

EPA's Greenhouse Gas Reporting Rule

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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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Summary

- Select notable items in the reporting rule
 - Once in, always in
 - Emissions certification and verification
 - Direct vs. indirect emissions
 - 30 mmBtu/hr presumption
 - Emergency generators
 - Stationary fuel combustion sources
 - Hybrid calculation methodology considerations
- Interaction with State and Federal climate change programs
 - American Clean Energy and Security Act of 2009

Once In, Always In

- ❑ Once a facility is subject to the GHG reporting rule, it must continue to monitor and submit annual reports even if the facility falls below the 25,000 tons CO₂ e threshold in future years.
- ❑ EPA argues that it is important to track trends of large emitting sources for purposes of policy analysis, and trends are better evaluated if population of sources remains constant.
- ❑ EPA recognizes that the “once in, always in” approach does not provide an incentive for facilities to modify operations so as to fall below threshold.
- ❑ The CARB mandatory reporting rule allows for sources to be exempt if they fall below the applicable threshold for three consecutive years; EPA is seeking comment on whether the federal rule should adopt a similar approach.

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Emissions Certification and Verification

- ❑ EPA considered, but ultimately rejected, a requirement for third party certification of reported GHG emissions.
- ❑ Instead, annual reports must be certified as to their completeness, truth and accuracy by a “designated representative,” and these reports are subject to verification by EPA.
- ❑ EPA left open the possibility that third party verification may be appropriate for other purposes in the future, such as offsets.
- ❑ EPA explicitly requested comment on the certification and verification aspects of the rule.

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Direct vs. Indirect Emissions

- The GHG reporting rule proposes reports of direct GHG emissions from stationary sources.
- Other existing reporting programs require reporting of indirect emissions based upon protocols developed by the World Resources Institute and World Business Council for Sustainable Development.
 - Scope 1 – direct GHG emissions from sources owned or controlled by the business.
 - Scope 2 – indirect GHG emissions resulting from purchase of electricity, steam and/or heat.
 - Scope 3 – other types of indirect emissions (employee commuting and transportation, waste disposal, purchased materials.)
- EPA is taking comments on an approach that would require reporting of electricity purchase data, but no indirect emissions.

30 mmBtu/hr Presumption

- ❑ Under 40 CFR §98.2(a)(3), any facility that does not include any listed source categories, but does employ stationary fuel combustion sources with an aggregate maximum heat input of 30 mmBtu/hr or greater and that emit 25,000 tons per year of CO₂e are subject to the rule.
- ❑ EPA characterizes this provision as a presumption that facilities with aggregate stationary fuel combustion sources of less than 30 mmBtu/hr do not have to determine their CO₂e emissions.
- ❑ But if the aggregate maximum heat input of stationary sources at a facility equals 30 mmBtu/hr, then at a minimum the facility must determine its annual CO₂e emissions in accordance with the rule.
- ❑ EPA estimates that this provision will require 30,000 facilities to determine their CO₂e emissions, and of these 13,000 will end up being subject to the rule.

Emergency Generators

- ❑ The proposed rule excludes from the fuel combustion source category portable equipment or generating units designated as emergency generators, but they must be used for emergency purposes only.
- ❑ The units must be designated as “emergency generators” in a permit issued by a state or local air pollution control agency.
- ❑ The rule defines “emergency generator” as a “stationary internal combustion engine that serves solely as a secondary source of mechanical or electrical power whenever the primary energy supply is disrupted or discontinued during power outages or natural disasters that are beyond the control of the owner or operator of a facility.”
- ❑ Engines that serve as back-up power sources under conditions of load shedding, peak shaving, power interruption pursuant to an interruptible power source agreement, or scheduled facility maintenance are not considered emergency generators.



Stationary Fuel Combustion Sources

- The hybrid approach towards GHG calculations results in a four-tiered framework for CO₂ emissions based on size and fuel type.
 - Size: 250 mmBtu/hr cut point
 - Fuel type: solid fossil fuel; gaseous fossil fuel; liquid fossil fuel; biomass; MSW

- Four Tiers
 - Tier 1 – emissions factor, annual fuel use, and default heating value for fuel.
 - Tier 2 – emissions factor, annual fuel use, and measured heating value for fuel.
 - Tier 3 – annual fuel use and measured carbon content of fuel
 - Tier 4 – CEMS

- Table C-1 in the preamble summarizes what units qualify for each tier.

- You can always use a higher tier.

- N₂O and methane emissions are calculated use emissions factors, annual fuel use and measured or default HHV.

Hybrid Calculation Methodology Considerations

- The hybrid approach proposed in the GHG rule generally offers sources a range of options for calculating GHG emissions.
 - Direct measurement using CEMS
 - Sliding scale of direct measurement of inputs and use of emission factors
- The use of default factors tends to over estimate emissions.
- Are the default emission and other factors listed in the rule reasonable and appropriate?
- Do you want to be low or high when reporting emissions; does that change over time?
 - Allocation vs. Auction of allowances?
 - Growth plans?

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Interaction with State and Federal Climate Change Programs

- ❑ Many states are moving forward on climate change programs (e.g. CA, NJ).
- ❑ At the same time, the federal government is moving aggressively towards a nationwide GHG program.
 - Endangerment finding
 - Cap and trade legislation
- ❑ Reporting requirements under rule may kick in before federal or state emission reduction programs.
- ❑ Does timing issue affect how sources approach compliance under the GHG reporting rule?

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American Clean Energy & Security Act of 2009 (Waxman – Markey)

- The Safe Climate Act (Title VII) contains a number of provisions that are not necessarily consistent with the GHG reporting rule.
 - 17% below **2005** levels by 2020; 83% below **2005** levels by 2050
 - “Covered entities” are specific stationary sources emitting 25,000 tons per year CO₂e; producers and importers of petroleum fuels; natural gas sellers and other GHG producers—all as of **2008**
 - The universe of stationary sources does not precisely line up with the GHG reporting rule

American Clean Energy & Security Act of 2009 (Waxman – Markey)

- Directs EPA to issue within 6 months regulations establishing a federal GHG registry
 - Supposed to take into account methodologies used by existing state and regional programs, including the Climate Registry
 - “Reporting entities” include “covered entities” plus stationary sources that emit CO₂e greater than **10,000 tons** in any year starting in **2008**
 - Reporting entities may be required to submit data going back to **2007**
- Will Congress and EPA be able to square up cap and trade bill and the reporting rule to avoid inconsistent and duplicative reporting?

Questions?

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