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## Climate Change Policy Update Week of April 13-17, 2009

**Commentary:** *EPA published its long-awaited proposed endangerment finding this week. Notably, the scope of the proposal only included the endangerment finding. The Agency could have included proposed emission standards for motor vehicles, and standards for other GHG sources. The fact that the proposal did not include such standards suggests that EPA might be moving deliberately, thereby reinforcing the Administration's oft-stated preference for a legislative program, and signaling that the Agency wants to avoid the regulatory cascade that some critics have said is the inevitable outcome of the endangerment finding. Can EPA "slow walk" its regulatory program? . . . In the House, the Subcommittee on Energy and Environment announced three days of hearings on the Waxman-Markey discussion draft for next week, which will feature Al Gore and a parade of advocates for and against legislation. Following these legislative hearings the Subcommittee is expected to "mark-up" the draft energy and climate legislation in sessions which may last more than one week. Members of the Subcommittee have been asked to identify their top three concerns or interests. As the Subcommittee and Committee leadership seeks the votes to pass the legislation, expect to see refinements and changes to the discussion draft, particularly in the area of allowance allocations, but extending throughout the lengthy draft bill.*

### Executive Branch

- **Update on Administration Appointments and Nominations.** President Obama has nominated Daniel Poneman to serve as Deputy Secretary of the Department of Energy (DOE). A national security expert who served on the staff of President Clinton's National Security Council, Poneman has been a principal at the Scowcroft Group since 2001. The White House also announced that the current Secretary of Transportation for the state of Maryland, John Porcari, will be nominated for the position of Deputy Secretary at the Department of Transportation. The Senate Committee on Energy and Natural Resources will hold a confirmation hearing this week on the nominations of Kristina Johnson, for Under Secretary of Energy; Steven Elliott Koonin, for Under Secretary for Science at the Department of Energy; Ines R. Triay, for Assistant Secretary of Energy (Environmental Management); Hilary Chandler Tompkins, for Solicitor of the Department of the Interior; and Scott Blake Harris, for General Counsel of the Department of Energy. The hearing will take place this Thursday, April 23 at 2 P.M. in Room SD-366 at the Dirksen Senate Office Building. In addition, the Senate Committee on Commerce, Science and Transportation will hold a hearing on Tuesday, April 21 on the nominations of Sherburne Abbott, for Associate Director of Environment at the White House Office of Science and Technology; Roy Kienitz, for Under Secretary of Transportation for Policy; Peter Appel, for Administrator of the Research and Innovative Technology Administration of the Department of Transportation (DOT); Joseph Szabo, for Administrator of the Federal Railroad Administration; Dana Gresham, for Assistant Secretary of the Office of Government Affairs at DOT; Robert Rivkin, for General Counsel of

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DOT; Cameron Kerry, for General Counsel of the Department of Commerce; and April Boyd, for Assistant Secretary for Legislative and Governmental Affairs at the Department of Commerce.

- **EPA Releases Proposed “Endangerment Finding” for Greenhouse Gases.** After receiving approval from the White House Office of Management and Budget (OMB), the Environmental Protection Agency (EPA) released a long-awaited, 133-page proposed finding that carbon dioxide and five other greenhouse gases (GHGs) endanger public health and welfare. The document was prepared in response to the Supreme Court’s 2007 ruling in the landmark case of *Massachusetts v. EPA*. Under the Clean Air Act, this “endangerment finding” is a necessary precursor to promulgating regulations to control GHG emissions from mobile and stationary sources. Although the finding does not itself propose any new regulations, EPA is widely expected to do so once the finding becomes final. EPA will open a 60-day public comment period once the proposed finding is published in the Federal Register. The proposed finding and supporting documents are available at <http://epa.gov/climatechange/endangerment.html>.
- **Initial Reactions to the EPA Endangerment Finding.** EPA’s proposed endangerment finding drew strong reactions from industry, environmental organizations, and legislators. David Doniger of the Natural Resources Defense Council, one of the litigators in *Massachusetts v. EPA*, hailed the decision, saying that, “Administrator Lisa Jackson and the Obama Administration have gone a long way to restore respect for both science and law. The era of defying science and the Supreme Court has ended.” Doniger also dismissed concerns that the finding would require EPA to regulate small emitters of GHGs. Sen. Barbara Boxer (D-CA), Chairman of the Senate Committee on Environment and Public Works, similarly praised EPA’s decision as “long overdue,” but stressed that a legislatively created cap-and-trade program would be the “best and most flexible way to deal with this serious problem.” The National Petrochemical & Refiners Association said that the finding was expected, and that EPA regulation of GHGs would represent “EPA’s single largest and potentially most complex assertion of authority over the U.S. economy and Americans’ lifestyles.”
- **Browner Ties Domestic Climate Policy to Copenhagen Negotiations.** Carol Browner, President Obama’s Assistant for Energy and Climate Change, said at a conference last week that the United States’ negotiating position at this December’s international climate change talks in Copenhagen will be “driven by what we are prepared to do domestically.” Referring to the recent draft climate change legislation released by Reps. Henry Waxman (D-CA) and Edward Markey (D-MA), Browner said that the upcoming hearings on the legislation would be “essential” to the Copenhagen talks, but declined to say whether the White House expected to sign climate change legislation prior to the summit.
- **FERC Establishes Climate and Energy Office.** The new chairman of the Federal Energy Regulatory Commission (FERC), John Wellinghoff, announced the creation of an Office of Energy Policy and Innovation to focus on energy and climate issues. Wellinghoff named Jamie Simler, Deputy Director of the Office of Energy Market Regulation, to lead the new office.
- **EPA Releases Latest National GHG Emissions Data.** EPA’s most recent GHG inventory for the United States, which the agency is required to submit to the Secretariat of the United Nations Framework Convention on Climate Change, found that U.S. GHG emissions increased by 1.4% in 2007, the highest rate of increase since the year 2000. According to EPA, the increase in

