

ADVISORY

SULLIVAN & WORCESTER CLIMATE-RELATED BUSINESS & TECHNOLOGY GROUP CLIENT ADVISORY

EPA Proposes Guidelines for Determining Confidentiality of Greenhouse Gas Emissions Data

Recently, the U.S. Environmental Protection Agency (“EPA”) published Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule. See 75 Fed. Reg. 39094 (July 7, 2010). Although EPA typically makes confidentiality determinations on a case-by-case basis, the Agency does not believe that would be possible for data submitted pursuant to the mandatory greenhouse gas (“GHG”) [reporting rule](#), see 40 C.F.R. Part 98, due to the large number of expected reporting facilities and the large amount of data that will be reported.

Instead, EPA proposes to place the data it receives into twenty-two data categories and to determine in advance which of the data categories would be released to the public. The information in the categories deemed releasable, which include “emission data” as defined by the Clean Air Act and data that are not “likely to cause substantial harm to the business’s competitive position,” would be posted online automatically. Information in the categories deemed confidential would be released in aggregated format.

EPA proposes to establish separate data categories for direct emitters of GHGs and suppliers of fossil fuels, as follows:

Direct Emitter Data Categories

Releasable Data

- Facility and unit identifier information
- Emissions
- Inputs to emission equations
- Calculation methodology and methodological tier
- Data elements reported for periods of missing data that are not inputs to emission equations
- Unit/process “static” characteristics that are not inputs to emission equations
- Unit/process operating characteristics that are not inputs to emission equations
- Test and calibration methods

IF YOU WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT:

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Confidential Data

- Production/throughput data that are not inputs to emission equations
- Raw materials consumed that are not inputs to emission equations
- Process-specific and vendor data submitted in Best Available Monitoring Method ("BAMM") extension requests

Generally, the data categories would apply uniformly to all source categories. However, there would be some exceptions; for instance, throughput data from Local Distribution Companies would not be entitled to confidential treatment because these data are already publicly available.

EPA is accepting public comment on the proposed rule until September 7, 2010.

Supplier Data Categories

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Releasable Data

- Identification information
- Calculation, test, and calibration methods
- Data elements reported for periods of missing data that are not related to production/throughput or materials received

If you have questions about EPA's proposed confidentiality determinations, or need assistance in submitting comments, please contact any member of Sullivan & Worcester's Climate-Related Business & Technology Group.

August 2010

Confidential Data

- Emission factors
- Amount and composition of materials received
- Data elements reported for periods of missing data that are related to production/throughput or materials received
- Supplier customer and vendor information
- Process-specific and vendor data submitted in BAMM extension requests

Possibly Confidential Data, Depending on Industry

- GHGs reported
- Production/throughput quantities and composition
- Unit/process operating characteristics

The proposed rule would not apply to data provided by motor vehicle or engine manufacturers.