

## President Obama Directs EPA to Reconsider California Waiver Request to Regulate Greenhouse Gases; Decision Appears Likely to Impact Automobile Manufacturers and May Signal EPA Regulation of CO<sub>2</sub> under the Clean Air Act

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In keeping with prior statements indicating that his administration would take action on the issue of global climate change, on January 26, 2009, President Obama directed the Environmental Protection Agency (“EPA”) to reconsider a March 2008 decision that denied California a preemption waiver that would have allowed it to set greenhouse gas (“GHG”) emission standards for motor vehicles.<sup>1</sup> EPA granted the waiver request on June 30, 2009.

### *THE CLEAN AIR ACT WAIVER PROVISION*

With the enactment of the Clean Air Act (“CAA”) in 1970, Congress delegated the authority to regulate emissions from mobile sources to EPA: The Administrator “shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any . . . new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”<sup>2</sup> For motor vehicle emissions, the CAA requires use of the “best available control technology” (“BACT”), which means “the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.”<sup>3</sup>

Under the CAA, EPA sets emission standards for new motor vehicles, and individual states are generally not permitted to implement their own standards.<sup>4</sup> Such a prohibition, however, does not apply if a waiver is granted for a state “which has adopted standards . . . for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966 . . . .”<sup>5</sup> Significantly, California is the only eligible state.<sup>6</sup> California may request a waiver to deviate from the federal approach and that request should be granted unless EPA finds that (1) California’s determination of the need for different standards is arbitrary and capricious, (2) California does not need different standards to meet compelling and extraordinary conditions, or (3) California’s standards and enforcement procedures are not consistent with the provisions of the CAA.<sup>7</sup> Historically, EPA has granted nearly all of California’s waiver requests, and has never denied a waiver in its entirety, thereby allowing the State to be the forerunner in implementing increasingly stringent standards to control air quality and pollution.<sup>8</sup> In 1993, for example, EPA granted a waiver allowing California to phase in more stringent low-emission vehicle standards for light-duty vehicles.<sup>9</sup> In 2002, EPA granted a waiver allowing California to implement Onboard Refueling Vapor Recovery regulations, which required automobile manufacturers to install technology to collect vapors that would otherwise escape into the ambient air during refueling.<sup>10</sup>

### *CALIFORNIA’S WAIVER REQUEST*

On December 21, 2005, California requested a waiver to implement regulations controlling the emission of GHGs from new motor vehicles.<sup>11</sup> Through the waiver, California sought to regulate several GHGs, including carbon dioxide, emitted from the operation of motor vehicles and their air conditioning systems. Under California’s approach, the emission standards for motor vehicles are determined based on the weight of the vehicle and the standards decrease each year through 2016. Vehicles are grouped into two

categories: Category 1 comprises passenger cars and the lightest trucks, and Category 2 includes the heavier light-duty trucks and medium-duty passenger vehicles.<sup>12</sup> The emission standard varies depending on the category and ranges from a fleet average of 323 grams per mile (“gpm”) carbon dioxide equivalent for Category 1 and 439 gpm for Category 2 for the 2009 model year, to 205 gpm for Category 1 and 332 gpm for Category 2 for the 2016 model year and beyond.<sup>13</sup>

On February 21, 2007, EPA indicated that it was reserving its decision on California’s waiver request pending the United States Supreme Court’s decision in *Massachusetts v. EPA*.<sup>14</sup> In that action, Massachusetts, along with twelve other states including California, petitioned the Court to review EPA’s authority to regulate GHGs under the CAA — an authority EPA denied when environmental groups petitioned for GHG regulation.<sup>15</sup> In analyzing the statute, the Court found that GHGs fit well within the CAA’s “sweeping” definition of “air pollutant,” which includes “any air pollution agent or combination of such agents, including any physical [or] chemical . . . substance or matter which is emitted into or otherwise enters the ambient air.”<sup>16</sup> Thus, the Court held that under Section 202(a)(1) of the CAA, EPA has the authority to regulate GHGs from motor vehicles – if the Agency finds that emissions from those sources cause or contribute to air pollution that may endanger public health or welfare.<sup>17</sup>

