

**Authors:****Lowell Rothschild**lrothshild@Venable.com
202.344.4065**Bob Smith**rgsmith@Venable.com
410.244.7590**Doug Green**dhgreen@Venable.com
202.344.4483**EPA Finalizes Greenhouse Gas Reporting Rule**

Earlier today, the U.S. Environmental Protection Agency (EPA) finalized its rule mandating the reporting of greenhouse gas (GHG) emissions across the country. As described in our March 26, 2009 Client Alert on EPA's proposed rule, the GHG reporting rule is tremendously expansive in both its breadth and depth, covering dozens of sectors of the economy and requiring hundreds of pages to describe. The final rule requires approximately ten thousand facilities to summarize and report their GHG emissions on an annual basis. Data must be collected starting in just over three months (January 1, 2010) for the first report, which is due March 31, 2011 for 2010 calendar year emissions. Any entity required to report under the rule will have to keep for three years a wide array of records related to their reports and reportable activities. Facilities are covered by the rule if they emit 25,000 metric tons or more of carbon dioxide (CO₂) (or CO₂ equivalent emissions) per year - an amount approximately equal to burning about 30 MMBTU/hr or about 2.5 million gallons of fuel per year. In addition, 31 prescribed industrial sectors must report even if their emissions fall below this threshold, including

- Manufacturers of lime, pulp, paper, vehicles and engines;
- Producers of aluminum, cement, glass, iron, steel, lead, phosphoric acid, nitric acid, and petrochemicals;
- Suppliers of coal-based liquid fuels, petroleum products, natural gas and natural gas liquids; and
- Petroleum refiners, municipal solid waste landfills, and manure management operations.

Significantly, included in the proposed rule but excluded for the time being from the final rule are electronics manufacturers; ethanol, magnesium and fluorinated GHG producers; food processors; industrial landfills; underground coal mines; coal suppliers; wastewater treatment facilities; and oil and natural gas systems. In addition, EPA has concluded it will not require fleet operators to report their emissions.

Other notable changes from the proposal include

- An escape hatch: The original rule required a facility to report its emissions for life even if it eventually fell below the 25,000 ton threshold. The new rule allows a facility to stop reporting if it drops below 25,000 tons for 5 years or below 15,000 tons for 3 years.
- A three-month monitoring phase-in: Facilities may use best available monitoring methods rather than mandated methods from January through March of 2010. EPA may extend this allowance if requested and may do so through the end of 2010.
- Modification of certain monitoring requirements, including methodologies, locations, and frequencies. In some circumstances, calculated estimates may now be used where monitoring was previously proposed.
- A clarification as to the size of manure management systems which fall under the rule.
- An exemption for R&D activities, emergency equipment, hazardous wastes, flares and unconventional fuels.
- A reduction in the document retention period from five years to three.

The final rule will be published shortly in the Federal Register. For more information on actions your industry or business must take to comply with the new rule, please contact Lowell Rothschild, Bob Smith, or Doug Green.

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