

## Part 98: Action to Defer Reporting of Certain Data Elements

### Action

The U.S. Environmental Protection Agency (EPA) is issuing an action related to certain data elements reported under EPA's Greenhouse Gas Reporting Program. EPA needs to further examine the likely business impact from the disclosure of these data elements before they are reported and potentially subject to public availability. EPA is therefore taking this action to defer the deadline for reporting these data elements while EPA addresses issues related to reporting and public availability of these data elements. An overview of this action is below.

**Rule: *Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule.*** EPA is deferring the required reporting of data elements that are used as inputs to emission equations for direct emitters under the Greenhouse Gas Reporting Program. EPA is deferring the reporting deadline for some of these inputs until March 31, 2013, and for others until March 31, 2015. The action will allow EPA the time necessary to carefully consider information on issues related to reporting and public availability of these data elements in the context of the Greenhouse Gas Reporting Program, and to make any related changes to the rule through public notice and comment. This action does not affect the reporting deadline for other data elements under the rule or for suppliers of greenhouse gases.

### 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.<sup>1</sup>
- 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.
- On December 27, 2010, EPA published three concurrent actions: the proposal to this final rule, an interim final rule that briefly deferred the reporting deadline for inputs until EPA could promulgate this action through notice and comment, and a call for information to inform this and

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<sup>1</sup> 40 CFR 2.302(a)(2)(i)(A).

related rulemakings. EPA accepted comment on the proposal to this final action and the call for information through March 7, 2010, and held a public hearing on the call for information (no public hearing on the proposal was requested).

## Further Information

- **What facilities are affected by this action?**
  - The deferral affects emitters that are required to report greenhouse gas (GHG) emissions for calendar years 2010 and 2011, and some that are required to report GHG emissions for calendar years 2012 and 2013. In particular, it affects facilities that are subject to subparts C through JJ<sup>2</sup> and subparts RR, SS, and TT, including any direct emitter subparts that EPA finalizes in future actions.
  
- **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.
  - 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 and may warrant changes to calculation methods or verification approaches.
  
- **What rule changes are included?**
  - EPA is amending the reporting deadline for certain inputs to emission equations for calendar years 2010 and 2011 until March 31, 2013, and other inputs for calendar years 2010, 2011, 2012, and 2013, until March 31, 2015. EPA has developed a process to determine whether public availability of each input is likely to cause substantial competitive harm and, if so, how to develop an alternative calculation methodology and/or verification approach that is not likely to cause this harm. Data elements deferred through 2013 are those for which EPA either is further along or able to proceed more quickly in this process. These inputs deferred through 2015 are those for which EPA either is less far along or the process is more time-consuming.
  - The rule only *defers* reporting of inputs for these calendar years; it does not remove the requirement that inputs for those years be reported. If, after further analysis, 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.
  - The rule includes several changes to the list of Greenhouse Gas Reporting Program data elements categorized as inputs to emission equations.
  - The rule does not change any GHG Reporting Rule requirements for reporting data elements other than inputs to emission equations. The rule also does not change the requirement that inputs to equations be retained as records in a form that is suitable for expeditious inspection and review.

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<sup>2</sup> EPA will not be implementing subpart JJ due to a Congressional restriction prohibiting the expenditure of funds for this purpose. As a result, 40 CFR part 98, subpart JJ is not included in the scope of this notice.

## Next Steps and Implementation

- This action will be published in the *Federal Register* shortly and will be available at: [www.regulations.gov](http://www.regulations.gov). It will be effective 15 days after the date of publication in the *Federal Register*.
- A prepublication version is available on our Web site: <http://www.epa.gov/climatechange/emissions/CBI.html>
- After conducting further evaluation, EPA 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 this action 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](http://www.epa.gov/climatechange/emissions/ghgrulemaking.html).