After reviewing the Court’s decision in *Massachusetts v. EPA*, holding hearings, and receiving approximately seven thousand public comments, EPA denied the waiver request, finding that California did not need GHG emission standards to meet compelling and extraordinary conditions.<sup>18</sup> EPA interpreted the waiver provision as allowing California to promulgate standards designed to address only local or regional issues, not global issues. Since climate change is a global concern and not unique to California (*i.e.*, the contribution by and impact of GHG emissions on California is not substantially different than other states or even countries), EPA concluded that California did not need its own GHG emission standards.<sup>19</sup> In response, California filed suit against EPA, claiming that the denial was inconsistent with the CAA.<sup>20</sup>

On January 21, 2009, California Governor Arnold Schwarzenegger wrote to President Obama, asking him to direct EPA to reconsider its denial of the waiver.<sup>21</sup> An accompanying letter from the California Air Resources Board (“CARB”) to EPA Administrator Lisa Jackson contends that EPA misinterpreted the CAA in denying California’s waiver request. In particular, California argued that EPA should have reviewed California’s need for GHG emission standards in the context of the State’s comprehensive motor vehicle emission control program. Viewed in this manner, the State argued that the GHG emission standards address compelling and extraordinary circumstances present in California, such as the large number of motor vehicles and the presence of thermal inversions, which significantly contribute to California’s degraded air quality. Alternatively, California argued that the CAA does not limit waivers to local or regional issues and that California should be permitted to independently regulate global climate change.

On January 26, 2009, a mere six days after his inauguration, President Obama granted Governor Schwarzenegger’s request and directed EPA to reconsider its waiver decision. Administrator Jackson pledged to review the waiver decision “very, very aggressively.”<sup>22</sup>

On June 30, 2009, EPA granted the waiver to California.<sup>23</sup> In overruling the March 2008 denial, EPA concluded that the statute does not limit California’s “discretion to a certain category of air pollution problems, to the exclusion of others.”<sup>24</sup> Instead, Congress intended that the waiver provision provide California with broad discretion in selecting its standards.<sup>25</sup> Significantly, EPA’s interpretation of the waiver provision returned the “burden [of proof] on opponents of a waiver to demonstrate that one of the criteria for a denial has been met.”<sup>26</sup>

Under this framework, EPA determined that none of the criteria for denying the waiver were met. Viewing California’s new motor vehicle emissions program “as a whole” and not solely in the context of local or regional air pollution problems,<sup>27</sup> EPA determined that there are unique air pollution problems in California

and that the waiver opponents did not adequately demonstrate that California no longer needs its motor vehicle emission program, or that the impacts from global climate change in California are not compelling and extraordinary.<sup>28</sup> EPA also found that California had a rational basis for its GHG emission standards considering the absence of applicable federal standards, and thus, California's standards were not arbitrary and capricious.<sup>29</sup> Finally, the waiver opponents did not establish that California's GHG emission standards were inconsistent with the provisions of the CAA.<sup>30</sup>

#### APPLICATION OF CALIFORNIA'S STANDARDS TO OTHER JURISDICTIONS

EPA's decision to grant California's waiver request makes California the first state to regulate GHG emissions from motor vehicles. Significantly, granting California's request automatically allows thirteen other states and the District of Columbia to do the same. Under Section 177 of the CAA, other states may deviate from federal emission standards as long as their standards are (1) identical to California's emission standards for which a waiver has been granted and (2) adopted by California and the other state at least two years before the motor vehicle model year for which the standards will apply.<sup>31</sup> The following thirteen states and the District of Columbia have met these requirements: Arizona, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.<sup>32</sup> The California standards were adopted in most of these states in 2007 or earlier.<sup>33</sup> As a result, granting the waiver triggers identical requirements in these states without any additional procedures. Moreover, Colorado, Florida, Iowa, Minnesota, and Utah are in the process of adopting California's emission standards.<sup>34</sup> Thus, granting California's waiver request likely has the effect of setting California's standard as the norm, with the remaining states and perhaps other countries following California's approach to regulating GHGs.

