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Mandatory Reporting of Greenhouse Gases Final Rule (74 Fed. Reg. 56,260)

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Effective since December 29, 2009, the Environmental Protection Agency's (EPA's) Mandatory Reporting of Greenhouse Gases Rule requires approximately 10,000 facilities, which are large emitters and suppliers of greenhouse gases (GHGs), to collect and annually report GHG data. The EPA estimates that the new program will cover 85% of United States GHG emissions, at a cost of $132 million in 2010 and $89 million in subsequent years. The data will allow businesses to compare their emission quantities with similar facilities, identify cost-effective methods to improve operational efficiency, and reduce GHG outputs. The goal of the new reporting system is to provide greater transparency regarding GHG emissions sources, allow public and institutional stakeholders to hold emitters responsible, and assist policymakers in the development of future legislation in the fight against climate change.

In general, the rule applies to specified sources that emit GHGs in an amount equal to or greater than 25,000 metric tons of carbon dioxide or its equivalent (CO_2e) per year. GHGs that must be monitored and reported include: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorcarbons (PFC), sulfur hexafluoride (SF_6), and other fluorinated gases.

The rule classifies GHG emitters into three categories: upstream sources, downstream sources, and manufacturers of vehicles and engines. Upstream sources consist of suppliers, producers, distributors, importers, and exporters of fossil fuels (i.e., petroleum products, natural gas, and coal-based fuels) and industrial GHGs.

Downstream sources include facilities with operational processes that use industrial GHGs or combust fossil fuels, and that directly emit regulated GHGs. These facilities are split further into three categories. The first category is stationary combustion facilities with operations that contain one of seventeen specified sources (including, electricity generation, petroleum refineries,

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petrochemical production, cement production and aluminum production). The second category includes facilities with operations that contain one of seven specified sources (including, glass production, lead production, iron and steel production, hydrogen production, zinc production, and paper and pulp manufacturing) that emit 25,000 metric tons of GHGs or more per year. The rule establishes a "catch all" provision for downstream facilities that do not fall into the above two categories. Accordingly, (the third category includes) facilities that do not contain a designated source, but have an aggregate maximum rated heat input capacity of at least thirty mmBtu/hr (one million British thermal units per hour) and emit at least 25,000 metric tons from all stationary combustion sources.

Finally, manufacturers that produce heavy-duty vehicles, off-road vehicles, or engines are also subject to the rule's reporting requirement. Additionally, the EPA does not require mobile sources, including fleet operators and vehicle owners to report at this time because such emissions are covered by reports from fuel suppliers and engine manufacturers.

Reports must be submitted to the EPA electronically by March 31 of each calendar year. However, facilities may cease reporting after five consecutive years of emissions under the 25,000 metric ton threshold, three consecutive years of emissions under 15,000 metric tons, or upon ceasing GHG emitting operations. Moreover, the rule does not supersede the quarterly reporting requirements applicable to facilities regulated under the Acid Rain Program (ARP). These facilities will continue to submit quarterly reports in addition to the annual reports outlined in the new rule. Although the EPA considered a quarterly reporting system based on comments on the proposed rule, the agency opted for an annual requirement. Most reports are prepared at the facility level, while corporate-level reporting is permissible for upstream sources and vehicle and engine manufacturers. Because downstream sources directly emit GHGs, the EPA determined that localized oversight was necessary to facilitate the rule's primary objective.

The rule's reporting provisions ensure the accuracy of emissions data through monitoring and verification. "Best available" monitoring methods may be used through March 31, 2010. After that time, facilities must comply with the monitoring methods specified in the regulations. For facilities already required under federal law to monitor emissions, direct measurement of GHGs is required. Facilities that are not subject to other federal monitoring requirements may choose to directly measure or to use facility-specific calculation methods. These facility-specific methods differ by source category. On the other hand, upstream suppliers must report annual GHG quantities based on theoretical combustion or actual use of products supplied, imported,

or exported. Any change in calculation methodologies must be noted and explained in the report. Additionally, although third-party verification is not required, reporting facilities must self-certify using a designated representative of the owner or operator. The representative must ensure that the report includes both monitoring and calculation methodologies, the facility name, address, dates covered, and submission date.

Implementation of this rule relies on the agency's existing authority under the Clean Air Act (CAA). The CAA provides the EPA with the authority to take enforcement action for non-compliance with the rule. The EPA considers the following to be violations: (i) failure to continuously monitor and test as required; (ii) failure to collect data needed to calculate emissions; (iii) failure to calculate emissions using the methodologies specified in the regulations; (iv) failure to report; (v) failure to keep records for verification purposes; and (vi) falsification of information in the reports. If the EPA finds a given facility to be in violation of the rule, that facility may be subject to daily fines.

Notably, the EPA deferred action on eleven emission sources listed in the proposed rule. Sources for which the EPA failed to develop final requirements include: electronics manufacturing, SF_6 from electrical equipment, food processing, ethanol production, fluorinated GHG production, magnesium production, oil and natural gas systems, underground coal mines, industrial landfills, wastewater treatment, and suppliers of coal.

EDITORS NOTE: On March 22, 2010, EPA Administrator Lisa P. Jackson signed four proposed rules that would amend the Mandatory Greenhouse Gas Reporting Rule. The proposed rules would require GHG emissions data reporting by the oil and natural gas industries, industries that emit fluorinated GHGs, and entities that store CO_2 underground for sequestration or oil and gas recovery purposes. EPA intends to promulgate these rules in 2010.