

Calendar No. 1067

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 110-491

FEDERAL GREENHOUSE GAS REGISTRY ACT OF 2008

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1387]

together with

MINORITY VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, having considered the bill (S. 1387) to amend the Emergency Planning and Community Right-to-Know Act of 1986 to provide for greenhouse gases, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

PURPOSES OF THE LEGISLATION

The Federal Greenhouse Gas Registry Act of 2008 (the Act), as amended would require the Administrator of the Environmental Protection Agency (EPA) to establish a Federal greenhouse gas (GHG) registry that is complete, consistent, transparent, and accurate, will collect reliable and accurate data for use by public and private entities, and will provide high-quality data to be used for implementing GHG reduction policies.

GENERAL STATEMENT AND BACKGROUND

Atmospheric greenhouse gas (GHG) concentrations have steadily been increasing since the industrial revolution. The accumulation of these GHGs traps more heat in the atmosphere and leads to increases in global average temperatures of air and water.

According to the Intergovernmental Panel on Climate Change (IPCC), “the warming of the climate system is unequivocal.” The IPCC also concluded with 90% certainty that humans are responsible for most of the recent warming.

According to the IPCC, continued increases in GHG concentrations will cause continued warming of the water and air, increased risk of droughts, threats to water resources, food shortages, more frequent and intense heat waves, spread of disease, and the extinction of species.

The 2008 Appropriations Act provided EPA \$3.5 million to draft a rule for mandatory reporting of greenhouse gas emissions in all sectors of the U.S. economy. The Act requires EPA to publish a draft rule in September 2008 and a final rule in June 2009.

S. 1387 builds upon the current EPA rulemaking, adding more detailed requirements relating to which facilities are covered, data collection and reporting, data verification and EPA enforcement.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would provide that the Act may be cited as the “Federal Greenhouse Gas Registry Act of 2008.”

Section 2. Purpose

The purpose of the act is to provide for the establishment of a Federal greenhouse gas registry that: (1) is complete, consistent, transparent, and accurate, (2) will collect reliable and accurate data that can be used by public and private entities to design efficient and effective energy security initiatives and greenhouse gas emission reduction strategies, and (3) will provide appropriate high-quality data to be used for implementing greenhouse gas reduction policies.

Section 3. Definitions

The term ‘affected facility’ is defined in detail, and the Administrator is authorized in certain cases to include additional facilities that emit greenhouse gas.

‘Carbon content’ means the quantity of carbon in carbon dioxide equivalent.

‘Carbon dioxide equivalent’ means the quantity of greenhouse gas that makes the same contribution to global warming as 1 metric ton of carbon dioxide.

‘Climate registry’ means the greenhouse gas emissions registry jointly established and managed by more than 40 states and Indian tribes.

‘Facility’ means 1 or more buildings, structures, or installations of an entity on 1 or more contiguous or adjacent properties in the United States.

The term ‘greenhouse gas’ refers to carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and other anthropogenically-emitted gas that EPA determines contribute to climate change.

The ‘greenhouse gas emissions’ include:

Stationary combustion source emissions emitted as a result of combustion of fuels, such as boilers, furnaces, burners, tur-

bines, heaters, incinerators, engines, flares, and other similar sources;

Process emissions from chemical or physical processes other than combustion;

Fugitive emissions consisting of intentional and unintentional emissions from equipment leaks, piles, pits, and cooling towers;

Biogenic emissions from biological processes, such as anaerobic composition, nitrification, and denitrification.

‘Indian Tribe’, ‘Local Distribution Company’, ‘Registry’, and ‘Source’ are defined. ‘Reversal’ means an intentional or unintentional release of a significant quantity of greenhouse gases to the atmosphere that was sequestered. ‘Sequestered’ refers to the isolation of greenhouse gas without reversal in geological formations.