As an alternative to meeting the emission limitations, California, the thirteen other states, and the District of Columbia have indicated that manufacturers may be able to demonstrate emissions compliance for model years 2012-2016 by satisfying the new fuel economy standards for 2012-2016 that were announced by President Obama on May 19, 2009.<sup>35</sup> Prior to the implementation of these fuel economy standards, California and the jurisdictions following California's GHG emission standards will have to amend their statutes and regulations to allow for compliance via the fuel economy standards. Significantly, by 2016 the fuel economy standards would achieve the same net effect for motor vehicles as California's 2016 GHG emission standard: an average 35.5 miles per gallon.<sup>36</sup> However for model years 2009-2011, these jurisdictions may enforce California's GHG emission standards. Importantly, notwithstanding the statutory requirement that the emission standards of other states be *identical* to California's standards, the method chosen to achieve those standards may be different. A 1996 case from the Second Circuit is illustrative: Automobile manufacturers brought suit against the State of New York, claiming that its promulgation of California's low emission vehicle regulations required New York to also adopt California's low-sulfur fuel regulations.<sup>37</sup> The manufacturers claimed that New York's unregulated, high-sulfur fuel would cause damage to vehicles designed to comply with the California emission standards. The Second Circuit held that fuel-related problems can never, as a matter of law, result in a violation of the CAA's identical standard requirement so long as the State does not administer or enforce California's standards in a more burdensome manner.<sup>38</sup> Importantly, the court explicitly noted that, based on the legislative history of the CAA, no linkage between California's emission standards and fuel standards is required.<sup>39</sup> Instead, the primary effect of the identical standards requirement is to ensure that manufacturers are not required to comply with different standards in every state. Small modifications to vehicles, however, do not constitute an undue burden and therefore do not violate the CAA.<sup>40</sup>

Differences in the implementation of California's standards could lead to problems for manufacturers in satisfying the GHG emission standards for model years 2009-2011. The type of fuel used in a vehicle impacts the level of emissions produced by that vehicle, and if the fuel required varies from state to state, manufacturers may be forced to use the most advanced, most expensive technology so that the vehicle

operates within the emission standards no matter what fuel is used and no matter where the vehicle is sold.

#### *DO PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS APPLY?*

Some environmental groups have suggested that by granting the waiver, carbon dioxide has become “subject to regulation” under the CAA. Specifically, such groups argue that granting the waiver triggers carbon dioxide requirements pursuant to the Prevention of Significant Deterioration (“PSD”) permit program.<sup>41</sup> If correct, stationary sources that trigger PSD could be required to install new technology to meet the PSD standards.

Under the PSD program, “major emitting facilities” are required to obtain permits before new construction or major modifications begin.<sup>42</sup> Major emitting facilities are defined as stationary sources which emit or have the potential to emit 250 tons per year or more of any air pollutant. For certain types of sources, such as fossil-fuel fired steam electric plants, iron and steel mill plants, and others, the PSD permit program applies if there is the potential to emit more than 100 tons per year of any air pollutant.<sup>43</sup> These relatively low levels were imposed by statute based on consideration of fundamentally different types of air pollutants (such as nitrogen oxides and sulfur dioxide) whose emissions are orders of magnitude lower than carbon dioxide. As a result, carbon dioxide emissions from many stationary sources are typically greater than the statutory limits, such that stationary sources as small as residential apartment buildings may find themselves subject to carbon dioxide emission regulations, notwithstanding the fact that EPA has indicated that it is “not interested” in applying the PSD program to such small stationary sources.<sup>44</sup>

