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EPA Finalizes Rule Requiring Greenhouse Gas Reporting Starting in 2010

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Insight — 9/24/2009

The Environmental Protection Agency ("EPA") issued on September 22 a pre-publication draft of its final greenhouse gas reporting rule. The final rule requires approximately 10,000 facilities in a broad range of industrial and manufacturing sectors to begin monitoring their greenhouse gas ("GHG") emissions in January of 2010. The rule is designed to inform future EPA policy decisions, which EPA states would include the possible establishment of GHG New Source Performance Standards under the Clean Air Act.

The rule covers five categories of facilities: (1) listed source categories, including electricity generating facilities subject to the Acid Rain Program, aluminum production, cement production, lime manufacturing, soda ash production and petroleum refineries; also listed are large manure management systems that emit methane and nitrous oxide in amounts greater than 25,000 tons of carbon dioxide equivalent ("CO₂e") annually; (2) facilities within listed source categories that emit more than 25,000 metric tons of CO₂e annually, including ferroalloy production, lead production, iron and steel, and zinc production; (3) any facility not otherwise covered that has stationary fuel combustion units with an aggregate maximum rated heat input capacity of 30 million Btu per hour and 25,000 tons of CO₂e emissions annually from these stationary fuel combustion sources; (4) certain suppliers of fossil fuels; and (5) manufacturers of heavy-duty trucks, non-road mobile sources, aircrafts, locomotives and motorcycles, which must estimate emissions resulting from the engines. EPA estimates that the reporting rule will cover 85 percent of all U.S. GHG emissions.

Covered facilities must begin collecting data on January 1, 2010 and must submit their first reports to EPA on March 31, 2011.

The rule differs from the proposal in three substantive ways. First, EPA has backed away from the proposal that once a facility is required to report its GHG emissions under the rule, it must always report its GHG emissions – even if those emissions dip below the 25,000 ton CO₂e annual threshold. The final rule allows a facility to cease reporting if its annual GHG reports demonstrate emissions that are either less than 25,000 tons CO₂e for five years, or less than 15,000 tons CO₂e for three years. The facility is obligated to notify EPA of its intention to stop reporting and provide an explanation for the reduction in emissions. Second, the final rule provides a brief window during which facilities may use "best

available" monitoring methods if it is not "reasonably feasible" to acquire, install and begin operations of appropriate monitoring equipment by the January 2010 deadline. Facilities have until April 1, 2010 to install monitoring equipment, although EPA can grant dispensations through December 31, 2010 for facilities that demonstrate that they are not able to install the equipment. Finally, certain sectors, including oil and natural gas systems, food processing, ethanol production, magnesium production, underground coal mines and coal suppliers are not currently included in the reporting system. EPA is reviewing public comment and will make final determinations on these sectors at a future date.

EPA acknowledged that the rule may result in double counting of upstream and downstream CO₂ emissions, but it did not narrow the scope of the rule. For example, petroleum suppliers are required to estimate GHG emissions resulting from use of their product, petroleum refineries must report GHG directly emitted, and various stationary fuel combustion units must report direct GHG emissions from combustion of fossil fuels. EPA argued that statutory language required the agency to consider both upstream and downstream emission sources and the data is necessary for future rulemakings.

EPA estimates that the rule will cost \$115 million in the first year and \$72 million annually thereafter. The rule is subject to petitions for reconsideration and judicial review 60 days after final publication in the Federal Register.

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