gas liquids (NGLs)
- Industrial GHGs: All producers of industrial GHGs, importers and exporters of industrial GHGs with total bulk imports or total bulk exports that exceed 25,000 metric tons CO<sub>2</sub>e per year
- CO<sub>2</sub>: All producers of CO<sub>2</sub>, importers and exporters of CO<sub>2</sub> or a combination of CO<sub>2</sub> and other industrial GHGs with total bulk imports or total bulk exports that exceed 25,000 metric tons CO<sub>2</sub>e per year

### Mobile Sources and Engine Manufacturers

Manufacturers of mobile sources and engines would be required to report emissions from the vehicles and engines they produce, generally in terms of an emission rate. These requirements would apply to emissions of CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and, where appropriate, HFCs. Manufacturers of the following vehicle and engine types would need to report: (1) manufacturers of passenger cars, light trucks, and medium-duty passenger vehicles, (2) manufacturers of highway heavy-duty engines and complete vehicles, (3) manufacturers of nonroad diesel engines and nonroad large spark-ignition engines, (4) manufacturers of nonroad small spark-ignition engines, marine spark-ignition engines, personal watercraft, highway motorcycles, and recreational engines and vehicles, (5) manufacturers of locomotive and marine diesel engines, and (6) manufacturers of jet and turboprop aircraft engines.

EPA is proposing that reporting be at the facility level. A few exceptions require reporting at the corporate level, such as fossil fuel importers and exporters, vehicle and engine manufacturers, and local gas distribution companies.

The reporting would cover 85-90 percent of total national U.S. GHG emissions from approximately 13,000 facilities. Most smaller businesses would not be required to report because they would fall below the 25,000 metric ton threshold. Moreover, most emissions sources from the agriculture sector would not be covered, except for livestock operations with GHG emissions from manure management systems that meet or exceed the threshold of 25,000 metric tons. This would cover 40-50 percent of the very largest livestock operations. Commercial and residential buildings with an aggregate maximum rated heat input capacity equal to or greater than 30 mmBtu/hr may meet the threshold, depending on calculations.

## What Has to be Reported?

The report would include total annual GHG emissions in metric tons of CO<sub>2</sub>e aggregated for all source categories and all supply categories for which emission calculation methods are provided in Part 98. The report would also separately present annual mass GHG emissions for each source category and supply category, by gas. Separate reporting requirements are provided for vehicle and engine manufacturers. These sources would be required to report emissions from the vehicles and engines they produce, generally in terms of an emission rate.

Within a given source category, the report would break out emissions at the level required by the respective subpart (e.g., reporting could be required for each individual unit for some source categories and for each process line in other source categories.)

In addition to GHG emissions, you would report certain activity data (e.g., fuel use, feedstock inputs) that were required to generate the emissions data.

For facilities subject to the Acid Rain Program and Nitrogen Oxides Trading Programs, the GHG reporting rule proposes to use the same CO<sub>2</sub> data rather than require additional reporting of CO<sub>2</sub> from Electric Generating Units. The facilities, however, would have to include reporting of GHG emissions, such as CH<sub>4</sub> and N<sub>2</sub>O.

## Methodology

EPA is proposing a direct measurement of stationary combustion source categories where data is currently collected. The Agency will require facility-specific calculation methods for other source categories at the facility.

## Timing

Data collection would begin January 1, 2010, with the first reports submitted to EPA March 31, 2011, except for vehicle and engine manufacturers, which would begin reporting for model year 2011. The reporting would be annual. An exception would apply for those facilities already reporting quarterly for existing mandatory programs, such as the Acid Rain Program. Those facilities would continue to report quarterly.

## Verification

The reporter would self-certify emissions data and EPA would QA/QC the reports. EPA can take enforcement action for non-compliance. The Clean Air Act (CAA) provides for several levels of enforcement that include administrative, civil, and criminal penalties. The CAA allows for injunctive relief to compel compliance and civil and administrative penalties up to \$32,500 per day.

## Confidentiality

Reporters need to consider whether information is confidential business information (CBI) in accordance with regulations in 40 C.F.R. Chapter 1, Part 2, Subpart B. EPA states, however, that emissions data under the Clean Air Act sections 114 and 208 cannot be considered CBI.

Holme Roberts & Owen's Environmental Practice Group are available to answer your questions or serve your legal needs regarding the rule. Please contact Charlotte L. Neitzel, Daniel J. Dunn, Alan Gilbert, Colin G. Harris, or E. Blaine Rawson. Their contact information is on the right side of page one.

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