

## EPA PROPOSES GREENHOUSE GAS REPORTING: IS CAP-AND-TRADE FAR BEHIND?

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To Our Clients and Friends:

On March 10, 2009, the United States Environmental Protection Agency (the “EPA”) released a proposed rule requiring mandatory reporting of carbon dioxide and other greenhouse gas (“GHG”) emissions. The rule requires facilities from various sectors of the economy to track their emissions of GHGs and report those emissions annually to the EPA. The first annual report is to be submitted to the EPA in 2011 for the calendar year 2010. Vehicle manufacturers would commence reporting for the 2011 model year.

Generally, the proposed rule targets large emitters of GHGs and suppliers of fossil fuels and industrial GHGs. Industrial facilities emitting more than 25,000 metric tons per year of carbon dioxide or carbon dioxide equivalents would be required to report. In addition, certain facilities listed in the rule, such as cement production facilities and petroleum refineries, would have to report their emissions even if they emit below the 25,000 ton threshold.

The new reporting requirements also apply to facilities that supply coal, coal-based liquid fuels, natural gas, natural gas liquids and petroleum products. Suppliers include producers, importers and exporters. Suppliers of certain industrial GHGs and motor vehicle and engine manufacturers are also subject to reporting requirements.

The EPA estimates the proposed rule will apply to approximately 13,000 facilities, accounting for 85% to 90% of the total domestic man-made GHG emissions. The agency believes the proposed rule would not affect most small businesses. It estimates compliance costs at \$160 million for the first year and \$127 million for subsequent years.

The rule does not require third-party verification of emissions. Rather, reporting entities would self-certify their emissions reports. Third-party verification would have significantly increased compliance costs for subject facilities.

Implementation of the proposed reporting system is largely viewed as an initial step towards the creation of a federal cap-and-trade system covering domestic GHG emissions. The EPA notes that “this is a reporting rule to collect accurate and comprehensive emissions data to inform future policy decisions.” The proposed rule helps lay the foundation for federal regulation of GHG emissions.

A 60-day public comment period will begin upon publication of the proposal in the Federal Register. Changes could be made to the rule based on the nature of comments received. Further information on the proposed rule can be found on the EPA's website at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

Please feel free to contact us with any questions.

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