Section 4. Reporting requirements

Section 4 would require affected facilities to submit reports to the Administrator describing the quantities and types of feedstocks, greenhouse gases, and electricity produced, generated, imported, exported, or sequestered. The report shall include a list of the sources of the greenhouse gas and quantify the amount in metric tons of source emissions, process emissions, and fugitive emissions. Additional detailed requirements for these reports are specified, and a provision authorizing the Administrator to provide de minimis exemptions from reporting is established. Reports must be verified by the Administrator.

Beginning in 2010, and each subsequent year, each affected facility shall submit quarterly data no later than 90 days after the end of the applicable quarter.

Nothing in this Act affects any requirements in effect relating to the reporting of fossil fuel production, refining, importation, exportation, or consumption, greenhouse gas emission data, or other relevant data.

Section 5. Data quality and verification

The Administrator shall establish by regulation comprehensive protocols and methods to ensure complete, accurate, consistent, and transparent data on greenhouse gas emissions that are to conform to best practices. EPA is to take into account the Climate Registry in issuing this rule. Specific protocols and methods are established in paragraphs (A) through (H), and best practices from other protocols and verification methods are required to be incorporated as specified.

Each affected entity shall provide information for the Administrator to verify and ensure the submission or retention of data, information on control and assumptions, and uncertainty.

The Administrator may waive reporting requirements for specific facilities if sufficient and equally or more reliable data are available under other provisions of law.

If data for an affected facility satisfactory to the Administrator is not provided, the Administrator shall prescribe methods to estimate emissions for the missing data and take appropriate enforcement action.

Section 6. Federal greenhouse gas registry

Not later than 2 years after the date of enactment of the Act, the Administrator is to promulgate regulations establishing a Federal greenhouse gas registry that builds upon the final rule promulgated under the Consolidated Appropriations Act of 2008, making necessary changes to achieve the purposes of this Act. Emissions reporting is to begin no later than January 1, 2011.

The Administrator shall design and operate the Registry and establish an advisory body broadly representative of private enterprise, agriculture, environmental groups, and State, tribal, and local governments to guide the development and management of the Registry. Coordination and technical assistance, taking into account the states' Climate Registry, is required.

The Administrator shall develop electronic reporting guidelines for affected entities, verify and audit reported data, calculate carbon content and greenhouse gas emissions using consistent methods, and immediately publish all Registry information on the internet, except information that is vital to national security, as determined by the President, or confidential business information that cannot be derived from information that is otherwise publicly available and that would cause competitive harm if published. Information relating to GHG emissions shall not be considered to be confidential business information.

The Administrator may use third parties that do not have any conflicts of interest to verify reported data.

The Administrator shall propose regulations no later than 180 days after the enactment of this Act and promulgate final regulations no later than July 1, 2009.

Section 7. Enforcement

The Administrator may bring a civil action against the owner or operator of an affected facility that fails to comply with any requirement of this Act. Any violation of this Act shall be subject to a \$25,000 fine per day for each violation.

The bill's title is amended to be "A bill to direct the Administrator of the Environmental Protection Agency to establish a Federal greenhouse gas registry."

LEGISLATIVE HISTORY

Senators Klobuchar and Snowe introduced S. 1387 on May 14, 2008 which was read twice and referred to the Committee on Environment and Public Works. The Committee met on September 17, 2008 and considered Senator Klobuchar's amendment in the nature of a substitute, which was adopted by voice vote without further amendment.

ROLLCALL VOTES

There were no rollcall votes. The measure was approved, a quorum being present, by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that the legislation does not impose substantial additional regulatory costs, and agrees with

the Congressional Budget Office that “[b]ecause the rule EPA is drafting under current law would likely include many of the facilities covered by the bill, the incremental costs of the mandates would likely not be substantial. In addition, most electric utilities are already required to report similar data to EPA under the Clean Air Act.” The Committee also agrees with CBO that costs of any mandates “would fall below the annual thresholds established in UMRA (\$68 million for intergovernmental mandates and \$136 million for private-sector mandates in 2008, adjusted annually for inflation).”