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emissions was principally due to a combination of extreme seasonal conditions (cooler winters and warmer summers relative to 2006), and low rainfall, which resulted in reduced hydroelectric output. Overall, U.S. GHG emissions increased 17.2% between 1990 and 2007, even as gross domestic product increased by 62%. Electricity generation accounted for 34% of domestic GHG emissions in 2007, transportation accounted for 28%, and industry accounted for 20%. Agricultural, commercial, and residential emissions together represented 18% of emissions.

- **EPA Issues NODA on Ocean Acidification.** Responding to a petition by the Center for Biological Diversity, EPA issued a Notice of Data Availability (NODA) last week presenting scientific information on the problem of ocean acidification, and soliciting additional data. The NODA asserted that rising GHG emissions are likely to cause a continued decrease in the pH of U.S. coastal waters, with harmful impacts on marine life, especially shellfish and corals. EPA indicated that it may act on the NODA by revising its pH standards for water quality under the Clean Water Act, and requested suggestions for effective strategies to address the impacts of acidification. The Federal Register notice is available at <http://edocket.access.gpo.gov/2009/E9-8638.htm>.

## Congress

- **ACES Hearings Scheduled.** Reps. Henry Waxman (D-CA) and Edward Markey (D-MA) have convened a week of hearings on their draft energy and climate bill, the American Clean Energy and Security Act of 2009 (ACES). The panels will begin on Wednesday, April 22<sup>nd</sup>, with reactions from administration officials (EPA Administrator Lisa Jackson, Energy Secretary Stephen Chu, and Secretary of Transportation Ray LaHood) and members of the industry and environmental coalition US Climate Action Partnership. Subsequent panels will discuss green jobs and economic benefits, allowance allocation, U.S. industry competitiveness and international participation, low-carbon electricity (including carbon capture) and grid modernization, energy efficiency and transportation, and carbon markets, state roles, and the Clean Air Act. Former Vice-President Al Gore and former Senator John Warner will also testify.
- **Rep. Inslee Circulates Transmission Siting Bill.** Rep. Jay Inslee (D-WA) has introduced a bill that would give the FERC authority to site transmission lines that would carry low-carbon electricity, if the regional planning process initiated by the bill fails to integrate low-carbon energy into the grid. The bill would prohibit use of the transmission capacity for coal-fired power until GHG regulations have been implemented. FERC would be directed to allocate the costs of renewable infrastructure investment to load-serving entities in the interconnection on a pro rata basis. In contrast to Senate's transmission siting proposals, the Inslee draft also creates an interconnection emissions standard, which would block any new plant with greater emissions than a single-cycle natural gas-fired turbine from accessing the new transmission lines.
- **Bipartisan Senate EPW Leadership Calls for OMB Action on Ethanol and Land Use Analysis.** The 2007 energy bill directed EPA to determine how to calculate GHG emissions resulting from direct and indirect land use changes triggered by biofuel production. This week, Senate Environment and Public Works Committee Chairman Barbara Boxer (D-CA), ranking member James Inhofe (R-OK), Clean Air Subcommittee Chairman Thomas Carper (D-DE), and subcommittee ranking member David Vitter (R-LA) sent a letter to OMB Director Peter Orszag asking for the quick release of EPA's plans for making the land use change calculations. The

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letter was also signed by Committee members Bernie Sanders (I-VT), Jeff Merkley (D-OR), George Voinovich (R-OH), and Lamar Alexander (R-TN).

