



# THE LAWS OF ENERGY: PROTECTING YOUR BUSINESS



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President Obama's Stimulus Bill (American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5) provides several revenue-raising proposals, including new or increased taxes targeted at the oil and gas sector, as well as energy-related spending proposals.

While the administration justifies these proposals on the grounds of climate change, many of the proposals appear to be at cross purposes with the goal of U.S. energy independence. This pamphlet briefly describes these controversial taxing proposals and touches on some energy spending proposals. Congress passed a 2010 Budget Resolution on April 29, 2009 (Senate Concurrent Resolution 13). The administration issued its "Greenbook" of Budget tax proposals (entitled "General Explanations of the Administration's Fiscal year 2010 Revenue Proposals") on May 11, 2009. The Greenbook offers further details on the energy revenue-raising proposals, and adds one new revenue-raising proposal in the energy area.

### CAP-AND-TRADE

The Budget proposes a 100% full action "cap-and-trade" system, commencing in 2012. The goal of this system is to reduce greenhouse gas (GHG) emissions 14% over 2005 levels by 2020, and 83% by 2050. The "cap-and-trade" proposal has generated controversy. Business constituents, including oil and gas companies have lobbied Congress to enable auctioning, thereby saving costs by getting sellable permits for free.

Environmental groups argue that such a system conflicts with the purpose of reducing greenhouse gases, in effect, allowing companies to continue polluting.

### 7-STEPS FOR DETERMINING CLIMATE CHANGE LEGISLATION'S IMPACT ON YOUR BUSINESS

Climate change legislation and cap-and-trade proposals have created significant concerns with respect to potential risks that companies are facing ("Carbon Liabilities"). Many leading companies, however, are discovering the potential for opportunities in a cap-and-trade environment ("Carbon Assets"). For companies with greenhouse gas ("GHG") emissions, identifying and evaluating Carbon Liabilities and Carbon Assets is a critical step in preparing for future climate change legislation.

As early as next year, Federal law will require companies to measure and report their greenhouse gas emissions to the EPA. The House has passed a climate change bill, and the Senate will be considering and voting on a climate change bill as early as this fall. If it passes, emitters of greenhouse gases may be required to reduce their greenhouse gas emissions. Almost half the states have adopted or are working on adopting climate change legislation. Thus, whatever Congress does, many states will impose their own restrictions on GHG emissions.

In a cap-and-trade program, companies may purchase GHG or "carbon" permits, called allowances or offsets to meet their regulatory requirements in lieu of reducing their emissions. In addition, under a cap-and-trade system, at the end of each year, either carbon allowances or offsets must be turned in for every ton of GHGs emitted by a facility during the prior year.

The challenge for companies looking forward is to understand how these regulatory requirements may affect them. [Here is the 7-Step Guide:](#)

- 1) Measure your GHG emissions or "Carbon Footprint" in accordance with existing state and proposed federal GHG reporting requirements.
- 2) Evaluate existing and proposed state and federal climate change laws and regulations that may affect your business operations.
- 3) Determine if your company will be required to incur costs to reduce GHG emissions or purchase carbon allowances or offsets. What are the Carbon Liabilities?
- 4) Determine what GHG emissions will not be regulated. For those emissions, evaluate whether reductions can be monetized and sold as carbon credits or retained to use for the companies own compliance requirements with a reasonable rate of return on investment. What are the companies Carbon Assets?
- 5) Develop a form of Carbon Ledger so that the company can develop a Carbon Accounting of its Assets and Liabilities, and analyze different ways of managing those Liabilities and taking advantage of its Assets. A program to track and analyze these Assets and Liabilities on a weekly, monthly, or at least annual may need to be developed. A carbon trading desk within the company or outsourced to a carbon broker may be appropriate.
- 6) Engage management on climate change regulatory issues and present the companies GHG emissions, Carbon Assets, and Carbon Liabilities.
- 7) Develop a Climate Change Strategy to reduce Carbon Liabilities and to develop and produce revenue or reduce costs using Carbon Assets.