

June 9, 2009

BY ELECTRONIC MAIL

Attn: Docket No. EPA-HQ-OAR-2008-0508  
U.S. Environmental Protection Agency  
EPA Docket Center, Mail Code 6102T  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**RE: Comments on EPA's Proposed Rule, "Mandatory Reporting of Greenhouse Gases," 74 Fed. Reg. 16,448 (April 10, 2009)**

Dear Sir or Madam:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits the following comments in response to the U.S. Environmental Protection Agency's proposed rulemaking, "Mandatory Reporting of Greenhouse Gases," 74 Fed. Reg. 16,448 (April 10, 2009). Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent body within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.<sup>1</sup>

Based on Advocacy's review of the draft greenhouse gas reporting rule, we generally support EPA's proposal to set the reporting threshold for most sources at 25,000 metric tons/year CO<sub>2</sub> equivalent. Advocacy acknowledges that EPA has made an effort to reduce the burden of greenhouse gas reporting on smaller entities. However, thousands of small entities, including small communities, will still be subject to the reporting rule, and some will face significant compliance costs. Accordingly, Advocacy recommends that EPA (1) ensure that the requirement to report "upstream" and "downstream" emissions does not result in double-counting, (2) allow sources to develop simplified emission calculation methods for approval by EPA as alternatives to the calculation formulas specified in the rule, and (3) develop a small entity compliance guide to emissions reporting.

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<sup>1</sup> 15 U.S.C. § 634a, *et. seq.*

## I. BACKGROUND.

EPA seeks comment on its proposed rule requiring certain sources of greenhouse gases (GHGs)<sup>2</sup> to report their annual GHG emissions. EPA was directed by Congress in the FY2008 Consolidated Appropriations Act<sup>3</sup> to promulgate the GHG reporting rule requiring mandatory reporting of GHG emissions above “appropriate thresholds” in all sectors of the U.S. economy. EPA was further directed to require reporting of emissions from upstream production and downstream sources that the agency deems appropriate. EPA has concluded that it may require reporting “from upstream sources such as fuel suppliers, as well as reporting of emissions from facilities (downstream sources) that directly emit GHGs from their processes or from fuel combustion.”<sup>4</sup>

The proposed rule requires annual reports from downstream facilities (primarily energy-consuming facilities) that emit 25,000 metric tons per year or more of carbon dioxide equivalent (CO<sub>2</sub>e) and to upstream suppliers of fossil fuels, as well as to motor vehicle/engine manufacturers. Reporting facilities are required to measure their GHG emissions directly (where monitoring technologies such as Continuous Emissions Monitoring Systems (CEMS) are in use), or make facility-specific calculations based on testing/sampling.

## II. ADVOCACY SUPPORTS EPA’S PROPOSED REPORTING THRESHOLD FOR MOST SOURCES OF 25,000 METRIC TONS/YEAR CO<sub>2</sub>e.

EPA estimates that over 13,000 facilities will be subject to the GHG reporting rule. The rule requires covered facilities to measure their GHG emissions directly or to conduct testing/sampling to support facility-specific emission calculations. While many facilities such as power plants and cement plants may already be measuring and/or reporting their GHG emissions, many others are not. Moreover, some measurement methods specified by the GHG reporting rule, such as determining fugitive emissions from pipeline systems, are likely to be time-consuming and costly undertakings.<sup>5</sup>

Advocacy therefore appreciates EPA’s efforts to tailor the GHG reporting rule to chiefly cover facilities that emit substantial annual quantities of GHGs. By virtue of the 25,000 metric ton per year CO<sub>2</sub>e threshold, smaller facilities with low GHG emissions will be appropriately excluded from the rule’s new reporting burdens.<sup>6</sup> Accordingly, the proposed reporting threshold is very important in limiting the economic impact of the

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<sup>2</sup> GHGs covered by the proposed rule are carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated gases.

<sup>3</sup> Pub. L. 110-161, 121 Stat. 1844, 2128 (2008).

<sup>4</sup> 74 Fed. Reg. 16,454 (April 10, 2009).

<sup>5</sup> For example, the Interstate Natural Gas Association of America (INGAA), has informed Advocacy that conducting direct measurement of fugitive GHG emissions from thousands of gas pipeline compressor stations will result in “inordinate” costs.

<sup>6</sup> EPA believes the GHG reporting rule with the 25,000 metric ton CO<sub>2</sub>e threshold will still be able to account for 85% to 90% of GHG emissions.

rule on small entities. Small entities are far less likely to have CEMS or other direct monitoring systems in place, and the cost of installing and operating such monitors would be a significant economic burden on these small entities. Moreover, small entities are likely to have greater difficulty in complying with facility-specific GHG emission calculations, because of the costs of testing and the complexity of the calculations. A small business or small community is more likely to have to hire an outside consultant or other professional to ensure that they are properly following EPA's reporting rules.

