



Environmental

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EPA Issues Proposed Greenhouse Gas Reporting Rule

In a move that is widely viewed as a precursor to comprehensive federal climate change legislation, on March 10, 2009, the Environmental Protection Agency (EPA) issued a proposed rule that would require large emitters of greenhouse gases (GHGs) to submit annual reports of their GHG emissions¹ to EPA. The proposed rule was anticipated as the FY2008 Consolidated Appropriations Act, signed December 2007, provided EPA with funding to develop a draft rule that would require mandatory reporting of GHG emissions. By issuing the proposed rule, the Obama administration has signaled an intent to prioritize climate change policy.

The proposed rule would require both upstream and downstream sources of GHG emissions to report their GHG emissions. EPA estimates that 85 to 90 percent of all United States GHG emissions from approximately 13,000 facilities would be covered. Specifically, the proposed rule applies to fuel suppliers; facilities that emit 25,000 metric tons or more of CO₂ equivalent (CO₂e) per year from fuel combustion sources; electric generating units that emit 25,000 metric tons or more of CO₂e per year; landfills and large animal waste management operations that generate 25,000 metric tons or more of CO₂e from CH₄ per year; facilities in certain source categories such as aluminum production, petrochemical refineries, and cement production; as well as vehicle and engine manufacturers.

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Covered businesses would be required to start collecting data on January 1, 2010, and would have to submit their first GHG emissions report on March 31, 2011. Vehicle and engine manufacturers would report beginning with the 2011 model year. Subsequent reporting would be required on an annual basis. Interestingly, the proposed rule has a “once in, always in” component – companies would have to continue to submit GHG emissions reports even if their actual emissions fall under the reporting thresholds. Total annual GHG emissions would be reported in metric tons of CO₂e. Vehicle and engine manufacturers would report in terms of an emissions rate. Regulated entities would report on a facility level, except for fuel importers and vehicle and engine manufacturers, which would report on a corporate level.

EPA’s proposed reporting rule is also an important first step toward a broader federal regulatory program to limit and, ultimately, reduce GHG emissions. Indeed, EPA specifically commented in its proposal notice that the GHG emissions information generated under the proposed rules would be helpful in developing future climate change policy. Quantifying GHG emissions across the key industrial sources would inform EPA’s future decision-making about whether and how to restrict GHGs. A GHG registry would also aid EPA in determining the number of allowances to distribute under a cap and trade program.

¹ The GHGs covered by the proposed rule are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF₆), and other fluorinated gases, including nitrogen trifluoride (NF₃) and hydrofluorinated ethers (HFE).

After the proposed rule is published in the Federal Register, the public will have 60 days to submit comments to the EPA. Additionally, two public hearings on the proposed rule are planned; April 6 and 7 in Arlington, VA, and April 16 in Sacramento, CA. Winston & Strawn's environmental attorneys are prepared to assist in commenting on the proposed rule and with compliance with the rule when it is adopted by EPA.

Please contact any of the Winston & Strawn attorneys listed below if you have any questions or would like to discuss the proposed rulemaking:

Chicago

Eleni Kouimelis	(312) 558-5133	ekouimelis@winston.com
Averil Edwards	(312) 558-8310	aedwards@winston.com

San Francisco

Joseph Armao	(415) 591-1591	jarmao@winston.com
Matthew Narensky	(415) 591-6867	mnarensky@winston.com

Washington, D.C.

William Hall	(202) 282-5928	whall@winston.com
May Wall	(202) 282-5962	mwall@winston.com