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ACES a Winning Hand? New Clean Energy Legislation at the Starting Gates

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Nancy Pelosi recently reaffirmed her commitment to getting a climate bill passed in the House by July, and on March 31, 2009, House Energy and Commerce Committee Chairman Henry Waxman released draft “clean energy” legislation with an ambitious schedule for action. The 648-page bill, offered by key leaders in the House, is the first serious attempt at addressing both climate change and energy issues since the Democrats took control of the Congress and the White House. Immediate reactions varied from glowing praise to scathing criticism – just a taste of the controversy likely to come.

In general, however, reactions reflected the compromised nature of the draft legislation. The US Climate Action Partnership, a coalition of 25 businesses and five environmental organizations, noted that the draft includes many of the recommendations in the Partnership’s Blueprint for Legislative Action. Many have described the draft as a good starting point in the discussion, noting that there are important details that have yet to be negotiated: for example, how to allocate allowances and what to do with the revenue from auctions.

Most environmental groups expressed their initial approval of the draft, though some criticized the offset provisions and the subsidies, or said the bill did not go far enough. Some noted that the timing of the draft sends a message regarding the current U.S. position on climate issues to delegates attending a UN meeting in Bonn this week.

The American Clean Energy and Security Act of 2009 (ACES) has four titles:

- **Clean Energy:** to promote renewable sources of energy, carbon capture, and sequestration technologies, low-carbon fuels, clean electric vehicles, a smart grid and electricity transmission;
- **Energy Efficiency:** to increase energy efficiency across all sectors of the economy, including buildings, appliances, transportation, and industry;
- **Global Warming:** places limits on emissions of heat-trapping pollutants; and
- **Transitioning:** to protect U.S. consumers and industry and promote green jobs during the transition to a clean energy economy.

Title I – Clean Energy

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Renewable Energy. The draft requires retail electricity suppliers to meet a certain percentage of their load with electricity from renewable resources, like wind, biomass, solar, and geothermal. The renewable electricity requirement begins at 6% in 2012 and gradually rises to 25% in 2025. Differences in the availability of renewable resources in various parts of the country make this aspect of the bill a likely target for controversy.

Carbon Capture and Sequestration. The draft includes a CCS early demonstration program, incentives for the wide-scale commercial deployment of CCS, and performance standards for new coal-fired power plants.

Clean Fuels and Vehicles. A new low-carbon transportation fuel standard would be developed to promote biofuels and other clean transportation fuels. It is not clear how this aspect of the law would be harmonized with the Energy Independence and Security Act of 2007, which calls for increased biofuel production. The draft would also provide energy grants and loan guarantees to cities, states, and private companies for large-scale demonstrations of electric vehicles. A related provision authorizes financial support to car companies to retool their plants to build electric vehicles.

Smart Grid and Electricity Transmission. The draft would encourage the deployment of a smart grid, including measures to reduce utility peak loads through demand response applications. It also directs the Federal Energy Regulatory Commission to reform the regional planning process to modernize the electric grid and provide for new transmission lines to carry electricity generated from renewable sources.

Title II – Energy Efficiency

Building Energy Efficiency. The draft promotes energy efficiency in new buildings by providing assistance to states that adopt advanced building efficiency codes, and directs the Environmental Protection Agency to develop procedures for rating building energy efficiency.

Appliance Energy Efficiency. The draft codifies negotiated agreements on efficiency standards for lighting and appliances. It makes numerous changes to the current Department of Energy process for setting energy-efficiency standards, making it easier to meet the cost-effectiveness test for new standards.

Transportation Efficiency. The draft directs the president to work with the relevant agencies and California to harmonize, to the maximum extent possible, the federal fuel economy (CAFE) standards, any emission standards promulgated by EPA, and California's standards for light-duty vehicles. The goal of this provision is find a way to allow California to continue its own program, while simplifying compliance by the auto companies. The draft also directs EPA to set greenhouse gas emissions standards for other mobile sources of pollution such as locomotives, marine vessels, and nonroad sources.

Utility Energy Efficiency. Under a new energy efficiency resource standard, each distribution company must demonstrate that its customers have achieved a required level of cumulative electricity or natural gas savings relative to business-as-usual projections, beginning with savings of 1% electricity and 0.75% natural gas in 2012, gradually increasing to cumulative savings of 15% electricity and 10% natural gas by 2020.

