



JONES DAY COMMENTARY

U.S. EPA ANNOUNCES FINAL RULES FOR MANDATORY GREENHOUSE GAS REPORTING

On September 22, 2009, U.S. EPA announced its final rule for mandatory reporting of greenhouse gas emissions. The 711-page Reporting Rule ([available at http://www.epa.gov/climatechange/emissions/downloads09/FinalMandatoryGHGReportingRule.pdf](http://www.epa.gov/climatechange/emissions/downloads09/FinalMandatoryGHGReportingRule.pdf)) will require, for the first time, certain direct greenhouse gas emitters, fossil fuel and industrial gas suppliers, and manufacturers of vehicles and engines to collect and report information regarding the greenhouse gas emissions of their operations and/or products. EPA estimates that approximately 10,000 facilities will be required to report under the rule, covering approximately 85 percent of the nation's greenhouse gas emissions. Affected facilities will need to begin collecting emissions data on January 1, 2010, leaving facilities only about three months to prepare.

BACKGROUND

The Reporting Rule has its roots in the FY2008 Consolidated Appropriations Act, in which Congress allocated \$3.5 million for EPA to use its existing

Clean Air Act authority (primarily sections 114 and 208 of the Clean Air Act) to develop a rule for mandatory reporting of greenhouse gas emissions. On March 11, 2009, Congress allocated an additional \$6.5 million in the FY2009 Consolidated Appropriations Act to develop and finalize a rule by June 26, 2009, and to begin implementation of the reporting system. On April 10, 2009 (74 FR 16448), EPA issued its proposed Reporting Rule.

After publishing the proposed Reporting Rule, EPA held two public hearings and more than 150 meetings with stakeholders, including industries, trade associations, state and regional governments, and environmental groups. More than 16,000 written comments were submitted. As a result of those meetings and comments, EPA made some significant changes to the proposed rule, such as permitting the use of "best available monitoring methods" in lieu of direct monitoring for a limited period of time, withholding certain source categories from automatic applicability (e.g., specified electronics manufacturing, ethanol production, food processing, industrial landfills, and

underground coal mines), and adding an exit mechanism for companies that reduce their emissions below applicable thresholds. EPA also made clear that the Reporting Rule will not preempt any other state or regional programs that collect data on greenhouse gas emissions.

The primary purpose of the Reporting Rule is “to gather [greenhouse gas] information to assist EPA in assessing how to address [greenhouse gas] emissions and climate change under the Clean Air Act.” However, EPA also expects that the collected information will (1) inform other climate change policy decisions (e.g., cap and trade program development) at both the federal and state level; (2) raise awareness of emissions among reporters and other stakeholders, thus contributing to voluntary emission reduction efforts; and (3) assist corporations and facilities in determining their greenhouse gas footprints and identifying options to reduce emissions. As further discussed below, given the wide range of potential uses of this information, it is imperative that facilities report accurately and consistently.

WHO IS COVERED BY THE RULE?

The Reporting Rule covers emissions of the following types of greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases such as nitrogen trifluoride and hydrofluorinated ethers. Beginning with calendar year 2010, facilities that directly emit one or more these greenhouse

gases must report their annual emissions if they trigger one of the applicability criteria spelled out in the rule. Suppliers of products that lead to emissions of greenhouse gases also may need to report under the rule, as discussed below. Reported emissions are expressed in terms of carbon dioxide equivalents (CO₂e), which represents the number of metric tons of carbon dioxide emissions with the same global warming potential as one metric ton of the subject gas. So, for example, if one ton of methane causes as much global warming as 21 tons of carbon dioxide, one metric ton of methane emissions would be equal to 21 metric tons CO₂e.

