

Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments

Subpart QQ: Importers and Exporters of Fluorinated GHGs Inside Pre-charged Equipment or Closed-cell Foams

FOREWORD

This document provides responses to public comments on the U.S. Environmental Protection Agency's (EPA's) Proposed Mandatory Greenhouse Gas Reporting Rule: Additional Sources of Fluorinated GHGs: Subpart QQ: Imports and exports of fluorinated inside pre-charged products and closed-cell foams. EPA published a Notice of Proposed Rulemaking in the Federal Register (FR) on April 12, 2010 (75 FR 18652). EPA received comments on this proposed rule via mail, e-mail, and at a public hearing held in Washington D.C. on April 20, 2010. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments letters and transcripts of the public hearings are also available electronically through <http://www.regulations.gov> by searching Docket ID EPA-HQ-OAR-2009-0927.

EPA prepared this document in multiple sections, with each section focusing on a different broad category of comments on the rule. In light of the large number of comments received and the significant overlap between many comments, this document does not respond to each comment individually. Rather, EPA summarized and provided a single response to each significant argument, assertion, and question contained within the totality of comments. Within each comment summary, EPA provides in parentheses one or more lists of Docket ID numbers for commenters who raised particular issues; however, these lists are not meant to be exhaustive, and EPA does not individually identify each and every commenter who made a certain point in all instances, particularly in cases where multiple commenters expressed essentially identical arguments.

EPA's responses to comments are generally provided immediately following each comment summary. In some cases, EPA provided responses to specific comments or groups of similar comments in the preamble to the final rulemaking. Rather than repeating those responses in this document, EPA has referenced the preamble.

Comments were assigned to specific section of this document based on an assessment of the principal subject of the comment; however, some comments inevitably overlap multiple subject areas.

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1. General Comments

Comment Summary 1-b: Three commenters (0085, 0128, DC-03) supported EPA's proposal to require reporting of imports and exports of fluorinated GHGs contained in pre-charged equipment and closed-cell foams. One commenter (0128) asserted that pre-charged equipment and foams contain a significant amount of stored GHGs, in total accounting for 29 million metric tons CO₂e.

Response 1-b: EPA has finalized the reporting requirements for imports and exports of fluorinated GHGs in pre-charged equipment and closed-cell foams. As discussed in the preamble of the proposed and final rule, this subpart represents a significant source of fluorinated GHGs. EPA estimates that approximately 22 MMTCO₂e of fluorinated GHGs are imported annually into the U.S., making it the eleventh most significant source of GHGs (when weighted by carbon dioxide equivalent) covered under the Mandatory Reporting of Greenhouse Gases Rule. Imports of fluorinated GHGs from entities subject to this subpart account for seven to ten percent of the U.S. fluorinated GHG supply. In addition, EPA estimates that the number of importers and exporters are relatively small and that the costs associated with the reporting requirements are reasonably modest.

2. Definition of Source Category

Comment Summary 2-a: One commenter (0119) recommended excluding closed-cell foams from this subpart. This commenter stated that most facilities operate regionally and do not ship closed-cell foams long distances due to economic considerations. This commenter also observed that EPA's Technical Support Document estimated that GHGs imported in closed-cell foams are equal to the amount exported, creating a "net effect of zero on GHG supply."

Response 2-a: EPA did not exclude closed-cell foams from this subpart. There may be specific closed-cell foam products or particular circumstances where the closed-cell foams are not shipped long distances. However, imports of closed-cell foams are, in fact, a significant source of fluorinated GHGs. EPA estimates that currently over 13 percent of fluorinated GHGs (in carbon dioxide equivalent terms) imported under this subpart are contained within closed-cell foams.

EPA subsequently obtained more detailed information regarding this sector and has updated the "Technical Support Document for Importers and Exporters of Fluorinated GHGs Inside Pre-charged Equipment and Closed-cell Foams." EPA found that imports of closed-cell foams exceed exports by a factor of 5. This results in a net increase in the U.S. supply of fluorinated GHGs and warrants inclusion of closed-cell foams under this subpart. See the "Technical Support Document for Importers and Exporters of Fluorinated GHGs Inside Pre-charged Equipment and Closed-cell Foams" for detailed estimates of U,S, imports and exports of closed-cell foams.

Note that this ration of closed-cell foam imports to exports is likely to change over time. Even if imports of closed-cell foams would equal the exports of closed cell foams (resulting in no net change in supply), EPA would still need to collect information on this source of fluorinated GHGs. EPA is collecting this information in order to understand this source category and to support analysis of policy options in regard to these sources.

