

Revised Rule for Mandatory Greenhouse Gas Reporting in Washington State

*By: Stuart D. Kaplow, Esquire
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The last promulgated regulations in Washington State would have required the reporting of 2009 Greenhouse Gas emissions before the end of 2010. The new proposed rule, still in a public comment period through October 14, 2010, mandates reporting start in 2013 for 2012 emissions.

At a time when cap and trade legislation in Congress is dead and the EPA effort to regulate GHG under the 1970's era Clean Air Act has drawn legal challenges from more than 90 businesses and trade associations, there is no national GHG policy. Today and for the foreseeable future, business must be cognizant of and comply with the laws of at least 18 states that have adopted rules that will require business to calculate and report their GHG emissions.

Washington State has proposed mandatory quantifying and reporting of GHG emissions that are at lower thresholds than EPA and, are thought by many commentators to be, a new benchmark for other states to follow.

Background

By way of background, in 2008, Washington adopted legislation and began to write regulations for mandatory reporting of GHG emissions. But the EPA proposed its own reporting program before Washington finalized its proposed rulemaking. In early 2010, the Washington legislature approved legislation to not be inconsistent with EPA's GHG reporting requirements and it is the regulations implementation that new State law that are now subject to public comment.

Who must report emissions

Reporting is required for suppliers that already report fuel sales to the Washington Department of Licensing, and stationary facilities with large GHG emissions sources. Mobile sources such as cars, trucks, ships, trains, and planes are not required to report because those emissions are covered by the fuel suppliers' reports.

Businesses operating the following sources must report their emissions of certain GHGs:

A single facility, source or site that emits at least 10,000 metric tons of GHGs annually in Washington; and

A supplier of liquid motor vehicle fuel, special fuel or aircraft fuel that supplies products equal to at least 10,000 metric tons of carbon dioxide annually in Washington.

This method arguably reduces the number of business that must report and has a lesser impact on small businesses than the earlier regulations, which by way of example, would have required reporting from vehicle fleets that exceeded a 2,500 metric tom CO2 threshold. Businesses

reporting will not have to take into account and report “indirect” emissions once they meet the threshold for direct emission, which is a very big change from the prior released rule.

There are significant differences between this Washington regulatory scheme and that being advanced by EPA:

The reporting threshold of 10,000 metric tons of carbon dioxide equivalents per year per facility or supplier means that small emissions sources won’t have to report, but that is a significantly lower threshold for reporting than EPA. EPA requires those emitting more than 25,000 metric tons per year to report.

Full mandatory reporting will start in Washington 2013 for 2012 emissions, sooner than EPA reporting. EPA requires reporting 2010 emission in 2011.

Washington requires that emission from combustion of biomass be reported. EPA does not.

The future

It is anticipated that these Washington State regulations will be finally issued following the October 14, 2010 close of the public comment period. Companies that do business in Washington must be cognizant of and comply with those rules. And at least 17 other states have adopted rules that will require business to calculate and report their GHG emissions.

We work in matters of GHG

We work with a broad breadth of businesses in matters of GHG emissions and sustainable business practices, including GHG calculation and reporting; much of that work, including GHG emission scientific studies, being done by [ajhon Sustainable Systems Integrator](#), a non-legal affiliate of our law firm. If we can assist your company, please contact Stuart Kaplow.

Stuart D. Kaplow is an attorney with offices in Baltimore, Maryland. He can be reached at skaplow@ajhon.com

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