

# Sustainability & Climate Change Reporter



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## **Sustainability & Climate Change Reporter**

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### **Confidentiality & Carbon Reporting**

As U.S. facilities collect their greenhouse gas emissions data this year to submit the first reports to the federal Environmental Protection Agency next March, one of the issues has been how the agency will treat information that a company considers confidential. Under the EPA's proposed rule it appears that most of the data provided by facilities will be publicly available and not protected as confidential business information (CBI).

### **Greenhouse Gas Reporting Rule**

The EPA's Mandatory Reporting of Greenhouse Gases rule, (40 CFR Part 98), issued under the authority of the Clean Air Act, took effect January 1, 2010. It requires that facilities collect their greenhouse gas emissions data annually and file reports by March 31 of each year starting in 2011.

The two main groups of facilities subject to the reporting rule are direct emitters, which are those facilities that release GHGs from industrial processes and stationary fuel consumption, and suppliers of fuels and industrial GHGs. Manufacturers of vehicles and engines are not included in the reporting rule.

### **Confidentiality Rules**

Under the Clean Air Act, for example in the Acid Rain Program, the EPA has taken a case-by-case approach to confidential information reported by emitters. The general rule is that "emission data" -- identity of the facility and the amount, frequency, concentration or other air quality related characteristics of emissions -- are publicly available.

With the GHG Reporting Rule, however, facilities will have to report more than 1,500 unique data elements (PDF), which would make it unwieldy to engage in a case-by-case determination of confidentiality. The proposed rule would decide confidentiality according to which sector is reporting and the category of the data, with the tendency in favor of disclosure. In addition to eliminating case-by-case determinations, the EPA would not provide prior notice to an individual facility when data is released.

## Direct Emitters

For industrial facilities, the general principle is that all data reported are either "emission data" or non-CBI, with only limited exceptions.

- Emission Data -- facility name and address, emissions, inputs to the emissions equations, the calculation methodology and methodological tier and data elements reported for periods of missing data. *Publicly Available.*
- Not Emissions Data/Not CBI -- unit/process static characteristics and unit operating characteristics that are not inputs to equations, and test and calibration methods. *Publicly Available.*
- CBI -- production/ throughput data and raw materials consumed, provided the data are not inputs to emission equations, and process-specific and vendor data submitted in best available monitoring methods extension requests. *Not Publicly Available.*

## Fuel & Industrial GHG Suppliers

None of the data to be reported by facilities in the fuel and industrial GHG supply sector would be considered "emission data" because those data relate to potential future GHG emissions from the eventual use of the products, and not emissions from the suppliers' facilities.

- Not CBI -- facility name and address, calculation, test and calibration methods; and data elements reported for periods of missing data not related to production/throughput or materials received. *Publicly Available.*
- CBI -- emission factors; supplier customer and vendor information; amount and composition of materials received; data elements reported for periods of missing data that are related to production/throughput or materials received; and process-specific supplier and vendor data submitted in best available monitoring methods extension requests. *Not Publicly Available.*
- Mixed CBI -- depending on the nature of the source category, GHGs reported, production/ throughput quantities and composition; and unit/process operating characteristics. *May or May Not Be Publicly Available.*

## Aggregating Information

Even where EPA designates information as protected CBI, the agency wants to publish compilations of the data if it can be done in a manner to protect the confidentiality of the data elements. EPA is considering using the data to create tables or charts by source category or geographic distribution, or by using numerical ranges for individual facilities but maintaining the confidentiality of actual reported values.

## Rule Not Final

For facilities that have been reporting under the EPA's Acid Rain Program, the proposed GHG reporting confidentiality rules will not represent a significant change since all of the data submitted under the Acid Rain Program has been publicly available and there have been no confidentiality assertions. The proposed GHG reporting rules, however, greatly expand the data elements to be reported and are likely to raise confidentiality concerns that the Acid Rain

Program rules did not. In addition, the GHG reporting rules will apply to many facilities that have not been subject to the Acid Rain Program. Not only will those facilities be confronted with a new and complex reporting regime, but the confidentiality rules are likely to add a layer of confusion about what is and is not publicly available.

The EPA's [Federal Register \(PDF\)](#) notice for the proposed rule provides a number of questions on which the agency is soliciting public comment. The comment period is open until September 7, 2010.

**Comments (0)** Read through and enter the discussion with the form at the end

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