



McGuireWoods News

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EPA Poised to Propose Federal Greenhouse Gas Registry Rule

The Obama EPA appears ready to pull the trigger on a proposed rule to require companies to evaluate and report their Green House Gas (GHG) emissions through the establishment of a federal GHG registry. The much anticipated proposal stems from a rider placed in the December 2007 omnibus appropriations bill, directing the EPA to promulgate regulations that "require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy." Considered to be a crucial first step towards a comprehensive federal climate change program, the rule is anticipated to initiate an enormous nationwide effort to collect and evaluate GHG emissions data -- possibly to start with 2009 emission data. Implications for sources will include evaluating what disclosures or public statements they may make based upon the collected data.

In February the Obama EPA sent its proposed rule to the Office of Management and Budget for review prior to publication in the Federal Register. The 2007 legislation required publication of the proposed rule by September 26, 2008 and the final rule by June 26, 2009, but the Bush EPA missed the September deadline and its proposed rule languished in the Office of Management and Budget. That proposal was recalled for review by the Obama EPA in January. Observers believe the new EPA and OMB are likely to move quickly to publish their proposal in March. EPA is believed to have reviewed and built upon existing state and regional greenhouse gas reporting regimes, such as those adopted in California and Oregon and under the Regional Greenhouse Gas Initiative. Protocols developed under voluntary reporting programs such as EPA's Climate Leaders and the private Climate Registry may also be a model.

In the past, only the electric utility industry has been required to monitor and report CO2 under the Clean Air Act's acid rain program. As well, some companies voluntarily report their GHG emissions. However, this rule, as directed by the legislation, is expected to encompass all economic sectors, potentially including the energy, manufacturing, commercial, agriculture, transportation, and even residential sectors, and really bring the implications of a carbon cap-and-trade bill to "main street". The conference report for the legislation notes that the EPA is directed to include reporting of

emissions resulting from upstream production such as fossil fuel and chemical producers or importers, and downstream sources or direct emitters such as large industrial facilities, to the extent that the EPA deems it appropriate.

The 2007 legislation gives discretion to the EPA to determine thresholds of emissions above which reporting is required and the frequency of such reporting. Threshold emission levels that trigger reporting have differed in state greenhouse gas registry initiatives in Oregon and California. For instance, in Oregon, general industrial facilities will have to report if they exceed 2,500 metric tons of CO₂, while in California industrial combustion sources that exceed 25,000 metric tons CO₂ must report. It is unknown at this time what general and/or sector applicability thresholds the EPA will choose, but most believe the EPA will propose a general threshold no greater than 25,000, and possibly as low as 10,000, metric tons CO₂. At these thresholds, a wide spectrum of relatively small industrial facilities, commercial operations, and even office buildings and residential high-rise buildings could be required to undertake annual greenhouse gas auditing and reporting.

All signs point to the EPA using an accelerated notice and comment period to meet the June 26, 2009 final rule deadline. GHG emission reporting required by the rule is likely to begin soon after, possibly by January 1, 2010, in order to create a database in time to help implement a federal cap and trade program. To that point, President Obama's proposed budget blueprint released on February 26 allocates \$19 million for the EPA to work with affected industry sectors to report "high-quality" emissions data that will "allow for work on the necessary steps toward implementing a comprehensive climate bill."

McGuireWoods LLP Clean Air Act Team

McGuireWoods LLP is a full service law firm with a specialty practices in Climate Change and Clean Air Act matters. For further information on EPA's Greenhouse Gas Registry rulemaking and its implications, please contact the authors or any member of our [Clear Air Act](#) team.

Partners

[Patricia Sharkey](#) - Chicago
312.750.8601

[Neal Cabral](#) - Washington, D.C.,
202.857.1727

[Gordon Alphonso](#) - Atlanta
404.443.5716

[David Rieser](#) - Chicago
312.750.8249

Associates

[Brad Daniels](#) - Chicago

[Stacia Christman](#) - Pittsburgh

[Christina Rey](#) - Los Angeles

[Elizabeth Rothenberg](#) - Jacksonville

[Amanda Short](#) - Charlotte

[Sarah Surber](#) - Richmond

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Atlanta 404.443.5500
Charlotte 704.373.8999 / 704.343.2000
Chicago 312.849.8100

Baltimore 410.659.4400
Charlottesville 434.977.2500
Jacksonville 904.798.3200