FIVE GROUPS OF REPORTING ENTITIES

1. Source Categories Subject to Automatic Applicability: Facilities with production processes in certain source categories are automatically subject to the Reporting Rule, regardless of the quantity of CO₂e they emit. 40 C.F.R. § 98.2(a)(1). Facilities that contain any one of these types of sources (listed below) are automatically subject to the reporting obligation for every emission source at the facility for which the rule provides a calculation methodology, including any sources that would not otherwise trigger automatic applicability on their own. EPA has included specific regulations applicable to each of these source categories in the regulations, including monitoring requirements and emission calculations. The specific regulations applicable to each of these source categories are found in new 40 C.F.R. Part 98 (subpart indicated in the chart below).

Source Categories Subject to Automatic Applicability	
Adipic Acid Production (Subpart E)	Certain Municipal Solid Waste Landfills (Subpart HH)
Aluminum Production (Subpart F)	Nitric Acid Production (Subpart V)
Ammonia Manufacturing (Subpart G)	Petrochemical Production (Subpart X)
Cement Production (Subpart H)	Petroleum Refineries (Subpart Y)
Electricity Generation (Subpart D)	Phosphoric Acid Production (Subpart Z)
HCFC-22 Production and Certain HFC-23 Destruction Processes (Subpart O)	Silicon Carbide Production (Subpart BB)
Lime Manufacturing (Subpart S)	Soda Ash Production (Subpart CC)
Certain Manure Management Systems (Subpart JJ)	Titanium Dioxide Production (Subpart EE)

2. Source Categories that Exceed the CO₂e Emissions Threshold: Other categories of sources trigger the Reporting Rule only if they exist at facilities that emit a combined total of 25,000 metric tons or more of CO₂e in any calendar year from all of their stationary fuel combustion units, miscellaneous uses of carbonates, and any of the other source categories listed below. 40 C.F.R. § 98.2(a)(2). If a facility's combined emissions from these sources exceed the 25,000

metric ton threshold, the facility is required to report emissions from all source categories for which the rule provides a calculation methodology, including those sources that would not otherwise trigger automatic applicability on their own. Again, the Reporting Rule includes specific regulations applicable to each of these source categories in new 40 C.F.R. Part 98 (subpart indicated in the chart below).

Source Categories to Include in Calculation of CO ₂ e Emissions Threshold	
Ferroalloy Production (Subpart K)	Lead Production (Subpart R)
Glass Production (Subpart N)	Pulp and Paper Manufacturing (Subpart AA)
Hydrogen Production (Subpart P)	Zinc Production (Subpart GG)
Iron and Steel Production (Subpart Q)	

3. Stationary Fuel Combustion Units that Exceed the CO₂e Emissions Threshold: Even facilities not covered by either groups 1 or 2 above must report if they emit 25,000 metric tons of CO₂e per year from one or more stationary fuel combustion sources (e.g., boilers, stationary internal combustion engines, process heaters, and combustion turbines) with an aggregate maximum rated heat input capacity of 30 million British thermal units per hour or greater. 40 C.F.R. § 98.2(a)(3). Facilities in this group are required to report emissions from their stationary fuel combustion sources only. Specific regulations applicable to general stationary fuel combustion sources are found at new 40 C.F.R. Part 98, Subpart C.

4. "Suppliers" of Certain Fossil Fuels and Industrial Greenhouse Gases: A fourth group of reporting entities consists of facilities that produce coal-based liquid fuels, petroleum refineries that distill crude oil, natural gas fractionators and all local natural gas distribution companies, facilities that produce industrial greenhouse gases, and facilities that produce carbon dioxide for commercial use. 40 C.F.R. § 98.2(a)(4). Suppliers of these products must report the quantity of CO₂e expected to be emitted from the combustion or use of the products they supply. Importers and exporters of these products in quantities equivalent to 25,000 metric tons or more of CO₂e per year also must report. Specific regulations applicable to supplies of fossil fuels and greenhouse gases are found at 40 C.F.R. Part 98, Subparts LL-PP.

