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HOUSE OF REPRESENTATIVES PASSES CLIMATE CHANGE ACT

The United States House of Representatives has passed the American Clean Energy & Security Act (Clean Energy Act), also known as the Waxman-Markey bill. At roughly 1,200 pages the bill is massive with wide-ranging effects. Its core purpose is to regulate the emissions of greenhouse gases (GHGs) through a cap and trade system. About 72 percent of U.S. GHG emissions would be covered in 2012, rising to 86 percent in 2020. Among other things the bill would establish a renewable portfolio standard (RPS) requiring a percentage of electricity to be generated from qualifying renewable sources, establish a Carbon Storage Research Corporation, fund additional loans for clean energy projects and advanced vehicles, and authorize a so-called "cash for clunkers" program to give incentives for individuals to buy more fuel efficient vehicles. This Alert focuses on the bill's GHG provisions.

It is obvious the GHG cap and trade system would have substantial impacts on energy intensive industries, but the Clean Energy Act would affect more businesses than many may realize. Beginning in 2012, nearly all electricity generators would be subject to the cap, along with entities that produce or import petroleum-based or coal-based liquids, petroleum coke, or natural gas liquids if combustion of the fuels produced or imported each year would result in more than 25,000 metric tons of carbon dioxide equivalent (mtCO₂e). Entities that import GHGs for direct use and CO₂ geologic sequestration sites would likewise be subject to the cap in 2012. The cap would extend to a range of industrial facilities with emissions above 25,000 mtCO₂e per year beginning in 2014.

Loosely patterned after the cap and trade system that reduced acid rain, the Clean Energy Act would aim to reduce America's total GHG emissions by 17 percent from 2005 levels by 2020, and 83 percent from 2005 levels by 2050. Emitters could buy and sell allowances so that businesses who are unable to sufficiently reduce their emissions may purchase additional allowances at market prices. About 20 percent of the allowances would be auctioned in the program's early years, rising to about 70 percent auctioned in 2030 and later. Except for a small number of allowances held in reserve by the federal government, the remaining allowances would be distributed for free. The majority of the free allowances would go to offset energy cost increases for consumers or to promote new technologies. Allowances could be banked for future years and, to a limited extent, borrowed from future years. Anyone could purchase, exchange or retire emission allowances.

Emitters could also create emissions offsets by reducing emissions at other facilities. For example, offsets could be created by causing others to change agricultural or land use practices, or by building a landfill gas collection system. Offsets must be certified by EPA. They may occur in other countries if authorized by international agreement.

The Congressional Budget Office estimates the allowances would generate \$858 billion in net federal receipts from 2010-2019. Given the amounts at stake, it is no surprise that the number and allocation of free allowances has fostered vigorous debate. There will be winners and losers among industry, based upon the allocation of free or auctioned allowances and based upon decisions about who is responsible for emissions from products that change hands before causing emissions. For example, beginning in 2016, distributors that deliver 460 mmscf or more of natural gas must submit allowances for the GHG emissions from that gas, if the customers are not themselves subject to the cap. Rural electric cooperatives and small petroleum refiners recently won concessions for additional free allowances.

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The Clean Energy Act will now go to the Senate. We expect the Senate will largely rely on the House bill as a starting point, but significant changes should be expected. Any differences between the House bill and a Senate bill would need to be resolved in conference before a final bill could go to the President for his signature.

HRO's Energy, Natural Resources, and Environmental attorneys are available to answer your questions or serve your legal needs regarding greenhouse gases. Please contact any of the attorneys listed on the right side of page one.

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