

## **EPA Proposes Greenhouse Gases Reporting Rule**

**March 23, 2009**

On March 10, the U.S. Environmental Protection Agency (EPA) released a proposed rule for the Mandatory Reporting of Greenhouse Gases (GHGs). This rule was authorized by the FY2008 Consolidated Appropriations Act, which directed EPA to use its existing Clean Air Act authority to develop a reporting rule for emissions “resulting from upstream production and downstream sources.” It will be available for a 60-day public comment period once published in the *Federal Register*.

### **Coverage**

According to the EPA, its proposed rule would cover 85%–90% of GHG emissions. It would cover the major GHGs, including carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons, and other fluorinated gases. The rule would apply to upstream facilities (i.e., producers and suppliers of fossil fuels and industrial gases) and to downstream facilities (i.e., facilities that combust fossil fuels or use industrial gases and directly emit GHGs from their processes or fuel combustion), as well as to manufacturers of vehicles and engines, as follows:

Downstream coverage of facilities would include:

- Facilities with units in certain source categories (e.g., petroleum refineries, petrochemical production, cement production)
- Facilities emitting 25,000 metric tons of carbon dioxide equivalent (CO<sub>2</sub>e—a measurement that converts the warming potential of other GHGs to an equivalent of CO<sub>2</sub>) per year in any calendar year starting in 2010 from listed source categories (e.g., electricity generation, industrial landfills, glass production)
- Facilities that contain no designated source categories, but starting in calendar year 2010, have an aggregate maximum rated heat input capacity of at least 30 mmBtu/hr and emit at least 25,000 metric tons CO<sub>2</sub>e per year from all stationary fuel combustion sources
  - These facilities file an abbreviated report in 2010, covering stationary fuel combustion sources only

Upstream coverage of facilities would include:

- Fossil fuel suppliers (coal, coal-based liquid fuels, petroleum products, and natural gas)

- Suppliers of industrial GHGs and CO<sub>2</sub> including all producers, and importers or exporters with total imports or exports greater than 25,000 metric tons of CO<sub>2</sub>e per year.

Vehicle and engine manufacturers would include manufacturers of engines and mobile sources such as the following:

- Passenger cars and light trucks
- Medium-duty passenger vehicles
- Heavy-duty engines
- Nonroad diesel engines
- Nonroad spark-ignition engines
- Personal watercraft
- Highway motorcycles
- Locomotive and marine diesel engines
- Jet and turboprop aircraft engines

## **Reporting**

Reports are first due March 31, 2011 for calendar year 2010 emissions (except for vehicle and engine manufacturers, which have a separate reporting scheme beginning with the 2011 model year). Reporting is generally done at the facility level and is on an annual basis. The reports must contain the aggregated CO<sub>2</sub>e for specified source categories and supply categories. The reports are certified as true and accurate by a designated representative of the owner or operator of the facility, with EPA verification of the reports. The proposed rule follows the “once in, always in” approach, which provides that once a facility is subject to the rule’s requirements, it will continue to be required to make reports, even if it no longer meets the standards that initially triggered reporting.

## **Measurement**

For units that already require continuous emissions monitoring systems (CEMS) under other federally enforceable programs (e.g., NSPS or SIPs), direct measurement of GHGs is required. Facilities that do not have units with CEMS installed can choose to either directly measure or to use facility-specific calculation methods. The facility-specific methods differ by source category, but include options such as using input data from fuel or raw material use. Vehicle and engine manufacturers have separate reporting requirements, generally requiring the calculation of an emissions rate.

## **Further Rulemaking and Future Compliance**

Throughout the proposal EPA solicits comments on a variety of issues including the relationship between this proposal and other GHG programs, application of the program to specific industries, and the role of states in compliance and enforcement. For some industries or facilities, this proposal will introduce substantial data collection requirements. For others, this proposal represents an expansion of environmental data collection and reporting requirements to cover GHGs for the first time. For still other industries, the data collection requirements in the proposal may overlap with, and fail to align with, existing GHG data collection programs and could result in reports of GHGs that may not be consistent with previously reported GHG data. We encourage companies to review the proposal and

participate in the rulemaking process to ensure the development of an accurate and effective program.

We strongly encourage those companies for which this proposal introduces new data collection requirements to begin developing their data collection and reporting programs now. Although the Rule is only a proposal and may be revised before being made final later this year, data collection activities will be required as of 2010 with reports due in March 2011. This preparatory work includes surveying current assets to identify covered facilities or products, developing data collection mechanisms with respect to such facilities, and developing auditing or other techniques to ensure data accuracy.

Morgan Lewis attorneys have experience working with a number of industries and their existing emissions reporting requirements, and can provide assistance in understanding the potential impact of this proposal and in preparing comments for those who wish to participate in the rulemaking.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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