5. Manufacturers of Heavy-Duty and Off-Road Motor Vehicles and Engines: For vehicle and engine manufacturers outside of the light-duty sector, the Reporting Rule incorporates greenhouse gas reporting requirements into the long-standing pollutant and fuel economy testing and reporting program for motor vehicles under Title II of the Clean Air Act, 42 U.S.C. § 7542. See 40 C.F.R. parts 86-90, 94, 1033, 1039, 1042, 1045, 1048, 1051, 1054, and 1065. U.S. EPA chose not to include requirements for light-duty vehicles, because it has separately proposed comprehensive greenhouse gas emission standards for light-duty vehicles in a joint rulemaking with the U.S. Department of Transportation. See Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 74 Fed. Reg. 49,454 (Sept. 29, 2009).

Exclusions and Exemptions. Research and development activities are not considered part of any source category subject to the rule. 40 C.F.R. § 98.2(a)(5). Carbon dioxide emissions attributable to the combustion of biomass are excluded when calculating emissions from stationary fuel combustion units for comparison to the 25,000 metric ton threshold (but methane and nitrous oxide emissions are included). 40 C.F.R. § 98.2(b)(2). Other source-specific exemptions and exclusions may be found in the individual subparts for each source category under the

Reporting Rule. For example, subpart C, which describes specific requirements for general stationary fuel combustion sources, excludes emergency generators, emergency equipment, and portable equipment. 40 C.F.R. § 98.30(b). To identify applicable source-specific exclusions, owners and operators of facilities that emit greenhouse gases and suppliers of greenhouse-gas-related products should review the applicable source-specific requirements in the subparts of the Reporting Rule referenced above.

What Is a “Facility?” With the exception of fossil fuel or gas suppliers and vehicle and engine manufacturers, which must report their corporate-wide emissions, the rule applies to remaining companies at the facility level. As a result, the scope of a “facility” is of critical importance when determining whether and how the rule applies. The term “facility” is defined broadly in the Reporting Rule as “any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control...” 40 C.F.R. § 98.6.

The definition of “facility” in the Reporting Rule includes some of the same concepts as other Clean Air Act programs (e.g., “contiguous or adjacent properties” and “common ownership or control”). However, the Reporting Rule definition of “facility” differs from the definition under the PSD and Title V programs because it does not incorporate the concept of shared SIC code. EPA purposely used a more expansive definition of “facility” to obtain reporting from facilities with the most significant greenhouse gas emissions, while minimizing the number of reporters. When applying this definition, therefore, owners and operators should not simply rely on prior determinations of the extent of their “facility” for purposes of other Clean Air Act programs.

Moreover, ambiguity may arise in the application of the definition to specific factual circumstances. For example, if there is a support facility that is under common ownership and located on a nearby (but not adjacent) property, but connected by some physical connection such as a pipeline, it is not clear whether those properties would be considered to be “in actual physical contact.”

Exit Mechanisms. Once subject to the rule for any one calendar year, reporting entities must continue to submit

greenhouse gas reports annually until they meet one of the Reporting Rule’s exit criteria. 40 C.F.R. § 98.2(i). A reporting entity can cease reporting if it permanently closes all greenhouse gas-emitting processes and operations covered by the rule. Other reporting entities, including those with sources in categories subject to automatic reporting, may exit the reporting program if annual reports demonstrate that covered emissions are either (1) less than 25,000 metric tons of CO_{2e} per year for five consecutive years, or (2) less than 15,000 metric tons of CO_{2e} per year for three consecutive years.

Given the multiyear burden to exit the program, it is in companies’ interest to carefully review coverage provisions now and consider available steps to avoid triggering the Reporting Rule in the first instance. Some facilities close to the 25,000 ton reporting threshold may not now know whether their emissions (or quantities of industrial gases sold) will exceed the threshold. Because the requirements of the Reporting Rule apply as of January 1, 2010, EPA recommends that sources close to the threshold monitor their emissions in accordance with the Reporting Rule if there is a chance they will meet or exceed the thresholds. If calendar year 2010 emissions are found to be below the 25,000 ton reporting threshold, no report need be submitted and the company will not enter the program.