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office has found that “S. 1387 would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring facilities, as defined in the bill, to submit data on greenhouse gas emissions to the registry established in the bill. Because the rule EPA is drafting under current law would likely include many of the facilities covered by the bill, the incremental costs of the mandates would likely not be substantial. In addition, most electric utilities are already required to report similar data to EPA under the Clean Air Act. Consequently, CBO estimates that the costs of the mandate would fall below the annual thresholds established in UMRA (\$68 million for intergovernmental mandates and \$136 million for private-sector mandates in 2008, adjusted annually for inflation).”

CONGRESSIONAL BUDGET OFFICE ESTIMATE

SEPTEMBER 24, 2008.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1387, the Federal Greenhouse Gas Registry Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1387—Federal Greenhouse Gas Registry Act of 2008

S. 1387 would require the Environmental Protection Agency (EPA), not later than two years after enactment, to establish a greenhouse gas registry that contains data from electricity-generating facilities and other types of facilities about greenhouse gas emissions. The bill also would require EPA to establish rules related to data collection, reporting, and data verification.

According to EPA, the agency is currently working on a draft rule that requires mandatory reporting of greenhouse gases for the largest emissions sources in the United States. Based on information from EPA, CBO estimates that implementing this legislation

would cost less than \$500,000 a year, subject to the availability of appropriated funds.

Enacting this legislation also would establish civil penalties (which are recorded in the budget as revenues) for the owners and operators of affected facilities that fail to comply with the requirements under this legislation. CBO estimates that any increase in revenues resulting from those civil penalties would not be significant. Enacting this bill would not affect direct spending.

S. 1387 would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring facilities, as defined in the bill, to submit data on greenhouse gas emissions to the registry established in the bill. Because the rule EPA is drafting under current law would likely include many of the facilities covered by the bill, the incremental costs of the mandates would likely not be substantial. In addition, most electric utilities are already required to report similar data to EPA under the Clean Air Act. Consequently, CBO estimates that the costs of the mandate would fall below the annual thresholds established in UMRA (\$68 million for intergovernmental mandates and \$136 million for private-sector mandates in 2008, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), Burke Doherty (for the state and local impact), and Amy Petz (for the private-sector impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS

S. 1387, the Federal Greenhouse Gas Registry Act of 2008, a bill that requires the Administrator of the Environmental Protection Agency (EPA) to establish a Federal greenhouse gas (GHG) registry, should be opposed and returned to the Environment and Public Works Committee by the full Senate. The legislation is unnecessary, duplicative, and may lead to legal confusion by amending two different Acts.

The FY 2008 Consolidated Appropriations Act provided \$3.5 million to EPA to develop and publish a draft Mandatory Greenhouse Gas Reporting Rule that is set to go final sometime next year. That Rule is nearly on track and is in the final stage of internal review and set to go to OMB in the next few weeks. While the draft Rule is not yet final, there has already been extensive stakeholder outreach and hours dedicated to its development. S. 1387 and its Substitute represent the authors' intentions to rewrite that Rule before they have even seen a preliminary draft. The language authorizing the Rule, while I did not support it, was actually drafted by the Majority last year. This language used familiar existing reporting requirement language from the Clean Air Act, and set an already ambitious timetable.

In addition, this legislation intends to amend the Emergency Planning and Community Right to Know Act of 1986, which may lead to more confusion upon implementation because it also seeks to build off the Appropriations language from the FY 2008 Act which directed the Administrator to act under the Clean Air Act. I am concerned that this bill will also complicate that Rule's development by using threshold reporting requirements and definitions from the Lieberman Warner bill, which the Senate rejected earlier this year. It also includes extensive penalties for noncompliance and introduces new terms into the Act. It is my hope that we reject this legislation and focus on oversight of what the Agency is already in the process of producing, and avoid this duplicative mandate that is no longer necessary.

JAMES M. INHOFE.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

