

Legal Alert: Climate Change Regulation Creeps Into Omnibus Spending Bill

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In an unexpected development, the U.S. Senate recently passed legislation with a requirement for the U.S. Environmental Protection Agency (“EPA”) to create a greenhouse gas emissions registry for industries. This requirement was included in the omnibus spending bill passed by the Congress that also included additional funding for the Iraq War.

Under the bill, EPA must develop the registry and require industries to report greenhouse gas emissions exceeding thresholds that EPA must develop for different industries in various sectors of the economy. EPA must also establish the frequency at which the industries must submit their reports to the agency.

EPA is required to consider reporting at both the “upstream” point of production, for example, at the point of mining coal, and at “downstream” sources (i.e., at an industrial plant’s emission source).

The EPA will have to draft its rules within nine months after President Bush signs the bill, which is expected within the next few days. Approximately \$3.5 million was allocated for the EPA to develop and publish the rule.

Many did not expect legislation on such a registry to pass so soon. Those in support of the registry have described it as a fundamental building block for more comprehensive climate legislation, including a cap-and-trade system. However, the passing of the legislation could also act to delay more comprehensive legislation, such as the Lieberman-Warner bill, to give the government time to see how the registry regulation is crafted and to consider the data generated by the registry process. It is unknown how the new rules may interact with various voluntary and regional registries that already exist or that are being developed. One thing is certain, however. Businesses in the United States are about to be thrust into the process of having to actively assess and manage their carbon footprint. The waiting period soon may be ending.



If you have any questions regarding this alert, or the services we provide, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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