Comment Summary 2.b: One commenter (0091) stated that EPA had not proposed the specific regulatory text that would add importers and exporters of fluorinated GHGs in pre-charged equipment or closed-cell foams as a supplier source category at 40 CFR 98.2(a)(4). This commenter stated that although EPA states its intention to make this addition, EPA has not provided the actual text nor notice and an opportunity for affected entities to comment on the proposed revision which will directly impact them.

Response 2.b: On April 12, 2010, EPA published the *Mandatory Reporting of Greenhouse Gases: Additional Source of Fluorinated GHGs- Proposes Rule* (75 FR 18653) to provide notice of the addition of this subpart and the opportunity to comment. Specifically, under Section II.F of the preamble, titled *Subpart A Revisions*, (75 FR 18689) EPA stated that "importers and exporters of pre-charged equipment or closed-cell foam products containing fluorinated GHGs . . . would be added to the list of

suppliers referenced in 40 CFR 98.2(a)(4).” The Notice of Proposed Rulemaking in its entirety and this particular statement provided notice of EPA’s proposed amendments to Part 98 and an opportunity to affected entities to submit comments on the proposed amendments. EPA received comments on the issue of whether the rule should cover suppliers; therefore, the notice given appears to be adequate. EPA is not required to provide draft regulatory text to accompany a Notice of Proposed Rulemaking.

3. Reporting Threshold

Comment Summary 3-a: Two commenters (0091 and 0116) stated that the proposed rule was contradictory and that EPA should therefore clarify whether the reporting threshold “was greater than and equal to” or just “greater than” 25,000 metric tons CO₂e. The commenters stated that the proposed rule is vague for facilities that are potentially covered under subpart C and subpart QQ and whether a supplier should consider combustion emissions when determining the applicability under subpart QQ.

Response 3-a: Subpart QQ has been added as a supplier source category under 40 CFR 98.2(a)(4). As stated in the final rule, the reporting threshold for importers and exporters is an annual quantity of fluorinated GHGs contained in pre-charged equipment or closed-cell foams that is greater than or equivalent to 25,000 metric tons CO₂e. Importers and exporters should calculate the amount of fluorinated GHGs imported or exported within pre-charged equipment and closed-cell foams and determine if this amount is greater than or equivalent to 25,000 metric tons CO₂e. If their imports and/or exports equal or exceed this threshold, they are required to report under this subpart. Because this is a supplier source category under 40 CFR 98.2(a)(4), suppliers should not consider subpart C combustion emissions when analyzing whether the supplier meets the reporting threshold under this subpart.

Comment Summary 3-b: One commenter (0085) expressed concern about importers segregating shipments into segments under the 25,000 metric tons CO₂e threshold and thus avoiding reporting.

Response 3-a: As stated in the final rule, importers and exporters of an annual quantity of fluorinated greenhouse gases contained in pre-charged equipment or closed-cell foams that is greater than or equivalent to 25,000 metric tons CO₂e must report under this subpart. The amount of fluorinated GHGs contained within an individual shipment does not impact whether importers or exporters must report under this subpart. The total quantity importer or exported within the calendar year must be evaluated in order to determine if an importer or exporter must report under this subpart.

Importers and exporters who meet the reporting threshold must report all imports and exports of fluorinated greenhouse gases contained in pre-charged equipment or closed-cell foams regardless of the size of each shipment.

Comment Summary 3-c: One commenter (0085) stated that the threshold calculation method at 40 CFR 98.2(f) is inappropriate as it only includes those fluorinated GHGs with global warming potentials listed in Table A-1. The commenter stated that the threshold analysis should not be limited to Table A-1 fluorinated GHGs when the market is rapidly transitions to new products with new flourinated GHGs. This commenter further stated that excluding fluorinated GHGs that are not listed on Table A-1 would provide EPA with an incomplete accounting of fluorinated GHGs.

Response 3-c: In this action, EPA did not propose and is not finalizing revisions to the methods used to determine if an entity meets the reporting thresholds described at 40 CFR 98.2. EPA included Table A-1 to ease the burden when analyzing if an entity would meet the reporting threshold for a particular subpart. Those who meet the reporting threshold must report imports and exports of **all** fluorinated GHGs contained in pre-charged equipment and closed-cell foams. EPA anticipates that it will update Table A-1 when the scientific community evaluates and re-evaluates the global warming potential of particular fluorinated GHGs. See the preamble to the Final Mandatory Reporting of Greenhouse Gases Rule for a discussion of the definition of the fluorinated GHGs and Table A-1 (74 FR 56260).

4. GHGs to Report

Comment Summary 4-a: Three commenters (79, 90,113) stated that EPA should limit the reporting requirements to fluorinated GHGs with a global warming potential (GWP) of 150 or higher. Commenters stated that this would provide an incentive to manufacturers to transition out of fluorinated GHGs with high GWPs. In addition, commenters stated that this would provide consistency with European Union regulations.