Significantly, in granting the waiver, EPA acknowledged the possibility that PSD requirements would be triggered, but chose not to address the issue.<sup>45</sup> As a result, the PSD issue remains unresolved. Recently, the Environmental Appeals Board (“EAB”) rejected the argument that carbon dioxide is regulated under the PSD permit program, finding that EPA had historically interpreted the “subject to regulation” requirement to describe pollutants subject to actual emission controls.<sup>46</sup> More simply, the decision reinforces that merely defining a substance as an air pollutant is not sufficient to require EPA to impose BACT emission limits; rather, EPA is only required to impose limits when the substance is actually regulated under the CAA. Such regulation can only take place after EPA makes a finding that emissions of an air pollutant may reasonably be anticipated to endanger public health or welfare.<sup>47</sup> Notwithstanding the EAB’s decision, environmental groups may argue that since the waiver was granted, California is regulating GHGs pursuant to the State’s special status under the CAA, thereby constituting the type of actual control necessary to require EPA to promulgate emission limits for carbon dioxide.

On the other hand, it is not clear that granting the waiver will trigger PSD (or any other) requirements under the CAA. The decision to grant the waiver is not an EPA regulation. A regulation is “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy[.]”<sup>48</sup> In the case of the waiver decision, EPA simply granted California permission to deviate from the federal approach - an action that has no impact on the content, interpretation, or enforcement of federal standards. Thus, by granting the waiver, it can be argued that EPA is not actually controlling or regulating carbon dioxide emissions in the manner necessary to require application of the PSD program.

Nonetheless, two other developments may have implications for applicability of the PSD program. First, on April 17, 2009, Administrator Jackson signed EPA’s proposed finding that GHG emissions from motor vehicles contribute to air pollution that endangers public health and welfare – the first step in potential federal regulation of GHGs from motor vehicles.<sup>49</sup> Second, the Waxman-Markey draft legislation (the “American Clean Energy and Security Act of 2009”) would expressly preclude GHG emissions from triggering PSD.<sup>50</sup>

## CONCLUSION

Whatever the implications on PSD applicability, granting California's waiver request has allowed California, thirteen other states, and the District of Columbia to regulate GHG emissions from motor vehicles. Automobile manufacturers, therefore, must meet California's GHG emission standards in these jurisdictions. Additionally, the waiver decision appears to be another step towards future regulation of carbon dioxide under the CAA.

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<sup>1</sup> Memorandum from President Barack Obama to Lisa Jackson, Administrator of the Environmental Protection Agency, *available at* [http://www.whitehouse.gov/the\\_press\\_office/Presidential\\_Memorandum\\_EPA\\_Waiver/](http://www.whitehouse.gov/the_press_office/Presidential_Memorandum_EPA_Waiver/).

<sup>2</sup> [42 U.S.C. § 7521\(a\)\(1\)](#) (2008).

<sup>3</sup> [42 U.S.C. § 7521\(a\)\(3\)\(A\)\(i\)](#).

<sup>4</sup> [42 U.S.C. §§ 7521\(a\)\(1\)](#); [7543\(a\)](#).

<sup>5</sup> [42 U.S.C. § 7543\(b\)\(1\)](#).

<sup>6</sup> California State Motor Vehicle Pollution Control Standards; Notice of Decision Denying a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, [73 Fed. Reg. 12156](#), 12158 n.9 (Mar. 6, 2008) (noting that California is the only State which meets eligibility criteria for obtaining waivers) (citing to S. REP. NO. 90-403, at 632 (1967)).

<sup>7</sup> [42 U.S.C. § 7543\(b\)\(1\)](#).

<sup>8</sup> *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, [508 F. Supp. 2d 295](#), 348-49 (D. Vt. 2007).

<sup>9</sup> California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision, [58 Fed. Reg. 4166](#) (Jan. 13, 1993). In particular, this waiver allowed California to require manufacturers to meet a non-methane organic gas fleet average requirement and a "Zero Emission Vehicle" production requirement.

<sup>10</sup> California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Decision, [67 Fed. Reg. 54180](#) (Aug. 21, 2002).

