



Corporate Compliance, Risk Management & Internal Controls



U.S. House of Representatives Narrowly Approves American Clean Energy and Securities Act

July 1, 2009

On June 26, 2009, the U.S. House of Representatives narrowly approved the American Clean Energy and Security Act (H.R. 2454, see [here](#) for text of bill, which is over 1400 pages) by a vote of 219-212, marking the first time that a Congressional body has passed a bill addressing regulation of greenhouse gas emissions. Greenhouse gases under the bill include carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbon, nitrogen trifluoride, and any other anthropogenic gas designated by the EPA. The current version of the bill will cut U.S. emissions of greenhouse gases by 17 percent from 2005 levels by 2020, and 83 percent by 2050. The bill will achieve such reductions primarily by establishing a cap-and-trade system. The bill will also impose a renewable electricity standard on states, which, among other things, requires electric utilities obtain at least 15 percent of their electricity from renewable sources by 2020. The bill also sets new energy-efficiency standards for new buildings and appliances, and includes provisions designed to promote energy efficiency in industry. The U.S. Senate has yet to take up the issue and is expected to draft its own version. It is unclear whether climate-change legislation will make it through Congress this year. However, in the event such legislation lags or otherwise fails to pass, the U.S. Environmental Protection Agency (EPA) is establishing a regulatory framework to govern emissions of greenhouse gases.

For example, on April 10, 2009, the EPA published the Greenhouse Gas Reporting Rule, which requires facilities emitting more than 25,000 tons per year of greenhouse gases to track annual emissions of such gases beginning January 1, 2010, and submit an annual report to EPA by March 31, 2011. The EPA received hundreds of comments on the proposed rule and closed the comment period on June 9, 2009. A response to comments and final rule is expected to be published later this year. Furthermore, on April 24, 2009, in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which held that greenhouse gases such as carbon dioxide fit within the definition of "air pollutant" in the Clean Air Act, the EPA published a proposed finding that emissions of greenhouse gases "threaten the public health and welfare of current and future generations" (endangerment finding) and that emissions from motor vehicles and motor vehicle engines contribute to atmospheric concentrations of greenhouse gases (contribute finding). This "endangerment and cause or contribute" finding is one of the first steps that EPA must take to construct a regulatory program to regulate greenhouse gas emissions under the Clean Air Act. Thus, even if Congress fails to pass cap-and-trade legislation, the EPA is paving an alternate path to regulate greenhouse gas emissions under the Clean Air Act.

Curran Tomko Tarski LLP Attorneys Can Help

Curran Tomko and Tarski LLP attorneys can help you stay abreast of the latest environmental legislative and regulatory initiatives that may impact your business. If you need assistance with these or other compliance concerns, other real estate matters, please contact one of the following attorneys practicing in the Curran Tomko Tarski LLP Environmental Group or your other favorite Curran Tomko Tarski LLP attorney:

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Other Helpful Resources & Other Information

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