Response 4-a: In this action, EPA did not propose and is not finalizing revisions to the definition of fluorinated GHGs. As discussed in the preamble to the Final Mandatory Reporting Rule (74 FR 56348) and the associated response to comment document (Volume No.: 2 "Selection of Reporting Thresholds, Greenhouses Gases, and De Minimis Provisions," page 15) reporting of **all** fluorinated GHGs imported and exported will provide valuable information on the full range of fluorinated GHGs entering U.S. commerce. This information can be used to assess the overall volume and importance of particular compounds. Ultimately, all of this information can be used to inform policy decisions regarding the appropriate type and scope of emission reduction measures for these gases. Considering the modest cost of reporting import and export of these compounds, the potential value of this information justifies a comprehensive definition of fluorinated GHG. EPA stresses that the final rule intends to collect data of sufficient accuracy and quality to inform future climate policy development, thus it would be premature at this time to include such a threshold level for GHGs. Changing the behavior of firms by encouraging substitution is beyond the scope of this rule.

5. GHG Emission Calculation Procedures

Comment Summary 5-a: One commenter (0085) suggested that EPA provide flexibility in the calculation procedures for closed-cell foams. This commenter noted that appliance manufacturers often blow foam into appliance cavities. In such instances, it may be difficult to determine the cubic feet of foam contained in the appliance. Reporters may wish to calculate the mass of fluorinated GHGs contained in the closed-cell foam within each unit and then multiply this mass by the number of units imported or exported.

Response 5-a: EPA notes that the proposal and this final rule include different calculation procedures and reporting requirements for closed-cell foams contained in appliances and for closed-cell foams not contained in appliances.

For closed-cell foams that are imported inside of appliances, the rule states that importers and exporters must report the identity of the fluorinated GHG contained in the foam, the quantity of fluorinated GHG contained in the foam in each appliance, and the number of appliances imported for each type of appliance. Thus, reporters are not required to calculate the cubic feet of foam contained in the appliance.

For closed cell-foams that are not inside of appliances, the final rule states that importers and exporters must report the identity of the fluorinated GHG, the density of the fluorinated GHG in the foam (kg fluorinated GHG/cubic foot), and the quantity of foam imported (cubic feet) for each type of closed-cell foam.

EPA notes that an additional calculation method was added to the final rule for closed-cell foams where the identity and density of the fluorinated GHG within the closed-cell foam is unknown. See section II.G.3 of the preamble for more information.

6. Data Reporting Requirements.

Comment Summary 6-a: One commenter (0085) suggested that EPA require reporters to submit broker information. This commenter stated that importers often act through brokers and expressed concern over an entity avoiding reporting by separating shipments among multiple brokers. This commenter suggested that brokers identify their clients and vice versa in their reports. The commenter also suggested that EPA utilize Dun and Bradstreet numbers to identify unique entities.

Response 6-a: EPA does not have reason to believe that the risk of entities avoiding reporting under this particular subpart is significant enough to justify the addition of these reporting requirements. In addition, EPA notes that the number of brokers used by an importer or exporter does not impact the information that the importer or exporter must report to EPA. This rule requires that importers and exporters must submit information on an annual quantity of fluorinated greenhouse gases imported and exported in pre-charged equipment or closed-cell foams. The range or number of brokers used to coordinate particular shipments does not impact the information that must be submitted by a particular importer or exporter. For more information on the definition of importers and the relationship to brokers see the Response to Comment document for the Final Mandatory Reporting Rule (Volume No.: 14 "Subpart A: Definitions, Incorporation by Reference, and Other Subpart A Comments," page 12)

Regarding the comment on Dun and Bradstreet numbers, on September 16, 2010, EPA amended subpart A to require facilities and suppliers reporting GHGs to also report their corporate parent company(s), the North American Industry Classification System (NAICS) code(s) that apply to the facility/supplier, and whether or not reported emissions include emissions from a cogeneration unit (75 FR 57669, September 22, 2010). In that rule, EPA considered requiring each facility and supplier to report a corporate identifier, such as a Dun and Bradstreet number. For numerous reasons, EPA decided not to require such reporting; please refer to the preamble to that action for a full discussion of and response to comments on corporate identifiers.

6.1 Confidential Business Information

Comment Summary 6.1-a: Four commenters (0085, 0091, 0116, 0119) stated that EPA should protect data submitted under subpart QQ as CBI. Commenters stated that data reported under this subpart would reveal key business information such as production information and market share. Commenters stated that releasing this data would harm the competitive position of reporting companies. Commenters also discussed whether the data reported under this subpart could be considered emissions data.

Response 6.1-a: For a response to comments about confidential business information (CBI), see the Preamble section II.B.