<sup>11</sup> California State Motor Vehicle Pollution Control Standards, [73 Fed. Reg. at 12157](#).

<sup>12</sup> According to the California regulations, the lightest trucks are those weighing between zero and 3,750 pounds loaded vehicle weight. The heavier light-duty trucks are those weighing more than 3,751 pounds loaded vehicle weight with a maximum of 8,500 pounds gross vehicle weight rating (i.e., a maximum allowable total weight of the vehicle when loaded, including fuel, passengers, cargo, and trailer tongue weight). However, trucks in Category 2 are exempt from the GHG emission requirements if they are certified to the Option 1 LEV II NOx standard in California's regulations. See [CAL. CODE REGS. tit. 13, § 1961.1](#) (2009).

<sup>13</sup> A complete listing of the emission standards are provided in [CAL. CODE REGS. tit. 13, § 1961.1\(a\)\(1\)\(A\)](#).

<sup>14</sup> California State Motor Vehicle Pollution Control Standards, 73 Fed. Reg. at 12157; 549 U.S. 497, 505 (2007).

<sup>15</sup> *Id.* at 505 (2007).

<sup>16</sup> *Id.* at 528-29.

<sup>17</sup> *Id.* at 532.

<sup>18</sup> California State Motor Vehicle Pollution Control Standards, 73 Fed. Reg. at 12156.

<sup>19</sup> California State Motor Vehicle Pollution Control Standards, 73 Fed. Reg. at 12159-60.

<sup>20</sup> *California v. EPA*, No. 08-1178 (D.D.C. filed May 5, 2008).

<sup>21</sup> Letter from Arnold Schwarzenegger, Governor of the State of California, to President Barack Obama, (Jan. 21, 2009), available at [http://gov.ca.gov/pdf/press/POTUS\\_Clean\\_Air\\_Act\\_waiver\\_reconsideration\\_request\\_-\\_01.21\\_2009\\_-\\_FINAL\\_.pdf](http://gov.ca.gov/pdf/press/POTUS_Clean_Air_Act_waiver_reconsideration_request_-_01.21_2009_-_FINAL_.pdf).

<sup>22</sup> Bryan Walsh, *Obama's Move on Fuel Efficiency: A Clean Win for Greens*, TIME, Jan. 26, 2009, available at <http://www.time.com/time/health/article/0,8599,1874106,00.html?iid=tsmodule> (last visited July 16, 2009).

<sup>23</sup> California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, available at <http://www.epa.gov/otaq/climate/ghgwaiver.pdf> (last visited July 16, 2009).

<sup>24</sup> *Id.* at 9.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* at 63.

<sup>28</sup> *Id.* at 83.

<sup>29</sup> *Id.* at 40.

<sup>30</sup> *Id.* at 135.

<sup>31</sup> 42 U.S.C. § 7507 (2008).

<sup>32</sup> Ariz. Admin. Code § R18-2-1801 (2008) (adopted in 2008); Conn. Agencies Regs. § 22a-174-36b (2008) (adopted in 2005); D.C. Law 17-0151; 06-096-127 Me. Code R. § 127 (2008) (adopted in 2005); Md. Code Regs. 26.11.34 (2009) (adopted in 2007); 310 Mass. Code Regs. 7.40 (2008) (Adopted in 2005); N.J. Admin. Code § 7:27-29 (2009) (adopted in 2005); N.M. Admin. Code § 20.2.88.107 (2008) (adopted in 2007); N.Y. Comp. Codes R. & Regs. Tit. 6, § 218-8.1 (2009) (adopted in 2005); Or. Admin. R. 340-257-0100 (2009) (adopted in 2005); 25 Pa. Code § 126.411 (2009) (adopted in 2005); 12-031-037 R.I. Code R. § 37.1 (2008) (adopted in 2005); 12-031-001 Vt. Code R. § 5-101 (2009) (adopted in 2005); Wash. Admin. Code 173-423-010 (2008) (adopted in 2005).

