

# Management Alert

## Early Action to Reduce Greenhouse Gases Can Reap Rewards Under Federal or State “Cap and Trade” Programs

Senator John McCain's recent reaffirmation of his commitment to the creation of a cap and trade system for greenhouse gas emissions makes the introduction of such a system in the U.S. significantly more likely, since all three current leading candidates for President support a cap and trade system. Bills pending before Congress would put such a system into effect in 2012. The major federal bills and the already enacted California greenhouse gas reduction legislation encourage potentially covered entities to take action to reduce greenhouse gases before 2012 by offering credits for emissions reductions or offsets achieved prior to the commencement of the federal cap and trade program. Anyone taking such early actions must, however, be able to verify their reductions in order to get credit once the federal cap and trade program is in place.

The three major federal bills pending before Congress each reward entities that reduce emissions prior to the start of the cap and trade program:

- S. 2191 (Lieberman-Warner): Five percent of emissions allowances issued in 2012 will be distributed to owners

and operators of covered facilities who have taken action since January 1, 1994, that resulted in “verified and credible reductions of greenhouse gas emissions. This allocation is reduced to one percent per year through 2016. A “covered facility” is any facility within the electric power sector, any facility within the industrial sector that emits more than 10,000 CO<sub>2</sub> equivalents of greenhouse gas in any year, any facility that produces or imports petroleum or coal-based transportation fuel which will emit more than 10,000 CO<sub>2</sub> equivalents of greenhouse gas in any year, and any facility that produces or imports nonfuel chemicals that will emit more than 10,000 CO<sub>2</sub> equivalents of greenhouse gas in any year.

- S. 280 (Lieberman-McCain – also sponsored by Obama): Administrator of the U.S. Environmental Protection Agency (“EPA”) directed to allocate emissions allowances to any covered entity in the amount equal to the emissions reductions registered by that entity if the reduction was registered prior to 2012. If the covered entity enters into an agreement

with the U.S. EPA under which it agrees to reduce its level of greenhouse gas emissions by 2012 to a level no greater than its level in 1990, then the Administrator is directed to allow that entity to satisfy forty percent of its emissions reduction requirements with domestic or international offsets (instead of the default maximum for offsets in the bill of thirty percent.)

- S. 309 (Sanders-Boxer): The bill does not describe the allocation scheme in the same detail as the two bills discussed above, but does allow the Administrator of the U.S. EPA to recognize reductions made before the effective date of any market-based trading program that were made in accordance with any state or local law or were made no earlier than 1992 and are at least as verifiable as reductions made in accordance with the rules to be established by the market based system.

On a state level, California AB32 (already enacted, unlike the federal bills discussed above) directs the California Air Resources Board (the “ARB”) to design regulations to encourage early action to reduce greenhouse gas emissions and to ensure that entities that voluntarily reduce their greenhouse gas emissions prior to 2012 receive appropriate credit. The ARB is also directed to adopt methodologies to quantify voluntary greenhouse gas reductions.

Although none of the federal bills or the California statute give examples of voluntary actions, they all share one common characteristic: credits will only be given for emissions reductions that are verifiable. Thus, anyone wishing to take early, voluntary action to reduce greenhouse gases should consider joining a program that will allow them to verify such reductions. On the national level, The Climate Registry (<http://www.theclimateregistry.org>) recently published a climate reporting protocol

that reporters to the registry can use to document their greenhouse gas emissions and reductions. The Chicago Climate Exchange (<http://www.chicagoclimatex.com>) requires members to document current emissions and steps taken to reach the emissions reductions targets; members’ reports are subject to third-party verification. On a state level, the California Climate Action Registry (<http://www.climateregistry.org>) allows owners and developers of greenhouse gas emission reduction projects to register their projects and the associated reductions on the Climate Action Reserve website. Projects must meet specific criteria and have been publicly listed for consideration, and be verified by an independent third party to ensure the project meets the protocol standards and accurately quantifies greenhouse gas reductions. The two projects currently registered are both conservation-based forest management projects.

What should you do if you don’t own a forest? As noted above, none of the federal bills or the California statute include specific examples of voluntary reduction projects. However, the ARB has considered, and in some cases approved, “early actions” to help California meet its goal of reducing greenhouse gas emissions in the state to 1990 levels by 2020. Some of these early actions will not be voluntary, but will be mandatory when the state program becomes effective on January 1, 2012. Some of these actions can be adopted on a voluntary basis in anticipation of a nationwide cap and trade program. Examples of general applicability include the following:

- Participate in the U.S. EPA’s Climate Leaders program, an industry-government partnership that works with companies to set a corporate-wide greenhouse gas (GHG) reduction goal and inventory emissions to measure progress and create a lasting record of accomplishments. The program includes overall

guidance on identifying GHG emission sources, including direct and optional sources, such as offsets, renewable energy, offsite waste disposal, product transport, employee commuting, business travel, and international operations.

- Join the SmartWay Transport Program, a voluntary partnership between various freight industry sectors and EPA that establishes incentives for fuel efficiency improvements and greenhouse gas emissions reductions. The three primary components of the program are creating partnerships, reducing all unnecessary engine idling, and increasing the efficiency and use of rail and intermodal operations.
- Adopt policies for refrigerant tracking, reporting, and recovery, and substitution of high global-warming-potential (“GWP”) refrigerants with low GWP alternatives.
- Adopt anti-idling rules for motor vehicles, and, where possible, switch idling vehicles to electric power (truck terminals, ports). Schools and other magnets for idling motor vehicles can also adopt policies to discourage/prohibit idling.
- Forty percent of greenhouse gas emissions in the U.S. are associated with buildings and construction. Certification under either U.S. EPA’s Energy Star program (<http://www.energystar.gov>) or the Green Building Council’s Leadership in Energy and Environmental Design (LEED) program (<http://www.usgbc.org>) can reduce greenhouse gas emissions over the lifetime of the building’s use plus achieve significant reductions in current operating costs.

In addition to the immediate benefits of reduced operating expenses, organizations can also use early actions to try out different greenhouse gas reduction strategies without the pressure of a looming deadline, and gather valuable

experience regarding what works - and what doesn’t work – in advance of the start of a mandatory system. Just remember to verify your emissions reductions.

*If you have any questions regarding this Management Alert, please contact the Seyfarth Shaw attorney with whom you work, or any Environmental attorney on our website, [www.seyfarth.com](http://www.seyfarth.com).*

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