If an entity stops reporting because its emissions of CO_{2e} (or quantities of CO_{2e} in products supplied) fall below 15,000 or 25,000 metric tons for the required length of time, that entity must begin reporting again if its emissions subsequently increase to 25,000 metric tons of CO_{2e} in any calendar year. On the other hand, an entity that exits the program by closing must resume annual reporting if it restarts greenhouse gas-emitting processes or operations subject to the rule, regardless of whether its emissions exceed 25,000 metric tons of CO_{2e} or trigger the rule’s applicability criteria upon restart.

WHAT MONITORING IS REQUIRED?

The Reporting Rule adopts a hybrid approach to measuring greenhouse gas emissions. In general, emitting units that are already required to collect data using continuous emissions monitoring systems (“CEMS”) under another air emission program (such as the Acid Rain Program) must

measure greenhouse gas emissions using these systems, even if upgrading the existing systems to monitor carbon dioxide or to add volumetric flow meters is necessary. Facilities that contain units that are not currently required to have CEMS may use emission calculations specified in the regulations for each source category. Depending upon the specific calculation methods for the source category, periodic data collection may be required (e.g., flow rates, fuel use, or heat values). If a facility has certain units that currently have CEMS and others that do not, CEMS data is required only for the units on which it is already installed.

Monitoring must begin on January 1, 2010. In response to comments arguing that it may not be possible to have the necessary monitoring equipment installed and operating by the deadline, EPA provided a short extension of time by allowing the use of “best available monitoring methods” between January 1 and March 31, 2010. During this period, the facility must use the greenhouse gas calculation methods specified for the relevant source category, but it may use the best available monitoring method for any parameter for which it is not reasonably feasible to acquire, install, and operate the required piece of monitoring equipment by January 1, 2010. See 40 C.F.R. § 98.3(d).

The final rule also added calibration requirements for greenhouse gas measurement devices. 40 C.F.R. § 98.3(i). In general, such devices must be calibrated by April 1, 2010, to an accuracy of 5 percent. Devices with an unexpired existing calibration do not need to be recalibrated until the existing calibration expires, and devices that cannot be calibrated until they are shipped offsite during a shutdown can be calibrated at the next shutdown. Fuel billing meters are exempt from the calibration requirement, provided there is no common ownership between the fuel supplier and the fuel combustion source.

Site-Specific Exemption. Beginning April 1, 2010, the facility must have the necessary monitoring equipment installed and operating, unless the facility applies for and obtains a site-specific exemption. The exemption must be applied for no later than 90 days after the publication of the final rule in the Federal Register (which had not yet occurred as of October 7, 2009). The application for the exemption must include a list of the monitoring equipment for which the request is being made, a reference to the regulatory requirement for the equipment, and a description of why the monitoring

equipment cannot feasibly be installed and operating prior to April 1, 2010. 40 C.F.R. § 98.3(d)(2).

If the basis for the site-specific extension request is that the equipment cannot be purchased by April 1, 2010, documentation of efforts made to purchase the equipment must be included. If the basis for the request is that a process unit shutdown is necessary to install the equipment, documentation of why it is not practical to isolate the area for installation of the equipment without a full process shutdown, an explanation of when the next shutdown is planned, and the dates of the most recent shutdowns must be included. It is “highly unlikely” that EPA will approve an exemption request for parameters that require only periodic sampling and analysis (as opposed to those subject to ongoing direct measurement). The longest that any site-specific exemption can last is until December 31, 2010.

WHAT REPORTING AND RECORDKEEPING IS REQUIRED?

