

EPA TO REQUIRE REPORTING OF GREENHOUSE GAS EMISSIONS

On March 10, 2009, the U.S. Environmental Protection Agency (“EPA”) announced the Mandatory Reporting of Greenhouse Gases rule, a proposed regulation creating a nationwide system for reporting greenhouse gas (“GHG”) emissions.¹ As proposed, the rule creates only an information-gathering program to monitor GHG emissions and does not contain any incentives or mandates to reduce or control emissions. EPA will be seeking comment on the rule for up to 60 days after its publication in the Federal Register, which is anticipated shortly. Once the rule is finalized, data collection will be required during 2010, with GHG reporting beginning on March 31, 2011, for most facilities and suppliers covered.

Will This Affect You? Approximately 13,205 facilities and suppliers will likely be impacted. Industries affected by this proposal include, but are not limited to, fossil fuel and industrial chemical producers and suppliers, manufacturers of finished engines and vehicles, electricity generators, food processors, landfill and wastewater treatment operators, iron and steel producers, glass manufacturers, and cement producers.² The proposed rule will require both specific industries, referred to in the rule as “source categories,” and facilities that produce 25,000 metric tons of CO₂ equivalent or more of GHG emissions per year to submit annual GHG emission reports to EPA.³ EPA believes that the program will cover approximately 85-90% of all U.S. GHG emissions, while keeping the reporting burden to a minimum for small GHG emitters. The rule has been in development for over a year and funding was authorized by the FY2008 Consolidated Appropriations Act signed into law by President Bush on December 26, 2007.

What Type of Reporting Will Be Required? Under the proposed rule, reports must generally include facility emissions from operations and projected emissions from products sold into the market. Data would be self-produced and not subject to any third-party oversight or verification. Information collected under the program would be made available to the public, with the exception of information asserted to be confidential business information. Failure to report GHG emissions in accordance with the rule could lead to enforcement actions by EPA under the Clean Air Act, including criminal penalties, injunctive relief, and civil and administrative penalties. The cost of compliance would vary from facility to facility. It will be necessary to understand how the rule applies to your organization so you can develop procedures and train employees in

¹ See <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html> for a prepublication copy of the proposed rule.

² See http://www.epa.gov/climatechange/emissions/ghg_infosheets.html for information sheets for each of the source categories in the proposed rule.

³ The GHGs covered by the rule include carbon dioxide, methane, nitrogen oxide, hydrofluorocarbon, perfluorocarbon, sulfur hexafluoride, and other fluorinated gases.

advance of when data collection is proposed to begin. EPA estimates the total national cost of compliance for the first year would be approximately \$168 million, with each subsequent year costing \$134 million.⁴

Once subject to the rule, facilities and suppliers will be required to continue reporting annually, even if in future years they reduce their emissions to below the reporting threshold. The rule also does not address any real-world carbon offsets or credits that a reporting entity might have. Seventeen states already participate in, or are developing, mandatory GHG reporting systems on the state or regional level. EPA's goal for its proposal is to supplement, rather than displace, these existing programs and use protocols and methodologies similar to those already used in such programs.

Potential Future Ramifications: Why Is EPA Collecting This Data? EPA seeks to have the program provide timely and accurate data on facility-level GHG emissions for the entire U.S. economy. According to EPA, this information will be used to help inform future climate change policy decisions such as research and development initiatives, economic incentives, new or expanded voluntary programs, adaptation strategies, emission standards, a carbon tax, or a cap-and-trade program. There is speculation that if the rule is finalized, reports submitted under it could become the baseline for GHG allocations under a future national cap-and-trade system, which the Obama Administration appears to support. In light of EPA's recent separately announced proposed finding that carbon dioxide poses a danger to public health,⁵ the GHG reporting requirement could also become part of Title V permitting under the Clean Air Act. Accordingly, consideration should be given to determining the applicability of the proposed rule to your organization and documenting any finding that it is not applicable.

Next Steps. Since January 2008, EPA has held meetings with more than 250 stakeholders, including trade associations, state and local agencies, environmental groups, and other federal agencies that have programs relevant to GHG emissions. Public hearings will be held on April 6th and 7th in Arlington, Virginia and April 16th in Sacramento, California.⁶ EPA will be seeking comment on the rule for up to 60 days after it is published in the Federal Register. Following the publication of the final rule, EPA plans to conduct an outreach and technical assistance program to facilitate implementation of and compliance with the rule. In developing comments on the proposed rule and ultimately managing compliance with the rule when adopted, consultation with environmental professionals may be helpful in order to evaluate the rule's potential impact and compliance requirements applicable to your specific business.

⁴ Mandatory Reporting of Greenhouse Gases, Preamble, Docket ID No. EPA-HQ-OAR-2008-0508 (Mar. 10, 2009).

⁵ Ian Talley, *EPA Raises Heat on Emissions Debate*, WALL ST. J., Mar. 24, 2009, at A2.

⁶ Public Hearings for the Mandatory Reporting Rule for Greenhouse Gases, 74 Fed. Reg. 12,782 (Mar. 25, 2009).

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