

**EXECUTIVE SUMMARY**  
**“AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009” –**  
**DISCUSSION DRAFT**

The “American Clean Energy and Security Act of 2009” is proposed climate change legislation released by Chairman Waxman and Subcommittee Chairman Markey on March 31, 2009 in the form of a “discussion draft.” The Act is 648 pages and would set new greenhouse gas (GHG) emission standards and efficiency standards across major sectors of the U.S. economy, create a carbon cap-and-trade program and a broad array of other new federal programs and energy trading markets, amend numerous federal energy and environmental statutes, direct the promulgation of complex new regulations, and authorize significant new grants and funding to be distributed widely both domestically and abroad.

The Act would impose enormous new costs on U.S. companies and consumers and have major implications for the U.S. economy, financial markets and international trade and commerce. It would be administered primarily by the Environment Protection Agency (EPA) and the Department of Energy (DOE), with oversight of new trading markets by the Federal Energy Regulatory Commission (FERC). Numerous other agencies would also play a role, including the Departments of State, Interior, Commerce, Transportation, Housing and Urban Development (HUD), Education, Labor, and Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC) and other agencies. The Act includes four titles with the following key provisions:

**Title I - Clean Energy**

- **Renewable Energy Standard:** The Act would require retail electric suppliers to either purchase a percentage of their electricity from renewable energy sources, or make an “alternative compliance payment” that would be the equivalent of 5 cents per kilowatt hour. The required percentage of renewable electricity purchases would be 6% in 2012 and increase to 25% by 2025. To implement the program, DOE would issue “Federal renewable electricity credits” that could be traded, borrowed or banked, and FERC would oversee the new credit and derivatives markets. Renewable energy sources would include wind, solar, geothermal, landfill gas, marine and hydrokinetic renewable energy, and limited biomass and hydropower sources. Nuclear energy would not be included and is not substantively addressed in the Act. If a retail electric supplier is in full compliance with the discussion draft’s separate energy efficiency resource standard for that year, the governor of their state may petition DOE to reduce the renewable requirement by up to one-fifth. This federal RES is in addition to, not in lieu of, any existing state renewable mandates. This legislation also does not give FERC any additional authority to site the electric transmission which would be necessary to reach these goals.
  
- **Carbon Capture and Sequestration (CCS) Technology Deployment:** The Act incorporates Rep. Boucher’s H.R. 1689, which would authorize a new organization to collect fees on fossil fuel electricity of approximately \$1 billion for 10 years to fund commercial deployment of CCS technologies. The Act would also provide for funding

by EPA of commercial-scale CCS projects, and for EPA and DOE to conduct studies and issue regulations to facilitate CCS technology deployment.

- **Performance Standards for New Coal-Fired Power Plants:** The Act would establish new standards for plants permitted after January 1, 2009 (which could emit no more than 1100 pounds of carbon dioxide per megawatt-hour after CCS is determined to be commercially operating or 2025, whichever comes first), for plants permitted after January 1, 2015 (which could emit no more than 1100 pounds of carbon dioxide per megawatt-hour), and for plants permitted after January 1, 2020 (which could emit no more than 800 pounds or an amount set by the EPA).

- **Transportation – Low Carbon Fuel Standard:** The Act would require EPA to conduct a life cycle GHG emissions analysis of all transport fuels and determine a fuel emissions baseline. From 2014-2022, no fuels sold may exceed the fuel emissions baseline. It would also require EPA to set a new emissions standard for transportation fuels to take effect in 2023. Other actions to advance plug-in hybrid and electric vehicle technology and infrastructure would also be mandated by the Act.

## **Title II - Energy Efficiency**

- **Commercial and Residential Buildings:** The Act would establish new energy efficiency targets, including 30% improvements for existing codes and standards by 2012, and 50% improvements for codes and standards issued in or after 2016. Future new targets would also be mandated.

- **Lighting and Appliances:** The Act would establish new standards for a variety of products, change Energy Star appliance efficiency test procedures for any product covered by DOE efficiency regulations, and establish “Best-in-Class” and “Superefficient Best-In-Class” programs to award bonuses and bounties to retailers and manufacturers.