The first annual report, covering calendar year 2010, is due March 31, 2011. Reports must be submitted annually as long as a facility or supplier is covered by the Reporting Rule. If a facility becomes subject to the rule due to a change in operations after January 1, 2010, the facility must report emissions for the calendar year in which the change occurs, beginning in the first month of the change and ending on December 31 of that year. Electricity generating units subject to the Acid Rain Program must continue to report carbon dioxide mass emissions quarterly, in addition to submitting annual reports under the Reporting Rule. If reporters discover or are notified by EPA of errors in an annual report, they must submit a revised report within 45 days.

The rule requires self-certification of monitoring results and includes an EPA verification process. Each report must contain a signed certification by a “Designated Representative” selected by the reporter. Each affected facility or supplier can have only one Designated Representative and an alternate who must be selected by an agreement binding on the owners and operators of such facility. The Designated Representative must certify under penalty of law on behalf of the owner and operator that the report has been prepared in accordance with the Reporting Rule’s requirements and that the information contained in the report is

true and accurate. Because statements by the Designated Representative are binding and have legal consequences for all owners and operators of the facility, facilities with shared ownership, such as joint ventures, must carefully consider how to designate and allocate responsibility for the Designated Representative.

EPA envisions a two-step verification process. First, EPA will conduct an initial centralized review of the data, which will be largely automated, to ensure the completeness and accuracy of data. Second, EPA intends to follow up with facilities if potential errors, discrepancies, or questions arise through the review of reported data and to conduct on-site audits of selected facilities. The on-site audits may be conducted by private verifiers contracted by EPA or by federal, state, or local personnel, as appropriate. EPA will work with the states to identify facilities for, and conducting, on-site audits.

Each reporter must retain and make available upon EPA's request the following records for three years in an electronic or hard-copy format (40 C.F.R. Sec. 98.3(g)):

- A list of all units, operations, processes, and activities for which greenhouse gas emissions are calculated;
- The data used to calculate the emissions data including, among others: the greenhouse gas emissions calculations and methods used, analytical results for the development of site-specific emissions factors, any facility operating data, or process information used for the emissions calculations;
- The annual emissions reports;
- Missing data computations, including a record of the duration of the missing data event, actions taken to restore malfunctioning monitoring equipment, the cause of the event, and the actions taken to prevent or minimize occurrence in the future;
- A written greenhouse gas monitoring plan containing required information;
- The results of all required certification and quality assurance tests of monitoring equipment and instruments;
- Maintenance records for all monitoring equipment; and
- Any other data specified in any applicable part of the Reporting Rule.

WHAT ARE THE PENALTIES FOR NONCOMPLIANCE?

Facilities or suppliers that fail to monitor or report greenhouse gas emissions, quantities supplied, or other data elements according to the requirements of the Reporting Rule could be subject to an enforcement action by EPA under existing Clean Air Act enforcement mechanisms, which provide for administrative, civil, and criminal penalties. EPA may seek injunctive relief to compel compliance and civil and administrative penalties of up to \$37,500 per day per violation. EPA makes clear in the preamble to the final rule that flexibility is needed and that the statutory maximum penalty will not be applied in every case.

Potential actions (or omissions) that could be considered violations include (40 C.F.R. Sec. 98.8):

- Failure to report greenhouse gas emissions;
- Failure to collect data needed to calculate emissions;
- Failure to continuously monitor and test as required;
- Failure to calculate emissions according to rule-specified methodology(ies);
- Failure to keep required records; and
- Falsification of emission reports.

EPA acknowledges the potentially complex challenges that will face facilities and suppliers subject to the Reporting Rule. It has stated its intent to conduct outreach to educate and assist potentially affected facilities in complying with the rule. Given EPA's broad enforcement authority and the limited time until the Reporting Rule takes effect, companies should ensure that they understand the rule and their attendant obligations.

WHAT ARE POTENTIAL IMPLICATIONS OF THE REPORTING RULE?

