

Mandatory U.S. Carbon Reporting Announced

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The U.S. Environmental Protection Agency recently announced that it will proceed with rulemaking requiring companies to report their “carbon footprint” from carbon dioxide and other greenhouse gas emissions from U.S. facilities. EPA is responding to a broad congressional directive buried within a FY 2008 omnibus spending bill (H.R. 2764) signed by President Bush on December 26, 2007. The bill requires the agency to issue regulations for “mandatory reporting of greenhouse gas emissions above appropriate thresholds in *all sectors of the economy of the United States.*” EPA must issue a proposed rule by September 2008 and final regulations by mid-2009. The new law leaves EPA with broad discretion to determine which industries and sources will be required to submit reports, what levels of emissions would trigger reporting requirements, and what exemptions will be provided. The omnibus bill provides \$3.5 million in fiscal 2008; however, the Bush Administration has already eliminated funding for the rulemaking in its fiscal year 2009 budget.

The GHG reporting language was inserted into the bill at the request of California Senators Barbara Boxer (D) and Diane Feinstein (D), who see mandatory reporting as an essential step towards reducing global warming through a cap-and-trade system, should Congress approve such legislation. EPA is working with The Climate Registry (TCR), a new a multi-state emissions reporting center, to develop a data sharing protocol which would theoretically allow companies to report emissions to TCR while having the reporting recognized by EPA and other registries.

The announcement of mandatory reporting dovetails with other recent developments on the climate change front. On April 2, 2007, the Supreme Court ruled that EPA has authority to regulate carbon dioxide and other greenhouse gases as “pollutants” under the Clean Air Act, and EPA is now required to assess whether greenhouse gas emissions pose a threat to public health (*Massachusetts v. EPA*, 127 S. Ct. 1438 (2007)). That assessment is still pending. Later in the year, EPA announced it would not grant a waiver under the Clean Air Act that would have allowed California and other states to implement stricter restrictions on tailpipe emissions than the national standards. In response, Senators Boxer and Feinstein recently introduced a bill that would overturn EPA’s denial of the waiver request by legislatively granting states the authority to adopt and enforce tailpipe emissions. At the same time, several comprehensive climate change bills are working their way through Congress, principally the Lieberman-Warner (S.

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2191) cap-and-trade bill which would impose mandatory emissions reductions across the U.S. economy. This bill, incidentally, would also require companies to report emissions to The Climate Registry. In California, state agencies continue to develop rules under California's ground-breaking A.B. 32 global warming bill, and regional efforts to reduce greenhouse gases are charging ahead under the New England and Mid-Atlantic states' Regional Greenhouse Gas Initiative, in the midwest under the Midwestern Greenhouse Gas Accords and in the greater west under the Western Climate Initiative.

In light of the strong movement in the U.S. toward mandatory reporting and emissions rules, companies should consider joining The Climate Registry www.theclimateregistry.org or another voluntary reporting program in order to gain valuable experience and establish an accurate emissions "baseline" in anticipation of emissions reductions.

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