



MEMORANDUM

Via E-Mail

DATE: September 22, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: EPA Signs Final Rule Requiring Greenhouse Gas Emissions Reporting

Today the U.S. Environmental Protection Agency (EPA) announced that EPA Administrator Lisa Jackson signed a final rule that would require reporting of greenhouse gas (GHG) emissions from all sectors of the economy. The prepublication version of the final rule states that it applies to fossil fuel suppliers and industrial gas suppliers, direct GHG emitters, and manufacturers of heavy-duty and off-road vehicles and engines. The rule does not require control of GHG, “rather it requires only that sources above certain threshold levels monitor and report emissions.” The final rule will be effective 60 days after publication in the *Federal Register*. The first annual reports for the largest emitting facilities, covering calendar year **2010**, will be due to EPA **March 31, 2011**. The prepublication version of the final rule is available at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

According to EPA’s fact sheet, in general, the threshold for reporting is 25,000 metric tons or more of carbon dioxide (CO₂) equivalent per year.¹ Reporting will be required at the facility level, except that certain suppliers of fossil fuels and industrial GHGs, as well as vehicle and engine manufacturers, will report at the corporate level. Under the final rule, facilities and suppliers will begin collecting data on **January 1, 2010**, and the first emissions report is due on **March 31, 2011**.

¹ The fact sheet is available on the Internet at <http://www.epa.gov/climatechange/emissions/downloads09/FactSheet.pdf>.



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EPA estimates that 85 percent of the total U.S. GHG emissions, from approximately 10,000 facilities, are covered by the final rule. According to EPA, most small businesses would fall below the 25,000 metric ton threshold and are not required to report GHG emissions to EPA. The only emission source in the agriculture sector covered by the rule is manure management systems at livestock operations with GHG emissions that meet or exceed the threshold of 25,000 metric tons. EPA states that its modeling estimates that just over 100 manure management systems at large livestock operations meet this threshold. The final rule includes a table of examples of affected entities by category, which is appended.

EPA describes the following key changes from its April 10, 2009, proposed rule:

- **Applicability** -- Reduced the number of source and supply categories that facilities and suppliers must report under this final rule. The following source and supply categories are not required to report at this time:

Electronics manufacturing
Ethanol production
Fluorinated GHG production
Food processing
Industrial landfills
Magnesium production

Oil and natural gas systems
Sulfur hexafluoride from electrical equipment
Underground coal mines
Wastewater treatment
Suppliers of coal

- **Exiting the Program** -- Added a mechanism for facilities and suppliers to cease annual reporting by reducing their GHG emissions:
 - Cease reporting after five consecutive years of emissions below 25,000 metric tons CO₂-equivalent (CO₂e)/year;
 - Cease reporting after three consecutive years of emissions below 15,000 metric tons CO₂e/year; or
 - Cease reporting if the GHG-emitting processes or operations are shut down.
- **Measuring Devices** -- Added a provision to allow use of best available data in lieu of the required monitoring methods for **January - March**



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2010. Facilities can request a date extension beyond **March 2010**, but EPA will not approve any requests for an extension beyond **2010**.

- **Monitoring Equipment** -- In several subparts, added monitoring options, changed monitoring locations, or allowed engineering calculations to reduce the need for installing new monitors.
- **Sampling Frequency** -- For fuel combustion and some other source categories, reduced the required frequency for sampling and analysis.
- **Exemption** -- Excluded research and development activities from reporting.
- **Quality Assurance** -- Added calibration requirements for flow meters and other monitoring devices including a five percent accuracy specification.
- **Report Revision** -- Added provision to require submittal of revised annual GHG reports if needed to correct errors.
- **Records Retention** -- Changed the general records retention period from five years to three years.
- **Verification** -- In several subparts, required more data to be reported rather than kept as records to allow EPA to verify reported emissions.
- **Combustion Sources** -- Added exemptions for unconventional fuels, flares, hazardous wastes, and emergency equipment. Reduced the need for mass flow monitors for some units or fuels. Allowed more facilities to aggregate reporting of emissions from smaller units rather than report emissions for each individual unit.
- **Manure Management Systems** -- Added an animal population threshold to reduce the burden of determining applicability. Reduced the monitoring requirements.



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In addition to the prepublication version of the final rule and the fact sheet, EPA has posted frequently asked questions, and a presentation concerning the final rule. EPA states that an applicability tool and its response to comments are coming soon. EPA's website concerning the final rule is available on the Internet at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

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We hope this information is helpful. As always, please call if you have any questions.

Attachment