### III. EPA SHOULD ENSURE THAT 'UPSTREAM' AND 'DOWNSTREAM' REPORTING DO NOT RESULT IN EMISSIONS DOUBLE-COUNTING.

While most small entities will not be subject to the GHG reporting rule on the basis of the reporting threshold, thousands of small entities will still be covered. These entities include small businesses (e.g., small pulp and paper facilities, small coal mining operations<sup>7</sup>) and small communities (e.g., municipal utilities). Both "upstream" GHG sources such as small coal mining operations and "downstream" GHG sources such as small paper mills would have to measure and report their emissions. Because the small coal operation has to report on estimated emissions from the coal it produces while the paper mill would report on emissions from boilers actually burning the coal, there will be double counting of the GHG emissions. Virtually all of the GHG emissions from coal should be accurately captured by downstream facilities when the coal is combusted. Therefore, EPA should clarify that coal mining operations, and possibly other small upstream GHG sources, should not have to report GHG emissions estimates because it is overwhelmingly likely to lead to double-counting. EPA should also exclude the smallest coal mines and other upstream sources that contribute insignificantly to coal, petroleum, natural gas, and other energy source production in the U.S. Alternatively, EPA should allow such upstream sources to use simplified reporting methods designed to exclude GHG emissions that are counted by downstream sources during combustion.

### IV. EPA SHOULD ALLOW SMALLER SOURCES TO DEVELOP SIMPLIFIED EMISSION ESTIMATION METHODS.

The proposed GHG rule contains emission calculation formulas for various industries to use where direct emission measurements are not required. While these calculation formulas are generally a benefit to reporting facilities, some small entity reporters may have difficulty using them. Where small entities in a particular industry can benefit from a simplified emission estimation method, as developed by a trade association or other organization, EPA should have a process for approving that estimation method. EPA should therefore develop a petition procedure for approving alternative emission calculation methodologies where appropriate.

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<sup>7</sup> The great majority of the coal mines in the United States are operated by small businesses; 48% of U.S. mines produce 100,000 tons of coal or less per year. The National Mining Association has informed Advocacy that it expects GHG reporting requirements to add \$7.00 per ton to the cost of small mining operations (or as much as \$700,000 per year).

## V. EPA SHOULD DEVELOP A COMPLIANCE GUIDE FOR SMALL ENTITIES.

As a further method to reduce the potential impact of the GHG reporting rule on small entities, EPA should prepare a small entity compliance guide to GHG emissions reporting. The guide could be very helpful in explaining the rule's applicability, particularly for combustion sources that are uncertain if they are subject to the rule. If small entities can gain an understanding of whether they are even "in the ballpark" for having to report, a guide would save much time and effort for small facilities. Similarly, by explaining alternative calculation methods that are available, a guide would make the process less burdensome for GHG reporters. The guide should also help familiarize small entity reporters with the forms they must use, recordkeeping requirements, and the verification procedures they are expected to follow. To be most beneficial, the guide should be published simultaneously with the final rule.

## VI. IF EPA SUBSEQUENTLY LOWERS THE GHG REPORTING THRESHOLD, IT NEEDS TO CONSIDER THE IMPACT ON SMALL ENTITIES.

If EPA determines that the GHG reporting threshold should be lowered below the current 25,000 metric ton CO<sub>2e</sub> level, the potential impact on small entities would increase, perhaps dramatically. Smaller facilities would be required to install and operate CEMS or other GHG direct monitoring devices, driving up the cost of the GHG reporting rule. To determine whether this action would significantly impact a substantial number of small entities, EPA would need to convene a Small Business Advocacy Review (SBAR) Panel on GHG reporting under section 609(b) of the Regulatory Flexibility Act (RFA).<sup>8</sup> EPA could benefit from receiving the views of small entities, and their on-the-ground experience, through the Panel process. The Panel process would also afford EPA the opportunity to consider alternative ways to achieve its regulatory objective without injuring small entities.

## VII. CONCLUSION.

For the foregoing reasons, EPA should ensure that the requirement to report "upstream" and "downstream" emissions does not result in double-counting. EPA should also allow sources to develop simplified emission calculation methods as alternatives to the calculation formulas specified in the rule. Finally, the agency should develop a small entity compliance guide to emissions reporting.

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<sup>8</sup> 5 U.S.C. § 609(b).

We look forward to working with you as the GHG reporting rule is finalized. Please do not hesitate to call me or Assistant Chief Counsel Keith Holman ([keith.holman@sba.gov](mailto:keith.holman@sba.gov)) or (202) 205-6936 if we can be of further assistance.

Sincerely,

/s/

Shawne C. McGibbon  
Acting Chief Counsel for Advocacy

/s/

Keith W. Holman  
Assistant Chief Counsel for  
Environmental Policy

cc: Kevin Neyland, Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget