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Stimulus Becomes Law; Implementation Begins

When President Barack Obama signed into law a $787 billion economic stimulus package on Feb. 17, he also approved an unprecedented set of transparency and oversight provisions. The law calls for the establishment of a Recovery Accountability and Transparency Board to oversee the disbursement of more than $500 billion in federal cash outlays and a website to publicly track the spending.

Obama announced on Feb. 23 that Interior Department Inspector General Earl Devaney will be tapped to head the Board. Devaney, labeled the "busiest gumshoe inside the federal bureaucracy," has been lauded for investigating and uncovering corruption in deals with Native American tribes by former uber-lobbyist and now-convicted felon Jack Abramoff. Obama's selection of Devaney indicates the degree of seriousness with which Obama is

approaching stimulus spending oversight, but it is just the first step in ensuring that the nation's resources are not squandered on waste, fraud, and abuse.

The American Recovery and Reinvestment Act (ARRA) also requires the board to establish a website that will be a "portal or gateway to key information related to this Act." Provisions from the law require the website to include "data on relevant economic, financial, grant, and contract information;" "detailed data on contracts awarded by the Government;" and "a means for the public to give feedback on the performance of contracts." The Obama administration has already launched the website, Recovery.gov, which will serve as the board's online portal to recovery spending. Since none of the stimulus funds have been spent yet, the website only contains some overview data and policy statements at this point.

While all of the oversight and transparency provisions in the act will provide much needed accountability to federal recovery spending, Obama has set a high bar for transparency and accountability. Accordingly, on Feb. 18, the Office and Management and Budget (OMB) issued implementation guidance to the federal agencies. Impressive for its speed and comprehensiveness, the guidance still leaves many unanswered questions and raises potential flaws. OMB says this is the first of several guidance documents.

Specifically, the initial guidance issued by OMB indicates that reporting of spending may be limited to one level of sub-recipients. The guidance only requires the first subsequent recipient (the sub-recipient) of federal recovery money to report on the use of the funds. For example, if the federal Department of Transportation gives a grant to the state of Georgia to repair and build roads, and Georgia then gives some portion to the city of Atlanta for area roads, there would be no requirement for companies receiving contracts from the city to report on the use of the money or the number of jobs created. Sweetheart deals between officials and their friends may go unnoticed without a federal requirement that reporting follow federal funds for multiple levels of contracting or grantmaking.

Another potential oversight weakness stems from the failure of the law to require that full contract or grant documents for recovery spending be made available online. Instead, it calls for *summaries* of contracts or grants totaling more than $500,000, as well as those that were not competitively bid or not awarded as fixed-price agreements, to be posted on the Recovery.gov website. OMB Watch has published an analysis of the act's transparency and accountability provisions, which details these and other oversight mechanisms.

In addition to analyzing the act's oversight measures, OMB Watch is also actively working with the Coalition for an Accountable Recovery (CAR), a group of more than 30 organizations and individuals who believe transparency and accountability are essential to ensuring that hundreds of billions of dollars of federal spending is disbursed fairly; spent with minimal waste, fraud, and abuse; and can be assessed as effective or ineffective. The coalition is chaired by OMB Watch and Good Jobs First; the Project on Government Oversight is leading CAR's legislative oversight work; and the Sunlight Foundation is spearheading transparency issues.

A top agenda item for the coalition is strengthening the potential ability of the Recovery.gov website to provide robust transparency to the public, journalists, advocacy organizations, and federal and state government overseers. CAR has developed a vision for a comprehensive federal and state data collection and dissemination system. Now it is preparing to describe the architecture needed to reach this vision. Accordingly, the coalition is collecting viewpoints on:

- Data Needs: All the specific data elements that are critical to ensuring accountable results
- Reporting Formats and Interface: Which information (e.g., unique entity identifiers, a parent company identifier) should be registered with a central data repository and in which format (e.g., XBRL) should that information be reported
- Machine Readable Access: How web developers can access the data; the standards and methods for accessing the data (e.g., XML, APIs, RSS, Atom); and whether both cleaned-up data (corrected for typos, etc.) and original data should be available
- People Readable Access: How the public can obtain data and what analytic tools will be provided, including what type of tools should be available on the website (e.g., mapping, downloading of searches, etc.)

To offer comments on any of these items, visit OMB Watch's CAR headquarters.

President Obama to Release His Fiscal Year 2010 Budget

President Barack Obama is expected to release his Fiscal Year 2010 budget on Feb. 26. Details of the spending blueprint remain vague, but media reports indicate that the president's budget, unlike those of his predecessor, will hew closer to real-world situations. For example, Obama's budget will include spending on the conflicts in Iraq and Afghanistan, physician reimbursements under Medicare, costs associated with natural disasters, and lost revenues from changes in the alternative minimum tax.

The administration will use the FY 2010 budget to focus attention on federal health care programs and their effect on the long-term deficit. Specifically, the president will suggest that by making the health care system more efficient and increasing taxes, the 46 million Americans who do not have health insurance can be covered without increasing the deficit. He will also push for the elimination of several programs, including Medicare Advantage subsidies for private insurance companies and will propose a reduction in spending on defense contracts. Federal outlays will also be affected by the withdrawal of troops from Iraq and an increase in taxes on wealthy Americans. To boost revenue, the president is expected to argue that taxes on the income of hedge fund managers should be taxed at income tax rates, instead of at the capital gains rate of 15 percent.

Acknowledging trillion dollar deficits as far as the eye can see, the White House held a bipartisan "fiscal responsibility summit" the week of Feb. 23 to address the nation's growing financial burdens. After committing enormous outlays to such spending measures as the recently-enacted $787 billion stimulus bill and the Troubled Asset Relief Program (TARP),

OMB Director Peter Orszag believes that the administration will begin planning to reduce the federal budget deficit. "[Obama] wants to present an honest budget, he wants to focus on health care, and he will cut the deficit by at least half by the end of his first term," said Orszag. Obama also plans to address this longer-term fiscal matter in his address to Congress tonight, Feb. 24.

Congress Looks to Complete Fiscal Year 2009 Funding Bills

On Feb. 23, the House released details of a $410 billion omnibus spending bill. The bill would continue funding large portions of the federal government for the remainder of the fiscal year, which ends Sept. 30. The omnibus bill bundles appropriations for nine out of 12 spending bills set to expire on March 6. The Senate is expected to pick up the legislation the first week of March.

At the close of the last fiscal year – Sept. 30, 2008 – Congress approved a continuing resolution (a stop-gap spending bill) to fund education, scientific research, nutrition and housing services, and a host of other vital federally funded programs. This was needed because Congress only acted on three appropriations bills in 2008, covering the Pentagon, Homeland Security, and Veterans Affairs. Democrats in Congress felt they could not resolve their differences with former President Bush and opted for the continuing resolution to continue funding the government until March 6. Work on completing legislation to fund the operations of the federal government resumed in earnest during the week of Feb. 23.

When the House Appropriations Committee unveiled summaries of the nine remaining spending areas on Feb. 23, it also posted the legislative text of its FY 2009 spending plans on the committee's website. The $410 billion spending package would be more than an eight percent increase over FY 2008 and would increase funding for many important programs, including:

- $6.9 billion for the Women, Infants, and Children (WIC) nutrition program, a $1.2 billion increase over FY 2008
- $3.2 billion for state and local law enforcement and crime prevention, $495 million above FY 2008
- $2 billion to study global climate change, a $262 million increase over last fiscal year
- $5.1 billion, $337 million above 2008, for IRS enforcement
- $30.3 billion for the National Institutes of Health to research diseases such as Alzheimer's, cancer, and diabetes, a $938 million increase over FY 2008
- $17.3 billion for college education grants, $3 billion more than in FY 2008

The omnibus bill would also mark a turning point in the trend of privatization of federal government services. Significantly, it would end the IRS's inefficient Private Debt Collection Program (PDC). The PDC not only unnecessarily puts taxpayers' sensitive personal information at risk, but, as Taxpayer Advocate Nina Olson has repeatedly pointed out, it is a waste of federal resources. The bill would also put on hold the Commercial Services

Management Initiative. This government-wide program that pits private contractors against federal employees in competitions to determine who can deliver federal programs at the lowest cost has been criticized by the Government Accountability Office and has been ultimately ineffective at reducing agency costs.

Seven of the nine annual appropriations bills have been approved by the Senate Appropriations Committee, and four have been approved by the House Appropriations Committee (all have been approved by House Appropriations subcommittees). Although the text of these committee reports is available online through the Library of Congress's website *Thomas*, congressional Republicans are calling for greater transparency in the appropriations process. House Republican Leadership penned a letter to Speaker of the House Nancy Pelosi (D-CA) and House Majority Leader Steny Hoyer (D-MD) asking that they make the text of the bill and an explanatory statement available online. Echoing President Obama's rhetoric on transparency, the authors stated that "[r]ecent experience has demonstrated that transparency, scrutiny, and regular order are essential tools for crafting effective and prudent legislation." House Democrats, following Obama's lead and agreeing with the Republican request, have made available online legislative text and a bill summary.

FY 2009 Omnibus Spending Levels by Budget Area
(in billions of dollars)

Budget Area	FY 2008 Enacted	Bush Request	FY 2009 Omnibus
Agriculture, Rural Development, Food and Drug Administration	18.0	18.6	20.5
Commerce, Justice, Science and Related Agencies	51.8	54.1	57.7
Energy & Water Development	30.9	31.2	33.3
Financial Services and General Government	20.7	22.3	22.7
Interior, Environment, and Related Agencies	26.3	25.6	27.6
Labor, Health and Human Services, Education, and Related Agencies	145.1	145.4	151.8
Legislative Branch	4.0	4.7	4.4
State,Foreign Operations, and Related Programs	32.8	38.2	36.6
Transportation, Housing and Urban Development, and Related Agencies	48.8	50.6	55.0

State Secrets Legislation Introduced on the Heels of Sensitive Court Decision

During the week of Feb. 9, the Obama administration invoked the state secrets privilege in a sensitive legal case. The decision has led some groups to question if President Barack Obama is breaking from the Bush administration's interrogation and intelligence policies as promised, or if he intends to continue existing practices. Meanwhile, both houses of Congress are considering legislation (H.R. 984 and S. 417) to narrow the interpretation of the largely undefined privilege created by case law.

Mohamed et al. v. Jeppesen Dataplan, Inc. was a case dismissed by the U.S. Court of Appeals for the Ninth Circuit on Feb. 9. The case was originally filed in May 2007 when the American Civil Liberties Union (ACLU) sued a Boeing subsidiary, Jeppesen Dataplan, for providing logistical support to the Central Intelligence Agency (CIA) when the agency forcibly disappeared five of the ACLU's clients for interrogation abroad (known as extraordinary rendition). In February 2008, a lower court dismissed the case when the Bush administration claimed the state secrets privilege. The ACLU appealed the lower court's dismissal.

The Obama administration reasserted the privilege on Feb. 9, explaining that it had thoroughly vetted the previous administration's claim and agreed with its decision to invoke the privilege.

The use of the state secrets privilege by the Obama administration brought swift and strong reactions from civil liberty groups. Anthony D. Romero, Executive Director of the ACLU, complained, "Candidate Obama ran on a platform that would reform the abuse of state secrets, but President Obama's Justice Department has disappointingly reneged on that important civil liberties issue." Romero also warned, "If this is a harbinger of things to come, it will be a long and arduous road to give us back an America we can be proud of again."

There are other cases pending on state secrets, including *El-Masri v. Tenet* and *Al-Haramain v. Bush*. Whether or not the Obama administration continues to pursue the same application of the privilege in these cases is unknown. It may be that the administration conducts cases pertaining to the actions of a prior administration differently from how the current administration will apply the state secrets privilege to its own actions.

Legislation: A Path to Change?

It has been 50 years since the U.S. Supreme Court established the state secrets privilege. Historically, it has only been invoked to withhold specific pieces of evidence from being reviewed by a judge for possible introduction at trial. Officials in the Bush administration interpreted the privilege more broadly to pressure courts to dismiss entire cases under the claim, arguing that any and all records related to the government's defense would be state secrets. Since courts, especially lower courts, rarely challenge use of the Supreme Court-established privilege, most cases have been dismissed upon the government's assertion of the privilege. In 2007, the Supreme Court also refused an opportunity to review the broader use of the privilege.

This has led many to support new legislation that would, at least, restrict the interpretation of the privilege. Since there is no law currently governing the use of the privilege, legislative action is the only way to ensure consistent executive interpretation across different administrations. The State Secrets Protection Act was reintroduced in both the House by Rep. Jerrold Nadler (D-NY) and the Senate by Sen. Patrick Leahy (D-VT) as an attempt to narrow the interpretation by setting uniform standards for how courts must view each assertion of the privilege. Senate co-sponsor Arlen Specter (R-PA) said that the act would bring "meaningful oversight by the courts and Congress to ensure the Executive branch does not misuse the privilege." Leahy and Specter are the chair and ranking member, respectively, of the Senate Judiciary Committee, which has oversight of these issues.

The bills are the same as those introduced last year, but the two versions contain some small yet key differences. The Senate bill directs courts to weigh executive branch state secrets claims over the claims of the plaintiff. The House bill, however, takes an approach aimed at retroactively narrowing the application of the privilege. The House legislation seeks to reopen cases, as far back as 2002, in which the privilege was claimed. The Senate version would apply only to current and future cases.

EPA Inspector General Rips Program on Chemical Risks in Communities

The U.S. Environmental Protection Agency (EPA) is in need of significant improvements in the implementation of the agency's Risk Management Program, according to a new report from the EPA Office of Inspector General (OIG). The OIG report highlights the need for greater accountability for the Clean Air Act program. However, EPA has refused to provide program data online, reducing the public's ability to ensure the safety of vulnerable communities.

The Risk Management Program requires various facilities around the country to file a Risk Management Plan (RMP). It was created by an amendment to the Clean Air Act in 1996, and it is designed "to reduce the likelihood of airborne chemical releases that could harm the public, and mitigate the consequences of releases that do occur."

The OIG identified two major concerns with the program. First, the agency has no procedures for identifying which facilities have not submitted or re-submitted their RMPs. Second, EPA's inspection process is not strong enough to provide assurance that facilities are complying with program requirements.

An analysis of facilities in Colorado, North Carolina, Pennsylvania, Texas, and Oklahoma with large quantities of regulated chemicals stored on-site found that 48 out of 62 high-risk facilities that may be subject to the Risk Management Program had not filed RMPs. Moreover, about five percent of covered facilities had not updated their RMPs, as is required every five years. The OIG found that EPA had no national procedures or timelines to identify non-filers. Unless addressed, this failure of the program will likely result in some facilities never filing RMPs or taking needed actions to prevent or mitigate accidents.

The OIG also found that more than half of the high-risk facilities have never been inspected. The report notes that 162 high-risk facilities, each impacting more than 100,000 people in the event of a worst-case chemical accident, have never been inspected by EPA officials. This oversight was attributed to the structure of the program. Most states rejected delegation of the program (only nine states administer the program inside their respective jurisdictions), so EPA must ensure compliance for the overwhelming majority of facilities nationwide. Due to limited resources, a low number of EPA inspectors, and other logistical difficulties, it has been impossible for EPA to inspect every site. OIG proposes EPA adopt a risk-based approach to inspections so that high-risk facilities receive priority. EPA is now working on solutions to follow through on these recommendations and anticipates completion by the end of 2009.

Under the Risk Management Program, facilities that contain more than 140 regulated toxic and flammable substances are required to submit a RMP to EPA. “The RMP describes and documents the facility’s hazard assessment, and must include the results of an off-site consequence analysis for a worst-case chemical accident at the facility.” Facilities are also required to implement prevention and emergency response programs, as well as an in-house mechanism to ensure implementation. Additional requirements are placed on facilities depending on the magnitude of their worst-case assessments.

The OIG report does not identify specific facilities that have failed to submit RMPs. A management failure of the program not addressed in the OIG report is the EPA's lack of online disclosure of the plans. The agency removed the plans from its website shortly after the 9/11 terrorist attacks. Despite rulemaking changes reportedly designed to re-establish online access, the plans remain offline. EPA's public access is limited to in-person visits to regional reading rooms. Each individual is limited to viewing ten RMPs a month and may take handwritten notes, but is otherwise prohibited from copying the documents or removing them from the reading room. The only remaining online access for RMP information is the Right-to-Know Network at rtknet.org, a collection of environmental databases operated by OMB Watch. OMB Watch secured access to RMP information as a result of legal action two years ago under the Freedom of Information Act and provides access to all sections of the RMPs except for the Off-Site Consequence Analysis portion, also known as the Worst Case Scenario, which is prohibited from being distributed electronically.

Failure to disclose this information diminishes accountability both of facilities and of the agency overseeing the program. Public disclosure of government information creates pressure on agencies to properly carry out their responsibilities in implementing programs such as the Risk Management Program. When the disclosure is stopped or strongly curtailed, the government also eliminates a significant driver for strong program management. Broader public disclosure of RMPs might have brought some of the problems discovered in the OIG report to light sooner. Withholding emergency response plans also defeats the purpose of the entire program – to better protect the public from possible chemical emergencies. Emergency plans are useless if not disseminated to the public before an emergency.

Nada Known about Nano – Reporting Requirement Inches Forward

As the nanotechnology industry continues to grow, government policies are slowly being developed to gather basic information on potential threats to the environment and public health. For years, the federal government has promoted the nanotech industry, even though little has been known about the environmental and public health impacts of the materials. Recent actions by California, Canada, and the U.S. Environmental Protection Agency (EPA) will require companies to report data on potential threats from the use of nanotechnology.

Nanotechnology – the development and use of materials on the scale of individual atoms and molecules – has received federal support in the form of public-private partnerships and funding to research, develop, and commercialize new technologies. However, research on the health and environmental impacts of these new materials has lagged significantly behind these promotion efforts. The House recently passed a bill (H.R. 554) to reauthorize the primary federal nanotechnology research program, the National Nanotechnology Initiative (NNI). Included in the reauthorization is an expanded focus on evaluating growing environmental, health, and safety concerns. The bill was introduced by Rep. Bart Gordon (D-TN) on Jan. 15.

On the state level, California appears to be the furthest along in collecting information about the potential impacts from nanotechnology. California's Department of Toxic Substances Control (DTSC) recently issued an "information call-in" that outlined the department's intent "to request information regarding analytical test methods, fate and transport in the environment, and other relevant information from manufacturers of carbon nanotubes." The department then sent formal letters to more than two dozen companies and institutions that use carbon nanotubes – one of the most common nanomaterials – requesting a range of information. According to the DTSC, this information request "will identify gaps in the existing information that could be filled to better protect human health and the environment." The California information request cites several studies that identify potential environmental and public health threats from carbon nanotubes as one of the reasons for the need to fill the data gaps.

In January, BNA (subscription required) reported that Canada is preparing to require Canadian companies to report their use of nanomaterials. Environment Canada, the national environmental agency, will begin data collection in February to assess the risks from nanomaterials and identify actions needed to protect public health. The Canadian program will be similar to an EPA program started in early 2008, the Nanoscale Materials Stewardship Program (NMSP). However, the EPA program is a voluntary reporting system that has experienced very little participation.

The EPA called its voluntary program's data collection a success, despite the fact that the interim report on the NMSP, released in January, acknowledged that only 29 companies had submitted data. The report also noted that only four companies had agreed to conduct tests of their materials, leading the agency to conclude that "most companies are not inclined to voluntarily test their nanoscale materials."

Beyond the NMSP, EPA is also taking a small but important step toward filling data gaps on nanomaterials. In October 2008, the agency announced that carbon nanotubes are considered to be "new chemicals," which require submission of a premanufacture notice (PMN) that provides the agency with basic information about the new chemicals. The PMN submissions require all available data on chemical identity, production volume, byproducts, use, environmental release, disposal practices, and human exposure. This collection of basic data allows EPA to help manage the potential risk from chemicals new to the marketplace.

The Project on Emerging Nanotechnologies, a partnership between the Woodrow Wilson International Center for Scholars and the Pew Charitable Trusts, estimates that $60 billion worth of nano-enabled products were sold in 2007, with sales estimated to have grown to $150 billion in 2008. More than 600 nanotechnology-enabled consumer products are on the market.

Nanotechnology uses materials that are from one to 100 nanometers in size. A nanometer is one billionth of a meter (for perspective, a sheet of paper is about 100,000 nanometers thick). Nanoscale particles tend to be more chemically reactive than their ordinary-sized counterparts because they have more surface area. At the nanoscale, materials have different chemical and physical properties than materials at larger scales. For example, the NNI states, "There is potential for nanosized particles to be transported through cell walls and other biological barriers in ways that are different from their macroscale counterparts."

Nanotechnology research is seeking to apply nanomaterials in, among other areas, pharmaceuticals, medical equipment, batteries, photovoltaics, and even bioengineered food.

EPA Preparing to Battle Climate Change on Multiple Fronts

The U.S. Environmental Protection Agency (EPA), led by new administrator Lisa Jackson, is taking its first steps toward tackling global climate change. Jackson has announced her intent to review several Bush-era policies that limited the agency's ability to curb greenhouse gas emissions through regulation.

With those documents presumably still in the agency's hands, and with the full support of President Obama's White House, EPA appears poised to take action. Carol Browner, Obama's lead advisor on climate change issues, told the National Governors Association Feb. 22 that EPA "will make an endangerment finding," according to *The Wall Street Journal*. "The next step is a notice of proposed rule making," Browner added.

Under the Clean Air Act, if EPA determines that vehicle emissions pose a risk to public health or welfare, a so-called endangerment finding, it triggers a legal obligation to regulate the pollutant.

The endangerment finding, along with a proposal to regulate tailpipe emissions, was sent to the White House Office of Management and Budget (OMB) for review in December 2007.

OMB officials refused to open the e-mail attachments sent by EPA, effectively shuttering the agency's work.

An endangerment finding for greenhouse gas emissions would likely prompt the regulation of stationary sources as well. Similar to tailpipe regulation, the Clean Air Act directs EPA to regulate stationary sources, such as power plants and oil refineries, if emissions threaten health or welfare.

Jackson is already setting the stage for stationary source regulation. Jackson announced Feb. 17 that she would review a memo written by her predecessor, Stephen Johnson, maintaining that greenhouse gas emissions should be ignored when considering regulation of a stationary source.

Jackson is reconsidering Johnson's Dec. 18, 2008, memo in response to a request from the Sierra Club. According to a press statement, "EPA will vigorously review the Johnson memo to ensure that it is consistent with the Obama Administration's climate change strategy and interpretation of the Clean Air Act." In the meantime, "[P]ermitting authorities should not assume that the memorandum is the final word on the appropriate interpretation of Clean Air Act requirements," Jackson wrote to the Sierra Club.

The U.S. Supreme Court has already interpreted the Clean Air Act as giving EPA the authority to regulate greenhouse gas emissions. In April 2007, the Court ruled in *Massachusetts v. EPA* that the agency should determine whether greenhouse gases pose a threat to public health and welfare and, if so, regulate them. However, the Bush administration successfully stalled for the remainder of its term both the endangerment finding and regulation.

In addition to the endangerment finding and corollary federal regulatory proposals, Obama has instructed EPA to reevaluate a 2007 decision that prevented several states from moving forward with plans to curb greenhouse gas emissions from vehicles. Under pressure from the White House, Johnson refused to grant the states a waiver to regulate vehicle emissions.

According to a press statement, "EPA believes that there are significant issues regarding the agency's denial of the waiver. The denial was a substantial departure from EPA's longstanding interpretation of the Clean Air Act's waiver provisions."

In 2005, California petitioned EPA to allow the state to regulate vehicle emissions. Under the Clean Air Act, only EPA can regulate emissions, but the agency may grant a waiver to California if the state wishes to adopt more stringent regulations. If EPA grants California a waiver, other states may choose between the national regulations and California's regulations. Seventeen other states representing almost half the U.S. auto market are expected to adopt California's standards.

Jackson is also moving forward with two proposed rules that had languished under Johnson. EPA has sent OMB two draft proposed rules: one that would mandate an increase in the

proportion of biofuels in the national gasoline supply and another that would create a registry for greenhouse gas emissions.

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) reviews and edits drafts of proposed and final regulations before they are shared with the public. The two EPA rules are among the first that Obama's OIRA will review.

The proposals are not released to the public until OIRA has completed its review.

Both rules have missed deadlines set by Congress. The renewable fuels standard – which requires a quadrupling of the renewable fuels supply, including a substantial amount of cellulosic ethanol or other advanced biofuels – was mandated under the 2007 energy bill. Congress set a deadline of Dec. 19, 2008, for EPA to finish the rule, but the agency has yet to even propose it.

The FY 2008 omnibus appropriations bill required EPA to propose the greenhouse gas registry rule by Sept. 26, 2008, a deadline it missed, and finalize the rule by June 26, 2009, a deadline it is in danger of missing.

According to EPA, the greenhouse gas registry rule "would establish monitoring, reporting, and recordkeeping requirements on facilities that produce, import, or emit greenhouse gases above a specific threshold in order to provide comprehensive and accurate data to support a range of future climate policy options."

USDA Announces Changes to Food Labeling Rule

U.S. Department of Agriculture (USDA) Secretary Tom Vilsack announced Feb. 20 that a food labeling rule finalized in the last days of the Bush administration will go into effect as scheduled. The rule has been under review at USDA in accordance with a Jan. 20 memo from White House Chief of Staff Rahm Emanuel, which placed a moratorium on all final rules not in effect at the time President Barack Obama took office. However, Vilsack is asking food producers to follow additional voluntary country-of-origin labeling practices that could close loopholes left by the Bush rule.

