

ENVIRONS

Washington State's Proposed Mandatory Greenhouse Gas Reporting Rules Differ from Federal Government's Rules – Which Will Prevail?

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Breaking Developments In Environmental Law

Businesses operating in the state of Washington might be understandably confused as a result of the Washington Department of Ecology's ("Ecology") release on October 2 of its draft greenhouse gas emission ("GHG") reporting rules, which differ in some material ways from the federal Environmental Protection Agency's ("EPA") reporting rules released on September 22.

The 128-page regulations are the result of a state law passed in 2008 that required Ecology to develop a mandatory GHG reporting system for implementation by 2010. In general the Ecology rules have lower thresholds for reporting and thus would apply to more businesses than would EPA's rules. Here are highlights of the state rules:

- Starting in 2010, owners of a fleet of on-road motor vehicles that emit a total of 2,500 metric tons of carbon dioxide equivalents annually must report. This is equivalent to 280,000 gallons of gasoline or 240,000 gallons of diesel per year.
- Starting in 2010, stationary sources and non-road mobile sources for transporting people or cargo (*i.e.*, rail, aircraft and ships) with annual GHG emissions greater than 25,000 metric tons must report.
- The reporting threshold for stationary sources and non-road mobile sources drops to 10,000 metric tons for 2010 and beyond.
- For reporting years 2009-2011, the calculation of GHG emissions is on a facility basis (not company-wide).
- Beginning in 2012, businesses must report total GHG emissions from all Washington State facilities if the company-wide in-state emissions meet or exceed the 10,000 metric ton threshold.
- Businesses may apply to have any of the information submitted to Ecology — except the emissions data itself — considered confidential business information, subject to Ecology determining whether the information qualifies as confidential business information and should be withheld from disclosure by the agency.
- Ecology will charge a fee for reporting based on the size of the business.

Ecology's draft rules provide that if federal rules are adopted that are sufficient to track progress toward the required state emissions reductions, then Ecology must amend the state reporting

rules to be consistent with the federal rule and ensure duplicate reporting is not required. The EPA released its final rule on September 22, 2009. The EPA rules are substantially similar to the draft Washington rules but differ from the state proposal in significant ways. First, EPA's rules do not require reporting of emissions from fleet operators of motor vehicles or mobile sources. Instead, they require "upstream sources" — vehicle and engine manufacturers and fuel suppliers — to report. Second, EPA's threshold for reporting is 25,000 metric tons of carbon dioxide equivalents emitted annually from stationary sources, while Washington's threshold for 2010 emissions and beyond is 10,000 metric tons. Additionally, EPA will not require reporting until 2011 (capturing 2010 emissions data), in contrast to Washington's requirement that 2009 emissions data be reported.

It is not clear whether the differences in reporting thresholds will mean that Ecology will require reporting by Washington businesses that might otherwise not have to report under the federal rule. Ecology is conducting workshops around the state during October to hear from businesses about the new rules, and it is likely that the interaction between the state and federal reporting requirements will be a prime topic of discussion. If Ecology goes forward with the rule adoption, it expects to do so by January or February 2010, with first reports due October 31, 2010.

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