EPA Required to Develop Greenhouse Gas Emission Reporting Rules

EPA Required to Develop Greenhouse Gas Emission Reporting Rules

Insight — 2/14/2008 12:00:00 AM

On December 26, 2007, President George W. Bush signed into law the Consolidated Appropriations Act of 2008 (H.R. 2764). The Act includes a simple one paragraph directive to the United States Environmental Protection Agency (EPA) to publish a draft rule within nine months (by September 26, 2008), and a final rule within 18 months (by June 26, 2009), which would "require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States."

No mandatory system for reporting of GHG emissions currently exists in the United States. Of the six Kyoto Protocol greenhouse gases (GHGs)-- carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6)-- only CO2 emissions are currently required to be reported to the EPA, and then only in certain circumstances as a means to verify emissions of nitrogen oxides (NOx).

And although this is the first time that EPA would create mandatory rules with respect to GHG reporting, the EPA has accumulated experience in creating and administering the Climate Leaders program, a voluntary GHG emissions reporting system. The Department of Energy (DOE) also administers similar programs-- the Climate Vision program and the Section 1605(b) program.

Notably, in administering these programs, both the EPA and the DOE make reference to incorporating the Greenhouse Gas Protocol corporate accounting and reporting standards developed by the World Resources Institute in collaboration with the World Business Council for Sustainable Development. Those same standards are in use by mandatory and voluntary monitoring, reporting and exchange programs (e.g., the California Climate Action Registry, the European Union Emissions Trading System, the Chicago Climate Exchange, etc.). Since the Consolidated Appropriations Act provides no guidance to the EPA as to the form and content of the rules that is required to draft, it is very likely that the EPA will fill in the blanks by drawing upon these standards.

While these standards obviously vary across the monitoring and reporting systems in place today, whether they be mandatory or voluntary, certain key concepts are consistent across those systems. Namely, all systems have mandatory reporting of both "direct" and "indirect" emissions of Kyoto

Protocol GHGs; optional reporting of offsets and non-Kyoto Protocol GHG emissions; and vigorous monitoring and certification obligations.

The definitions of direct and indirect emissions, in particular, have become standardized in existing systems such that the EPA would likely adopt them without much change. In the current monitoring and reporting systems, direct emissions are defined to include the on-site generation of electricity, heat or steam; physical or chemical processing transportation of materials, products, waste, and employees; and fugitive emissions. Indirect emissions are defined to include emissions from the generation of the electricity and steam purchased by an individual company.

Along with direct and indirect emissions, the current voluntary monitoring and reporting systems provide the option to report emissions from "upstream" and "downstream" sources, emissions of GHGs other than the six Kyoto Protocol GHGs, offset investments (e.g., sequestration, landfill methane); renewable energy; offsite waste disposal, product transport; employee commuting; business travel; and international operations. It is unclear whether these reporting options will become reporting requirements under the EPA's new rules.

Apart from definitional and categorization issues, a larger question is whether the EPA's rules will attempt to anticipate any future GHG reduction obligations. While the Act does not expressly authorize or direct the EPA to draft rules for reducing GHGs, the EPA will likely have to consider the impact of the monitoring rules on future mandatory or market-based GHG reduction obligations. In doing so, the new rules would have to address whether reporting is performed on a facility level or a corporate level. The facility level approach is an easier method to monitor compliance with GHG reduction obligations. The corporate level approach is more easily integrated with general accepted accounting principles, and therefore, with a typical US company's overall corporate reporting obligations. In addition, the timeframe for reporting of GHG emissions, including the establishment of a baseline, will be established in a federal mandatory program. Ideally, the reporting time periods and the baseline will be consistent with the yet-to-be-enacted federal program; however, there is no assurance that will be the case.

Whatever form the draft and final rules take, US companies will be constrained to include monitoring and reporting of GHG emissions in their corporate compliance responsibilities. For those that are already using existing programs and protocols, the adjustments may not be significant. For others, particularly smaller companies, the burden of compliance may be considerable.