In the USDA press release announcing the agency's intent to implement the rule, Vilsack released a letter to producers outlining the additional labeling practices and said USDA intends to track industry compliance before deciding whether the rule should be amended to achieve the intent of Congress. Vilsack is quoted as saying, "I strongly support Country of Origin Labeling – it's a critical step toward providing consumers with additional information about the origin of their food."

Country-of-origin labeling (COOL) was mandated by Congress in the 2002 farm bill. The law required beef, lamb, pork, fish, perishables, and peanuts to be labeled. Subsequent

appropriations legislation in 2004 and 2005 delayed implementation of COOL practices until September 2008.

To meet this deadline, the Bush administration issued Aug. 1, 2008, an interim final rule (a rule published first as a final rule instead of a proposed rule and with the opportunity to comment at the time the rule is promulgated). The Food, Conservation and Energy Act of 2008, known as the 2008 farm bill, expanded the list of products covered by COOL requirements.

Vilsack's Feb. 20 letter to industry groups indicated that after reviewing the final rule promulgated by the Bush administration, he had "legitimate concerns" about some of the rule's provisions. Specifically, he noted "treatment of product from multiple countries, exemptions provided to processed foods, and time allowances provided to manufacturers for labeling ground meat products." Despite these concerns, Vilsack is allowing the final rule to go into effect March 16 but is "suggesting" that the manufacturers adopt additional practices to provide consumers with greater information.

For example, because of confusion about how to label meat products that pass through different countries during production, the label should indicate which "production steps occurred in each country." Thus, an animal born, raised, and slaughtered in different countries has to bear a label indicating in which countries the animal was born, raised, and slaughtered.

Vilsack also criticized the rule's definition of "processed food" as possibly too broad. The rule exempts foods if processing would "change the character" of the food item, if the item is combined with some other food item, or if the item is cooked, cured, or smoked. For example, a bag of combined frozen peas and carrots in a grocery store is considered a processed food even though a bag of frozen peas and a bag of frozen carrots are not considered processed and, therefore, have to be labeled.

USDA's Agricultural Marketing Service is responsible for implementing the country-of-origin program. Vilsack's letter promises close scrutiny of producers' efforts to meet the voluntary steps before deciding on any amendments to the existing rule.

Questions Loom for President's Office of Faith-Based and Neighborhood Partnerships

On Feb. 5, President Barack Obama signed an executive order establishing the White House Office of Faith-Based and Neighborhood Partnerships to help address the nation's social problems by strengthening the capacity of faith-based and community organizations. The executive order amends a Bush-era order that created the former Office of Faith-Based and Community Initiatives. Despite campaign promises, the Obama order does not reverse the Bush policy that allowed federal agencies to award contracts to faith-based organizations that discriminate in their hiring processes based upon religious affiliation, marital status, or sexual orientation.

The Obama order expands the faith-based program by calling for an increase in federal funding of social service programs run by religious institutions and by establishing a federal advisory board composed of 25 diverse religious and secular leaders to consult on how funding will be distributed and to help shape the administration's policies on issues such as abortion, AIDS, and social welfare.

Before Obama signed the order, he spoke at the annual National Prayer Breakfast, where he outlined the program and referenced the important role community groups play in alleviating social ills. "The goal of this office will not be to favor one religious group over another – or even religious groups over secular groups," said Obama. "It will simply be to work on behalf of those organizations that want to work on behalf of our communities, and to do so without blurring the line that our founders wisely drew between church and state. This work is important, because whether it's a secular group advising families facing foreclosure or faith-based groups providing job-training to those who need work, few are closer to what's happening on our streets and in our neighborhoods than these organizations. People trust them. Communities rely on them."

According to *The Washington Post*, the office will expand its agenda and "will be more involved in policy planning than it was during the Bush years." The top priorities for the office will be reducing poverty and making community groups a part of the economic recovery, interfaith relations with leaders around the world, strengthening the role of fathers in society, and addressing teenage pregnancy and reducing the need for abortion.

The Obama order references the importance of supporting community groups while maintaining the separation of church and state. The order states, "It is critical that the Federal Government strengthen the ability of such organizations and other nonprofit providers in our neighborhoods to deliver services effectively in partnership with Federal, State, and local governments and with other private organizations, while preserving our fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and forbidding the establishment of religion."