- **Motor Vehicles:** The Act would require EPA to set new GHG emission standards for motor vehicles (that meet or exceed California law for vehicle emissions) by 2010. Other new emission standards would also be required for new heavy-duty vehicles, marine vessels, locomotives, aircrafts and engines. EPA at its discretion could authorize averaging, banking and trading of credits across transportation categories.

- **Utilities:** The Act mandates an Energy Efficiency Resource Standard that would require electric and natural gas distributors to achieve cumulative energy savings beginning with 1% in 2012 and increasing to 15% by 2020 for electricity distributors, and beginning with .75% in 2012 and increasing to 10% by 2020 for natural gas distributors.

- **Industrial Facilities:** The Act would require DOE to develop new industrial plant certification standards.

### **Title III - Reducing Global Warming**

- **Mandatory Caps on GHG Emissions:** The Act would impose mandatory caps on U.S. GHG emissions beginning with 3% below 2005 levels by 2012 and increasing to 83% below 2005 levels by 2050. “Covered entities” would include any electricity source; stationary source that imports fuels that emit more than 25,000 tons of carbon dioxide equivalents annually; geologic sequestration sites; stationary sources in specified industrial, chemical and petrochemical, and other manufacturing sectors that emit more than 25,000 tons of carbon dioxide equivalent annually (including food processing, iron and steel, cement, glass, pulp and paper); fossil fuel-fired combustion devices; and local natural gas distribution companies.
- **Cap and Trade – Carbon Markets:** The Act would establish a highly complex cap-and-trade program to be administered by EPA. To implement the program, EPA would for each year beginning in 2012 issue various types of emission allowances and offsets that could be traded, banked or borrowed subject to specified restrictions. Covered entities would be required to hold 1 allowance for each ton of carbon dioxide equivalent emitted directly or indirectly in the prior year, or alternatively satisfy their obligations through offset credits and international emission allowances from reduced deforestation. FERC would exercise oversight over the allowance market; the President is directed to delegate authority over the derivatives market to appropriate agencies .
- **Allocation and Auction of Allowances** – The Act currently contains a placeholder for information on allocation and auction of emission allowances. Without this information, it is impossible for the CBO to analyze costs of the bill.
- **Offsets** – An offset credit is worth 4/5 of a standard emissions credit. Covered entities could meet some of their allowance obligation by purchasing offsets – 30% of their obligation in 2012 ramping up to 66% in 2050. No more than ½ of the offsets could be international.
- **Additional GHG Emissions Standards:** The Act would require EPA to set GHG emission standards within 1 year for U.S. stationary sources which are not covered by the general allowances program but which emit greater than 10,000 tons of carbon dioxide equivalent annually. These companies and the “covered entities” subject to the general allowances program would also be required to report annually on their GHG emissions to EPA which would establish a GHG Registry. Methane emissions from sheep and cattle are exempt.
- **Citizen Suits:** The Act would authorize any person who has suffered or reasonably expects to suffer harm from a violation of the Act to bring a citizen suit. “Harm” would be broadly defined to include “any effect of air pollution (including climate change), currently occurring or at risk of occurring” even if it is widely shared. A lawsuit could be based on any act or omission that violates the Act or slows the pace of its implementation, or results in higher GHG emissions. Multiple lawsuits could be

consolidated before a multidistrict panel. Successful plaintiffs could recover damages, costs, reasonable attorneys fees and expert fees.

#### **Title IV - Transitioning to a Clean Economy**

● **Domestic Competitiveness:** The Act would authorize rebates that would be determined 1 year in advance for trade-affected eligible sectors. Rebates could be phased out beginning in 2020 if EPA determines that 70% of the global output from the sector occurs in countries with commensurate GHG regulations.

● **International GHG Reductions:** The Act would authorize an International Reserve Allowance Program that would seek to prevent foreign GHG emissions from undermining U.S. climate change goals. If the President determined compliance costs, even with rebates described above, have caused significant reduction in domestic jobs or production, or an increase in foreign GHG emissions, EPA could issue international allowances that importers would be required to purchase and submit when importing covered goods.