<sup>33</sup> James E. McCarthy, *CRS Report for Congress: California's Waiver Request to Control Greenhouse Gases Under the Clean Air Act*, available at <http://www.azclimatechange.gov/download/082007.pdf> (last visited July 16, 2009). It should be noted that under Arizona's and New Mexico's legislation, adopted in 2008 and 2007, respectively, manufacturers are not required to meet the new GHG emission standards until model year 2011. ARIZ. ADMIN. CODE § R18-2-1801; N.M. ADMIN. CODE § 20.2.88.107.

<sup>34</sup> Joseph R. Szczeny, *Time, California and Detroit Go to War Over Gas Mileage*, TIME, Mar 8, 2009, available at [www.time.com/time/nation/article/0,8599,1883720,00.html](http://www.time.com/time/nation/article/0,8599,1883720,00.html) (last visited July 16, 2009).

<sup>35</sup> *EPA Grants California GHG Waiver*, available at <http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceac8525735900400c27/5e448236de5fb369852575e500568e1b!OpenDocument> (last visited July 16, 2009); *President Obama Adopts California's National-Leading Standard*, <http://gov.ca.gov/index.php?fact-sheet/12341> (last visited July 16, 2009); The White House Briefing Room, May 19, 2009, available at [http://www.whitehouse.gov/the\\_press\\_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/](http://www.whitehouse.gov/the_press_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/) (last visited July 16, 2009).

<sup>36</sup> *Id.*; see also *California and Federal Government Agree to New Vehicle Standards*, PEW CENTER ON GLOBAL CLIMATE CHANGE, available at <http://www.pewclimate.org/node/6542> (last visited July 16, 2009); CAL. CODE REGS., tit. 13 § 1961.1(a).

<sup>37</sup> *Motor Vehicles Mfrs. Ass'n v. N.Y. Dep't of Env'tl. Conservation*, 79 F.3d 1298 (2d Cir. 1996).  
<sup>38</sup> *Id.* at 1307-08.  
<sup>39</sup> *Id.*  
<sup>40</sup> *Id.* at 1308.  
<sup>41</sup> 42 U.S.C. § 7475.  
<sup>42</sup> 42 U.S.C. § 7475(a).  
<sup>43</sup> 42 U.S.C. § 7479(1).  
<sup>44</sup> *EPA Administrator Outlines Agency Goals, Priorities (February 27, 2009)*, E&E, available at [http://www.eenews.net/eep/epa\\_jackson/interview\\_full](http://www.eenews.net/eep/epa_jackson/interview_full) (last visited July 16, 2009).  
<sup>45</sup> California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, *supra* note 23, at 146.  
<sup>46</sup> Order Denying Review in Part and Remanding in Part, *In re Deseret Power Elec. Coop. PSD Permit No. OU-0002-04.00*, PSD Appeal No. 07-03 (Nov. 13, 2008), available at [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Recent-Additions/C8C5985967D8096E85257500006811A7/\\$File/Remand...39.pdf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Recent-Additions/C8C5985967D8096E85257500006811A7/$File/Remand...39.pdf). A BACT emission limit is required for "each pollutant subject to regulation under [the] Act." 42 U.S.C. § 7475(a)(4).  
<sup>47</sup> 42 U.S.C. § 7408(a)(1).  
<sup>48</sup> 5 U.S.C. § 551(4) (2008). Although the Administrative Procedure Act provides the definition of a "rule," the Code of Federal Regulations indicates that "regulation" and "rule" have the same meaning. 1 C.F.R. § 1.1 (2009).  
<sup>49</sup> Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Docket EPA-HQ-OAR-2009-0171 (Apr. 17, 2009).  
<sup>50</sup> See Draft American Clean Energy and Security Act of 2009, available at [http://energycommerce.house.gov/Press\\_111/20090331/acesa\\_discussiondraft.pdf](http://energycommerce.house.gov/Press_111/20090331/acesa_discussiondraft.pdf) (last visited July 16, 2009).