A separate 2002 Bush order had been criticized for not instilling safeguards to assure that federally funded services are appropriately coordinated, provided by qualified individuals, and provided without requirements for religious observance. This order also claimed that the constitution's guarantee of freedom of speech ensured that groups may receive federal taxpayer money "without impairing their independence, autonomy, expression or religious character." This assertion was intended to grant the right to faith-based institutions to use federally funded programs to proselytize for their religion. Perhaps the greatest controversy was that the Bush order allowed discriminatory practices in employment and in access to services.

In July 2008, during a speech in Zanesville, OH, candidate Obama said that he planned to prohibit religious hiring discrimination for federally funded positions, as well as religious proselytizing. "If you get a federal grant," Obama said, "you can't use that grant money to proselytize to the people you help and you can't discriminate against them or against the

people you hire on the basis of their religion." This opposition was reiterated in a fact sheet issued by the campaign on plans to work with faith-based organizations. "Religious organizations that receive federal dollars cannot discriminate with respect to hiring for government-funded social service programs."

Instead of completely withdrawing Bush's order, Obama outlines that the director of the new White House Office of Faith-Based and Neighborhood Partnerships should seek guidance from the Department of Justice on specific legal issues. The order says that when legal or constitutional issues arise regarding "existing or prospective programs and practices," the executive director is to seek the opinion of the White House counsel and the attorney general. According to news reports, "the hiring rules would be reviewed on a case-by-case basis when there are complaints and that the Justice Department will provide legal assistance." A number of groups are saying the order does not go far enough in rescinding the Bush hiring policies and are now calling on Obama to act on this campaign promise.

The Obama order also creates the President's Advisory Council on Faith-Based and Neighborhood Partnerships. Jim Wallis, founder of Sojourners Magazine and a member of the council, said the council and the new faith-based office "offers the chance to move beyond necessary programs to fund exemplary faith-based organizations [. . .] to a broader and deeper vision of real 'partnership' between the faith community and sound social policies."

Members of the advisory council will be appointed to one-year terms, which may be extended. The role of the council will be "to identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations to the President."

The advisory council consists of both those who have publicly supported and opposed the hiring issue. One member of the new advisory council is Richard Stearns, president of World Vision. Recently, new reports highlighted a 2007 Justice Department Office of Legal Counsel (OLC) legal opinion allowing a $1.5 million grant to World Vision, a Christian aid group that makes religious belief a condition of employment. Since the 2002 Bush order could not replace existing statutes, the OLC opinion interprets the Religious Freedom Restoration Act as a way for agencies to exempt grantees from statutes such as the Civil Rights Act of 1964, which forbid discriminatory hiring.

Existing religious hiring rights is a controversial issue; while some groups argue that hiring based on religion is necessary for their work and identity, others assert that it is a violation of Americans' civil rights. Groups charged that as written, the Obama order continues to allow discrimination in hiring. Americans United for Separation of Church and State (AU) issued a press release citing executive director Rev. Barry W. Lynn. Lynn said, "It should be obvious that taxpayer-funded religious bias offends our civil rights laws, our Constitution and our shared sense of values."

In July 2008, OMB Watch joined the Coalition Against Religious Discrimination (CARD), a group of religious, civil rights, and civil liberties groups, in letters to the presidential candidates advocating corrective action to "restore religious liberty and civil rights as critical components of future administrative policy."

AU has put out an action alert calling on the public to contact the White House asking the president to put forth an executive order that directly bars employment bias in all publicly funded programs. In the letter to Obama, AU asserts, "When you signed an executive order creating the Council, you failed to put an immediate end to such discrimination and clearly ban proselytization. Although you have offered criticism of some of the constitutional pitfalls of Bush's Faith-Based Initiative, I am saddened to note that every rule and regulation of his Initiative remains intact today."

While Obama's executive order may be controversial because of the hiring issue, some elements are heartening to many. For example, the change of the office's title to include "partnership," the specific priorities put forth for the office, and the creation of a new advisory council all offer the chance for constructive outcomes. Obama said the office will "be a resource for nonprofits and community organizations, both secular and faith based, looking for ways to make a bigger impact in their communities, learn their obligations under the law, cut through red tape, and make the most of what the federal government has to offer."