Future Cap and Trade Program. Accurate and timely emissions data is crucial to implementing a future cap and trade program. Reliable data on overall U.S. emissions is necessary to ensure that the program's annual numerical caps accurately reflect the reduction targets agreed upon by politicians. For example, the Waxman-Markey cap and trade bill

passed by the House of Representatives in June mandates a 17 percent overall reduction of emissions (compared to 2005 levels) by 2020 from the categories of sources covered by the program, which it estimates will equate to total emissions of 5.065 billion tons of CO₂e. However, the bill directs U.S. EPA to adjust that total as necessary to calibrate actual emissions to the 17 percent legislative target.

A monitoring program also plays a critical function in implementing cap and trade at the facility level. Such data will play a key role in establishing the historical “baseline” emissions of various industry segments, such as the electric utility industry, and of individual emitters within such segments, which in turn will serve as the basis for distributing the free emission allowances allocated to those segments under cap and trade legislation. Accordingly, while many covered facilities will want to carefully assess their emissions to ensure that they in fact trigger a mandatory monitoring requirement, they should also consider the potential importance of establishing an accurate historical baseline and the potential long-term implications of understating those emissions.

In seeking to develop an accurate picture of current greenhouse gas emissions, U.S. EPA hopes to avoid a mistake made by the Europeans when establishing their cap and trade program under the Kyoto Protocol, known as the EU Emissions Trading Scheme (“EU-ETS”). Without reliable historical monitoring data upon which to base emissions caps or to allocate emissions allowances, the EU relied on estimates by facilities and member states. Since these actors recognized the risk of underestimating, they erred in the opposite direction. When it became clear that baseline emissions had been overestimated by about 15 percent, resulting in an oversupply of emissions allowances, the market price for allowances on the EU-ETS crashed to almost zero. The absence of a meaningful “price signal” eliminated much of the financial incentive for firms to reduce their emissions, undermining the long-term objectives of the EU’s cap and trade program.

The cap and trade proposals in Congress include mandatory emissions monitoring requirements that do not exactly match the new rule. If legislation is enacted, U.S. EPA would be required to modify its monitoring rule to match legislative requirements. While there is no certainty that legislation will ultimately be enacted and, even if it is, what the enacted legislation would require, companies that monitor

the pending legislation and build appropriate flexibility into their monitoring programs may be rewarded down the road.

Clean Air Act Regulation. On September 30, 2009, EPA announced a proposed rule that would require new and “modified” facilities emitting more than 25,000 tons per year CO₂e to obtain operating permits and use “best available control technologies” to control greenhouse gas emissions. If finalized, this rule would require existing facilities to include estimates of their greenhouse gas emissions in their next operating permit renewal. EPA has noted that facilities would use the same data collected under the Reporting Rule to fulfill this requirement. Therefore, while the Reporting Rule currently involves reporting only, the data collected could have costly future implications in terms of permit-imposed emission control requirements for facilities exceeding the 25,000 ton threshold.

SEC Reporting. In recent years, a broad range of investor groups have pressed the Securities and Exchange Commission to require public companies to disclose climate change risks, including a calculation of greenhouse gas emissions. Importantly, petitions to the SEC to require more climate change disclosure have argued that such disclosures are already required under existing SEC rules. Some companies have been pressured to disclose this information via proposed shareholder resolutions and even under threat of shareholder litigation.

With the implementation of mandatory reporting, information about the greenhouse gas emissions of covered companies will now be public information, which will likely only strengthen the case for financial disclosure of climate change risks. Public companies that have thus far not included a discussion of climate issues in their SEC filings, but which will soon be reporting significant greenhouse gas emissions to EPA, should carefully consider whether some discussion should be included going forward. Companies that have discussed climate risks in SEC filings in the past should review those discussions in light of their expected emission reporting.

In addition to, or in lieu of, SEC reporting, many companies have voluntarily addressed climate change issues in corporate sustainability reports. These reports are largely unregulated and the emissions information upon which they were based was not previously subject to specific

data collection standards and/or was not publicly available. Companies that will now be collecting and publicly reporting this sort of data under the Reporting Rule should review any public discussions of climate change risk—not just in formal SEC filings, but any statements that an investor may claim to have relied upon, such as company web site statements—and ensure that information is consistent with expected emission reporting.

