

Mandatory Reporting of Greenhouse Gases Rule: Actions to defer reporting of certain data elements and associated call for information

ACTION

The U.S. Environmental Protection Agency (EPA) is issuing three concurrent actions related to certain data elements reported under EPA's Greenhouse Gas Reporting Program (GHGRP). EPA needs to further examine the likely business impact from the disclosure of certain data elements before those data elements are collected and potentially subject to public availability. EPA is therefore taking these three actions to defer reporting of these data elements while EPA obtains and reviews additional information to resolve issues related to reporting and public availability of these data elements. An overview of each of these actions is below.

Proposed rule: *Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule.* EPA is proposing to defer, for calendar years 2010, 2011, and 2012, the required reporting of data elements that are inputs to emission equations until March 31, 2014. The proposed action would allow EPA the time necessary to collect information on issues related to reporting and public availability of these data elements and to carefully consider this information in the context of the GHGRP. This action would not affect the reporting deadline for other data elements under the rule. The public has 30 days from the date of publication in the *Federal Register* to submit comments on the proposed deferral, or 45 days if a hearing is requested.

Interim final rule: *Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule.* This interim final rule defers reporting of data elements that are inputs to emission equations for calendar year 2010 from the current deadline of March 31, 2011 until August 31, 2011; it does not affect any other data elements under the rule. This interim final rule is effective upon publication in the *Federal Register*. This short-term deferral will give EPA the time needed to promulgate the longer-term deferral through notice and comment.

Call for information: *Information on Inputs to Emission Equations Under the Mandatory Reporting on Greenhouse Gases Rule.* In this notice, EPA requests information and comment to assist in evaluating issues related to reporting and public availability of inputs to emission equations. This notice describes the specific types of information requested, including how public availability of certain data elements could cause competitive harm, whether any of the data elements are already publicly available through other data sources, and additional methods for calculating greenhouse gas (GHG) emissions and conducting verification of reported data. The public has 60 days from the date of publication in the *Federal Register* to submit comments and requested information.

BACKGROUND

- On October 30, 2009, EPA promulgated the Mandatory Reporting of Greenhouse Gases rule. This rule, including subsequent amendments, covers a broad range of industry sectors and requires reporting from facilities that directly emit GHGs to the atmosphere as well as suppliers of fuels and industrial GHGs.
- On July 7, 2010 (and in a supplemental proposal on July 27, 2010), EPA proposed confidentiality determinations for data to be submitted under the GHG Reporting Program that would establish

which data elements would be publicly available and which data elements would be treated as confidential.

- Under the Clean Air Act, data that is reported to EPA must be available to the public unless the data qualify for confidential treatment as specified by 5 U.S.C. § 7414(c).
- The Clean Air Act precludes “emission data” from being treated as confidential. Under EPA regulations, “emission data” include data that are necessary to determine the identity, amount, frequency, concentration, or other air quality related characteristics of emissions.¹
- In the July 2010 confidentiality proposals, EPA proposed that data elements that are inputs to emission equations are “emission data” and therefore would be available to the public.

FURTHER INFORMATION

- **What facilities are affected by these actions?**
 - The interim final rule affects direct emitter facilities that are required to report their GHG emissions for calendar year 2010. It does not affect direct emitter facilities first required to report GHG emissions for calendar year 2011. It also does not change requirements for suppliers of fuels and industrial greenhouse gases.
 - The proposed deferral notice similarly affects facilities that are required to report GHG emissions for calendar year 2010. The proposed deferral additionally affects facilities first required to report GHG emissions for calendar year 2011.
- **Why are we deferring reporting of inputs to emission equations?**
 - Numerous public comments on the July 2010 confidentiality proposals raised significant concerns about reporting and public availability of inputs to emission equations.
 - Many commenters wrote that certain inputs to emission equations (which include production and throughput quantities, product compositions, raw materials used, and other process-specific information among other data elements) are considered trade secrets or otherwise sensitive business information and that making these inputs publicly available would cause serious competitive harm.
 - Some reporters commented that, had it been clear to them that inputs to emission equations qualify as emissions data that must be made available to the public, they would have commented differently during the establishment of the GHG Reporting Program and might have suggested or agreed to alternative methods of calculating such inputs to avoid reporting of sensitive data elements.
 - EPA reviewed these comments and has concluded that some of the concerns warrant more extensive evaluation of the potential effects of making certain inputs to emission equations publicly available.
- **What rule changes are included in the interim final rule?**
 - EPA is adding a table to the GHG Reporting Requirements at 40 CFR Part 98 (Part 98) specifying the individual data elements for which this action defers the reporting requirement. The table is organized by subpart and shows the regulatory citations for each of the affected data elements.
 - Under the annual reporting requirement at 40 CFR 98.3(c), EPA is adding a subparagraph stating that, for calendar year 2010, reporting of the data elements listed in the table is deferred until August 31, 2011.

