

Hearings Begin on American Clean Energy and Security Act of 2009

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On April 21, 2009, the House Subcommittee on Energy and the Environment and the Energy and Commerce Committee commenced joint hearings on the "discussion draft" of "The American Clean Energy and Security Act of 2009 (ACESA)," comprehensive energy and climate change legislation that was released on March 31, 2009, by Rep. Waxman (Chairman of the Energy and Commerce Committee) and Rep. Markey (Chairman of the Energy and Environment Subcommittee). A copy of the discussion draft can be found [here](#).

ACESA is comprehensive clean energy legislation; it would create a nationwide cap-and-trade GHG emission reduction program. While many of the program elements are very targeted and proscriptive in nature, certain fundamental issues remain unaddressed or unresolved. Among the most significant to be resolved:

- The allocation of allowances and distribution of revenues from the auction of allowances;
- The framework of the "offsets" program, including ensuring that program uncertainties that could pose significant barriers are replaced by provisions promoting the development of offset-generating projects, limits on credits available from offsets, the scope of the additionality qualifier, appropriate limits on the cap and use of offsets (including international offsets), and credit for early action;
- How ACESA will work in the context of state and regional climate change programs and whether and how it influences the ability of EPA to regulate GHGs under existing Clean Air Act authorities;
- The proper entity(ies) for overseeing and regulating carbon markets, and the scope of its regulatory authority;
- The question of rebates, eligibility for such rebates and their WTO consistency; and
- The operation, pricing and WTO consistency of the proposed "reserve allowance

mechanism."

According to a preliminary schedule, the Energy and Commerce Committee hopes to complete consideration of the ACESA by the end of May, with hearings and the full Committee markup set for the week of May 11. There are several other Committees and Subcommittees in the House that are planning to have hearings on and, in some instances, may seek jurisdiction over, specific portions of what is in ACESA. Because ACESA is so broad and includes provisions addressing energy/renewable energy, "taxes" or revenue, stimulus-type grant programs, etc., these and other elements of ACESA may well become the subject of competing legislative processes on the House side. In addition, the Senate will also be seeking to move forward on climate change in this Congressional session, likely with the same myriad of issues and jurisdictional challenges.

For now, however, it appears that ACESA will be the main vehicle for energy and climate change discussions in the United States, at least in the near term. Regardless of where these discussions and debates take place, businesses with an interest in these issues should monitor the upcoming activity closely and participate where needed. There is a narrow window of opportunity to develop and implement the strategy that will ensure that members of Congress understand and appreciate that decisions made today on these issues will have long lasting and significant impacts, not only on the success of the program but on companies that are subject to the program. If you have questions about the legislation or its implications, please call one of the listed authors of this Alert, or call your WilmerHale Lawyer.

If you are interested in a more detailed discussion of the key issues, click [here](#).

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