Litigation and Public Relations Risks. For years, facilities have been required to annually report information regarding toxic chemical releases and waste management activities above certain thresholds for U.S. EPA's Toxic Release Inventory ("TRI"). This information is then published and made publicly available by EPA. Each year, soon after the TRI is published by EPA, articles appear in the press crudely ranking the companies who "release the most toxic chemicals" based on TRI data. Although these rankings do not take into account the actual risks associated with the releases, companies ranked high on the TRI list face a public relations issue. Further, EPA touts the TRI program as giving "communities more power to hold companies accountable and make informed decisions about how toxic chemicals are to be managed in their area." Thus, companies that rank high on the TRI list may face public pressure to reduce emissions. Because greenhouse gas emissions data will be publicly available in the same way, companies that rank high on lists of greenhouse gas emitters should be prepared to face similar public scrutiny.

In December 2008, *USA Today* published an article suggesting that school children in certain communities have been subjected to harmful levels of air toxics. The article inspired a class action lawsuit against several manufacturers alleged to have emitted air toxics. The article and lawsuit expressly relied, in part, on TRI data to identify and support the allegations against those manufacturers. With the recent decision by the U.S. Court of Appeals for the Second Circuit that a public nuisance claim based on greenhouse gas emissions is not barred by the political question doctrine, climate change tort litigation may have new life. Companies that rank high on lists of greenhouse gas emitters face the greatest litigation risk.

WHAT SHOULD I DO TO PREPARE?

While EPA's new Reporting Rule will clearly be a linchpin for future climate change rules and legislation, companies should in the near term focus on the specific requirements of this regulation, not only to determine whether they are among the entities covered, but to assess what steps should be taken now to ensure compliance with this rather detailed reporting and recordkeeping rule. Following are suggested steps to take now to plan for and facilitate compliance.

1. Evaluate the rule requirements against available facility-specific data to determine if your facility will be required to report. EPA has prepared a flow chart (available at <http://www.epa.gov/climatechange/emissions/downloads09/generalprovisions.pdf>) to assist facilities in this applicability determination.
2. Determine if new monitoring equipment is required. If so, begin planning now for purchase and installation of that equipment. If equipment will not be available by April 1, 2010, begin preparing an extension request.
3. Develop a compliance plan. Developing a compliance plan now will allow you to maximize your ability to respond quickly to the new requirements contained in the rule. The compliance plan may include written protocols for collecting and processing emission data in accordance with the rule's requirements, including protocols for addressing missing data, quality assurance plans, and training for employees who will be calibrating equipment and collecting data.
4. Incorporate the Reporting Rule's deadlines and requirements into your existing compliance calendars and compliance management systems. Important milestones include:
 - Any request for an extension of the period to use best available monitoring methods past April 1, 2010, must be submitted no later than 90 days after publication of the rule in the Federal Register;
 - Written greenhouse gas monitoring plan must be in place by January 1, 2010;

- Monitoring/emissions accounting must begin January 1, 2010;
- Most greenhouse gas measurement devices must be calibrated by April 1, 2010;
- Designated Representative forms are due January 29, 2011;
- First annual report is due on March 30, 2011 (for calendar year 2010 data); and
- If an error is discovered or EPA notifies the company of an error in the annual report, a revised annual report must be submitted within 45 days.

CONCLUSION

Given the short time period before requirements are triggered under the new Reporting Rule, companies should review the applicable portions of the rule and develop a compliance plan now to address its requirements. Certain time periods, like the time available to file an extension request, are extremely short, and potentially crucial options may soon be lost if not investigated and utilized (where appropriate) almost immediately.

LAWYER CONTACTS

For further information or for assistance in applying the rule to your specific circumstances, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

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