## States and Cities

- **Washington State Passes Climate Bill Without Cap-and-Trade Provisions.** The Washington state House passed climate change legislation that does not include provisions for implementing a cap-and-trade program in the state. Instead of an emissions trading program, the bill requires the state's lone coal-fired power plant to meet an emissions standard that will require it to halve its GHG emissions from current levels by 2025 and directs state land-use planning agencies to develop plans to reduce vehicle miles traveled. The bill must be reconciled with a version passed by the Senate before being sent to Governor Christine Gregoire (D). The Governor had pushed for the inclusion of provisions that would allow the state to implement the Western Climate Initiative through a cap-and-trade program, but nevertheless is expected to sign the bill.
- **Montana House Committee Rejects CCS Bill.** A bill to promote the use of carbon capture and sequestration (CCS) at coal-fired power plants failed to pass out of a committee of the Montana House of Representatives. The bill, which had been passed previously by the state Senate, is the third piece of legislation addressing CCS to fail in the state.
- **Maryland Reallocates RGGI Auction Proceeds.** In response to the economic downturn, the Maryland state legislature redirected a significant portion of the funds generated by Regional Greenhouse Gas Initiative (RGGI) emission allowance auctions away from energy efficiency and conservation programs toward electricity rate payer protection. Passed as part of Governor Martin O'Malley's Budget Reconciliation and Financing Act of 2009, the amendments will reduce spending on energy efficiency from 46 percent of total auction revenues to 17.5 percent, while increasing rate payer protections from a 17 percent share of the revenues to 50 percent. State officials said that the approximately \$70 million reduction in energy efficiency and conservation funding will be more than offset by \$165 million the state will receive for energy efficiency programs under the federal stimulus bill passed in February.
- **California Bill Would Require New Homes to Achieve Zero Net Energy Use by 2020.** A bill drafted by California Assembly Speaker Pro Tem Lori Saldana (D) would mandate that new homes built after 2020 achieve zero net energy use. The bill would direct the California Energy Commission to implement the requirement by drafting standards for new home design and construction, and energy and water use.

## Industry

- **IETA Submits Recommendations on Market Oversight to Congress.** The International Emissions Trading Association (IETA), which represents firms that actively buy and sell GHG allowances and offset credits, sent an open letter addressing oversight and regulation of the GHG markets to the Chairmen and ranking members of the House Energy and Commerce Committee and its Subcommittee on Energy and Environment. In the letter, IETA advocated that the Commodity Futures Trading Commission (CFTC) be given responsibility for monitoring and enforcing GHG trading rules. IETA also supported continuing to allow buyers and sellers of GHG allowances to contract directly with each other in the "over the counter" (OTC) market,

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rather than require exchange trading of allowances. The letter is available at <http://www.ieta.org/ieta/www/pages/index.php>.

## Studies and Reports

- **Steep Emission Cuts Could Stabilize, Not Avoid, Climate Change.** Researchers at the National Center for Atmospheric Research in Boulder, Colorado, have explored the effects of different GHG emission pathways during this century. Their projections, which will be published in the April 21<sup>st</sup> issue of *Geophysical Research Letters*, indicate that cutting global emissions by 70 percent by the end of the century would limit the increase in average global temperatures since the Industrial Revolution to approximately 2.8 degrees Fahrenheit. According to their projections, limiting warming to 2.8 degrees gives the greatest odds of avoiding the most dangerous potential climate change impacts, including massive melting of polar ice and sea level rise. Failing to curb emissions would result in a 5.8 degree rise by 2100, and would double the intensity of climate impacts such as changes in precipitation patterns and heat waves.
- **Study Shows Vast Renewable Potential in Africa.** Of the 35 countries with the biggest reserves of renewable energy, 17 are in sub-Saharan Africa. A report on Africa's private sector by the Center for Global Development argues that the continent needs to lower the cost of doing business by making regional investments in infrastructure such as electricity reliability and roads. The report also identified the potential for small-scale distributed renewable technologies to provide power for villages and small towns that will not need to be connected to a public grid. The report is available at <http://www.cgdev.org/content/publications/detail/1421337>.

## International

- **Africa Group Calls for \$200B in Climate Funding for Developing Nations.** The Africa Group, a group comprised of 53 African nations, submitted to the United Nations a document calling for developed nations to provide over \$200 billion in climate funding to developing nations by 2020 under a successor treaty to the Kyoto Protocol. The proposal would have developed nations contribute 0.5 percent of their gross domestic product to a fund that would support voluntary climate change mitigation actions in developing nations. The proposal also called on developed nations to accept stringent binding emissions targets of at least a 40 percent reduction below 1990 levels by 2020, and 80-95 percent below by 2050.
- **US, Mexico Sign Bilateral Climate Cooperation Agreement.** At a meeting in Mexico City, Mexico, U.S President Barack Obama and Mexican President Felipe Calderón signed an agreement under which the two countries will cooperate to reduce emissions and develop low-carbon energy resources. The U.S.-Mexico Bilateral Framework on Clean Energy and Climate Change will create a forum for cooperation on emission reductions and renewable energy technologies. The agreement also addresses energy efficiency measures, deforestation, climate change adaptation, and the reliability of cross-border electricity grids. Mexico has already passed domestic legislation mandating that it produce over 25 percent of its electricity from renewable energy sources in four years and reduce its emissions by 50 percent by 2050. Like the U.S., Mexico is considering launching an emissions trading system by 2012.

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- **Australian Institute Will Promote CCS Deployment.** The Australian government launched a global institute aimed at promoting the deployment of CCS technology. The Global Carbon Capture and Storage Institute (GCCSI) will receive A\$100 million (US\$72 million) annually from the Australian government with the goal of achieving broad CCS deployment by 2020. The GCCSI is supported by 16 other national governments, over 40 major companies, and has a total of 85 members.

*The Climate Policy Update is intended as a general summary of major climate change-related policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.*

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