¹ 40 CFR 2.302(a)(2)(i)(A).

- This interim final rule does not change any GHG Reporting Rule requirements for reporting data elements that are not inputs to emission equations, and does not change any other requirements of Part 98. The rule does not change the requirement that inputs to equations be retained as records in a form that is suitable for expeditious inspection and review.
- **What rule changes are included in the proposed deferral notice ?**
 - EPA proposes to add additional data elements to the table that specifies the data elements for which reporting is deferred. The additional data elements are from source categories that first report emissions for calendar year 2011.
 - EPA proposes to defer reporting of the listed data elements for calendar years 2010, 2011, and 2012 until March 31, 2014.
 - The proposed rule only *defers* reporting of inputs for calendar years 2010, 2011, and 2012; it does not remove the requirement that inputs for those years be reported. If, after analysis of additional information, EPA determines that any further changes to the reporting requirements of the GHG Reporting Program are justified, a new amendment to that rule will be proposed for comment.
 - Like the interim final rule, the proposal would not change any GHG Reporting Rule requirements for reporting data elements other than inputs to emission equations. The proposal also would not change the requirement that inputs to equations be retained as records in a form that is suitable for expeditious inspection and review.
- **What information is requested in the call for information?**
 - The call for information describes the specific types of information EPA is soliciting. This information is needed to inform EPA's deliberations on issues related to reporting and public availability of inputs to emission equations. Requested information includes:
 - Identification of which specific data elements used as inputs to emission equations the commenter considers to be sensitive business information and specifically how disclosure would cause competitive harm.
 - Identification of which data elements that are inputs to emission equations are already publicly available, discernable from other publicly available data, or otherwise would not be considered sensitive information.
 - EPA is also soliciting suggestions regarding possible changes to Part 98, including:
 - Identification of additional calculation methods that do not use the specific inputs that the commenter considers to be sensitive.
 - Identification of additional verification methods that do not use the specific inputs that commenters consider to be sensitive.
 - EPA strongly urges any parties concerned about the public availability of inputs to emission equations to submit detailed information in response to this request.
 - EPA is not soliciting further comment on our proposal that inputs to emission equations constitute emission data under the Clean Air Act and therefore cannot be held confidential.

NEXT STEPS AND IMPLEMENTATION

- The three actions will be published in the *Federal Register* shortly and will be available at: www.regulations.gov.
- Prepublication versions are available on our Web site: <http://www.epa.gov/climatechange/emissions/CBI.html>
- The public will have 30 days to comment on the proposed deferral after publication in the *Federal Register*. If requested, a public hearing will be held in the Washington, DC, area, and the public comment period will be extended to 45 days.
- EPA plans to take any final action on the proposed deferral by August 2011.

- The public has 60 days from the date of publication in the *Federal Register* to respond to the call for information.
- After collecting information and conducting our evaluation, EPA intends to publish a *Federal Register* notice regarding our findings and may take additional action if needed to resolve issues regarding reporting and public availability of inputs to emission equations.

MORE INFORMATION

For more information on these three actions and other aspects of the Greenhouse Gas Reporting Program, including guidance and a schedule of training opportunities, please visit EPA's Greenhouse Gas Reporting Program Web site:

www.epa.gov/climatechange/emissions/ghgrulemaking.html.

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