Industrial Energy Efficiency. The draft requires the secretary of energy to establish industrial energy efficiency standards and to seek recognition of the result by the American National Standards Institute.

Public and Federal Energy Efficiency. The draft amends the Energy Independence and Security Act of 2007 to include nonprofit hospitals and public health facilities among public institutions eligible for grants and loans for energy efficiency. It also requires competitive bidding for energy savings performance contracts.

Title III – Reducing Global Warming Pollution

Global Warming Pollution Reduction Program. The draft establishes a market-based program very similar to the proposal currently being evaluated in California, targeting about 13,000 electric utility plants,

petroleum refineries, large manufacturing plants, and other facilities that collectively are responsible for 85% of U.S. global warming emissions. Under this program, covered entities must have tradable federal permits, called “allowances,” for each ton of pollution emitted into the atmosphere. Facilities emitting less than 25,000 tons per year of CO₂ equivalent are exempt. The number of available allowances decreases each year to ensure that aggregate emissions from the covered entities are reduced by 3% below 2005 levels in 2012, 20% below 2005 levels in 2020, 42% below 2005 levels in 2030, and 83% below 2005 levels in 2050.

Supplemental Pollution Reductions. The draft directs EPA to achieve additional reductions in global warming pollution by entering into agreements to prevent international deforestation. By 2020, these supplemental reductions are expected to achieve reductions equivalent to 10% of U.S. emissions in 2005. Approximately 5% of the allowance value would be dedicated to the program.

Offsets and Banking. The draft allows covered entities to increase their emissions above their allowances if they can obtain “offsetting” reductions at lower cost from other sources. The total quantity of offsets allowed in any year cannot exceed two billion tons, split evenly between domestic and international offsets. Covered entities using offsets must submit five tons of offset credits for every four tons of emissions being offset. The draft also allows unlimited banking of allowances for use during future compliance years and establishes a rolling two-year compliance period, effectively allowing covered entities to borrow from one year ahead without penalty.

Strategic Reserve. The draft directs EPA to create a “strategic reserve” of about 2.5 billion allowances by setting aside a small number of allowances authorized to be issued each year, thereby creating a cushion against a faster-than-expected rise in prices.

Carbon Market Assurance and Oversight. The draft charges the Federal Energy Regulatory Commission with regulating the cash market in emission allowances and offsets, and requires regulation of the carbon derivatives market, but does not specify what agency would be responsible.

Additional Greenhouse Gas Standards. The draft directs EPA to set new source performance standards for certain uncapped sources not covered by the allowance system. In addition, it creates special programs to reduce emissions of two pollutants that contribute to global warming: hydrofluorocarbons (HFCs) and black carbon.

Clean Air Act Exemptions. To ensure that ACES becomes the single vehicle for addressing GHG emissions, the draft provides that CO₂ and other greenhouse gases may not be regulated as criteria pollutants or hazardous air pollutants on the basis of their effect on global warming. The draft also provides that new source review does not apply to these global warming pollutants.

Title IV – Transitioning to a Clean Energy Economy

Ensuring Domestic Competitiveness. The draft in effect authorizes government subsidies and tariffs to protect American businesses. Companies in industrial sectors that face competition from countries without strong GHG laws could receive “rebates” to compensate for additional costs incurred under the program. Sectors that use large amounts of energy and produce commodities that are traded globally would be eligible for the rebates. If the president finds that the rebate provisions do not sufficiently correct competitive imbalances, he would be directed to establish a “border adjustment” program (some would call this a tariff), under which foreign manufacturers and importers would be required to pay for and hold special allowances to “cover” the carbon contained in U.S.-bound products.

Exporting Clean Technology. The discussion draft includes provisions to provide U.S. assistance to encourage widespread deployment of clean technologies to developing countries.

Adapting to Global Warming. The draft establishes an interagency council to ensure an integrated federal response to the effects of global warming. The National Oceanic and Atmospheric Administration is directed to conduct vulnerability assessments and establish a National Climate Service. Each federal agency is directed to prepare an adaptation plan, review climate impacts on matters within its jurisdiction, and develop plans for addressing those impacts.

