



U.S. Environmental Protection Agency Issues Regulations for Carbon Emission Reporting

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In what is likely a first step toward developing comprehensive carbon emissions controls, the U.S. Environmental Protection Agency ("EPA") recently issued proposed regulations for a mandatory federal greenhouse gas reporting program. Pursuant to the 2008 Consolidated Appropriations Act, which instructs the EPA to require mandatory reporting of greenhouse gas emissions in all sectors of the economy, the regulations would cover 85-90% of total U.S. emissions and affect approximately 13,000 large industrial facilities. While regulations for measuring and reporting carbon emissions do not have the effect of reducing carbon emissions, any future program, such as cap and trade or a carbon tax, will need this data in order to be implemented effectively.

Who needs to report

The EPA's proposed regulations, which would be the first nationwide system for reporting major source emissions of CO₂ and other greenhouse gases in the U.S., would require reporting by all suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit more than 25,000 metric tons of carbon dioxide equivalents per year. (Greenhouse gas units are generally referred to in terms of carbon dioxide, but other gases, such as methane, can actually create much more harmful greenhouse gas effects.)

The 25,000 ton threshold would cover all significant sources, but is designed to not require reporting by individual commercial buildings or small businesses, in most cases. However, every potential source, unless somehow exempted, would be required to measure carbon emissions in order to determine whether the source was regulated under the rules. In order to avoid burdening small sources, the EPA is proposing that a facility, such as a commercial building with a stationary combustion unit with a maximum heat rate input capacity of less than 30 million BTUs per hour, will be assumed to not emit over 25,000 tons per year. Even if a building has a combustion unit in excess of that BTU threshold, facility operators should be able to utilize the particular fuels or hours of operation for the specific unit in order to determine if the threshold is reached.

What needs to be reported

The regulations require that actual emissions, not the potential to emit, to be reported. In other words, if a manufacturing facility with a combustion unit generating greenhouse gases is utilized only eight hours a day, what is to be measured and reported are the actual emissions, not what the source could produce if it ran 24 hours a day (as is common in some air pollution programs).

Interestingly, the proposed rule requires reporting of emissions from both upstream production facilities and downstream emission sources, such as an upstream supplier of fuel oil and the large end-user facility who burns the oil. In many cases this would result in double-reporting of emissions; however the EPA has stated that such double reporting is consistent with the appropriations language, and will provide information to EPA to craft policies that address both sides, such as cap and trade upstream and end-use emissions standards downstream.

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In calculating the total emissions from a particular “source,” all emissions from that source would be aggregated, and apparently all contiguous facilities under common ownership will be aggregated as well, in order to determine whether the threshold of 25,000 tons per year is reached.

Most major sources already utilize monitors on stacks to track emissions levels. However, in many cases, non-stack sources are not directly measured and will need to be estimated. The regulations include intricate detail on how such measurements will be undertaken for each type of industrial source. Non-major sources of air pollution will need to utilize heat inputs, raw material through-puts, etc., in order to determine emissions.

The proposed rules also contemplate that electricity usage would be reported along with greenhouse gas emissions. Since each power plant will be required to report its own emissions, the electricity consumption of an electricity consumer will not be directly translated into additional greenhouse gas emissions, but rather will be available as an indicator energy footprint.

The rules detail more than two dozen industries and analyze specific sources of emissions in each industry, existing mechanisms for measuring or estimating these emissions, and difficulties in reporting. For some industries, implementing the proposed rules will be more arduous than for others. A landfill will be required to report all the greenhouse gases it generates, not simply the greenhouse gases emitted (in the case where greenhouse gases are either flared or used for generation of electricity). Automobile manufacturers will be required not only to report emissions from manufacturing facilities, but from estimated usage of the engines produced. Fleet operators may also be required to report emissions.

Next steps

The proposed regulations are very broad, but the EPA is asking for comments on all aspects of the program including sources to be covered, reporting and measuring standards, and breadth and scope of the industries that are regulated. The EPA has also requested comments concerning the degree to which small sources should be impacted by these rules.

If adopted, the proposed rule would require reporters to submit their first annual greenhouse gas emissions report by March 31, 2011, based on emissions data from 2010. Facilities which already report emissions data quarterly would continue to do so. Requirements for vehicle and engine manufacturers would kick in with the 2011 model year.

Ultimately, the EPA believes that an effective national reporting system for greenhouse gas emissions will facilitate the discussion, development and implementation necessary for a national climate policy to move forward.

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