

April 9, 2012

Practice Group(s):

Energy

*Climate Change and
Sustainability*

Mandatory Filing of Annual Photovoltaic Cell/Module Shipments Report

By Stan Lewandowski and Aaron Schapiro

Each year the U.S. government relies upon mandatory data from companies that are part of the photovoltaic (“PV”) industry in order to satisfy its reporting obligations to the U.S. Congress. While providing the data on an annual basis is mandatory, many PV companies are unaware of the requirement to submit Form EIA-63B, Annual Photovoltaic Cell/Module Shipments Report (“Report”) to the U.S. Energy Information Administration (“EIA”). The deadline for submission of the Report for 2011 is April 30, 2012.

Purpose of the Report

Pursuant to the authority granted to the U.S. Department of Energy (“DOE”) by the Federal Energy Information Act of 1974, as amended (“Act”), EIA, currently part of DOE, is charged with the responsibility of monitoring and reporting U.S. energy reserves and production. In carrying out its duties, EIA tracks photovoltaic cell and module shipments via submitted Reports and subsequently provides the U.S. Congress with a summary of information concerning the size and status of the photovoltaic industry. To see EIA’s analysis for 2010 released on January 30, 2012, click [here](#).

Entities Required to Submit Reports

For over thirty years, the preparation and submission of a Report has been mandatory for all companies (both U.S. and foreign-based) that (a) operate under the laws and regulations pertaining to the conduct of commerce within the U.S. and its territories and possessions and (b) engage in photovoltaic-related activities within the U.S. and its territories and possessions, including photovoltaic cell/module manufacturing, shipping, importing, and/or exporting.

The companies involved in such activities can be classified in any of the following categories: (1) manufacturer, (2) brand name manufacturer (private label owner), (3) subsidiary or business unit of overseas manufacturer, (4) U.S. registered publicly traded overseas manufacturer, (5) importer, and (6) exporter.

Submission of Report

The Report form can be accessed [here](#). Companies filing the Report are required to provide a range of information about their product inventory, shipments, and revenue from the reported shipments. They must also submit data identifying the product origin (country or state/territory), manufacturer name, product type, peak kilowatts, sector and end use. Instructions can be found [here](#).

The completed Report must be filed with EIA through EIA's Internet Data Collection (IDC) system (<https://signon.eia.doe.gov/ssoserver/login>) by April 30 following the end of the calendar year to which the Report relates. Failure to respond may result in penalties under the Act as described below.

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Enforcement of Reporting Requirement

EIA has been provided with authority to enforce collection of data from energy-producing and -consuming companies. Section 13(b) of the Act (15 U.S.C. §772(b)) makes the timely submission of the Report mandatory with certain penalties for civil violations and fines for criminal violations. Failure to respond may result in a penalty of not more than \$2,750 per day or a fine of not more than \$5,000 per day for each civil or criminal violation, respectively.

Confidentiality of Submitted Information

The information provided to EIA in the Report is subject to protection and will not be disclosed to the public to the extent it satisfies the criteria for exemption under the Freedom of Information Act (5 U.S.C. §552), the Trade Secrets Act (18 U.S.C. §1905) and certain implementing regulations.

However, EIA is required under the Act to provide company-specific information to other agencies of the U.S. government for official use.

Time Burden on Filing Companies

EIA estimates that a reporting company needs approximately five hours to complete the Report, including the time for, among other things, reviewing the instructions for the Report, searching existing data sources and gathering and maintaining the data necessary for inclusion in the Report.

Conclusion

Because of the mandatory nature of the Report and potential penalties and fines associated with the failure to submit the Report in a timely manner, companies that may be subject to the filing requirement should carefully review their circumstances and determine whether or not their filing of the Report is required.

Authors:

Stan Lewandowski

stan.lewandowski@klgates.com

+1.650.798.6743

Aaron Schapiro

aaron.schapiro@klgates.com

+1.650.798.6711

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