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## Obama's Climate and Energy Agenda Begins to Take Shape — A U.S. Policy Snapshot

Although he took office only a few weeks ago, President Obama's climate and energy agenda has already begun to take shape. While many of the details have yet to emerge, the signs are clear that the administration plans to take a very active approach to reducing emissions of greenhouse gases (GHGs) and to increasing energy efficiency and renewable energy. At the same time, Congress is beginning to lay out the broad outlines of its energy and climate agenda, and actions at the state and regional level proceed at a rapid pace.

### Administration

On January 26, 2009, President Obama held a press conference to make his first major energy policy statement, which came against the backdrop of a worsening domestic economic situation. He repeated themes from his campaign for the presidency including the need to enhance energy security through a new energy economy that can create millions of jobs. The dangers to U.S. national and economic security, he added, "are compounded by the long-term threat of climate change." He further committed to ensure that the "fuel-efficient cars of tomorrow" — more competitive on the world stage than the current U.S. fleet — would be built in the United States and that U.S. oil use would decrease as a result of implementa-

tion of higher fuel economy standards beginning with the 2011 model year.

Following his press conference, President Obama signed a presidential memorandum (a nonlegally binding directive) committing to increase U.S. reliance on alternative energy in a manner that will create jobs in the face of rising unemployment. This will be done through:

- Putting 460,000 Americans to work through clean energy investments;
- Doubling the national capacity to generate alternative energy over the next three years;
- Laying 3,000 new miles of electrical transmission line; and
- Making federal buildings 75 percent more energy efficient and weatherizing the homes of two million working families to reduce energy bills.

On that same day, the president signed another presidential memorandum directing the U.S. Environmental Protection Agency (EPA) to reassess its previous denial of an application from California for a waiver under the Clean Air Act to set emission standards for greenhouse gas emissions from motor vehicles and to initiate appropriate action based upon that reassessment. A grant of the

waiver request would pave the way for California and more than a dozen other states to adopt greenhouse gas emissions standards for automobiles for the first time, a major reversal of the policies of the previous administration.

President Obama also made it clear that the United States is “ready to lead,” and called for a “truly global coalition” to address climate change. He noted that in addition to action by the United States, the rest of the world must also do its part, including nations like China and India.

President Obama’s top environmental appointments indicate that the White House will play a key role in planning and coordinating climate and energy policy initiatives. Carol Browner, President Clinton’s EPA administrator, was chosen to serve as a senior adviser to the president on energy and climate issues. As the White House “Energy Czar,” it is not yet clear whether Browner will serve in a purely advisory capacity or whether she will take on direct responsibility in overseeing climate and energy policies across multiple federal agencies, but it is clear she considers addressing climate change to be a major priority for the administration. At the same time, the president ensured economic issues would be carefully considered in any future actions by appointing former Clinton Treasury Secretary Lawrence Summers as a senior economic adviser.

President Obama also picked Lisa Jackson, former head of the New Jersey Department of Environmental Protection, to serve as the head of the EPA. Jackson led efforts in New Jersey to address climate change, including the state’s participation in the Regional

Greenhouse Gas Initiative, a regional program to address carbon dioxide emissions from power plants. Jackson sent an early signal to industry that regulatory efforts are forthcoming, stating in a January 23 email to her staff that the EPA would assist Congress with crafting climate legislation while also exploring the possibility of regulating greenhouse gases under the Clean Air Act.

President Obama’s other picks for top environmental positions are also expected to focus on climate issues. The chairperson of the Council on Environmental Quality, Nancy Sutley, is former deputy mayor of Los Angeles for energy and environment issues and another former EPA official from the Clinton administration. Dr. Steven Chu, President Obama’s choice to lead the Department of Energy, is a Nobel Prize-winning physicist, who, as the director of the Lawrence Berkeley National Laboratory, had advocated action on climate change and the expanded use of nuclear power.

Secretary of State Hillary Clinton has expressed her strong support for action on climate change and named Clinton White House climate adviser Todd Stern as a U.S. special envoy to lead the State Department’s efforts to reengage in the negotiations for a post-2012 climate treaty to follow the Kyoto Protocol.

### **Congress**

The Obama administration is expected to address climate change through both regulatory measures and by working with Congress. As they did last year, Democratic leaders in both the House of Representatives and the Senate have pledged to pass climate change legislation that would regulate GHG emissions in the United States. On

the House side, Representative Henry Waxman, the new chair of the House Energy and Commerce Committee, has said his committee would complete work on a comprehensive climate bill by late May of this year. That bill is expected to be more aggressive than a proposal floated last year by his predecessor, John Dingell. Speaker of the House Nancy Pelosi has long expressed a desire to pass a climate change bill.

In the Senate, Barbara Boxer, chair of the Senate Committee on Environment and Public Works, released on February 3, 2009, a set of six principles for climate legislation that would “reduce [GHG] emissions to avoid dangerous global warming while promoting economic growth and energy independence.” The principles are relatively general and not necessarily new, reflecting many of the themes that emerged from the cap-and-trade climate bill introduced in late 2007 by Senator Joe Lieberman and former Senator John Warner that was successfully voted out of the committee in 2008 but failed to receive the 60 votes needed for a full debate on the Senate floor. But perhaps in recognition of the global economic crises, the principles emphasize the need for a “transparent and accountable” market-based system and focus the use of revenues from the carbon market on consumers, workers, businesses, communities and others impacted by a transition to clean energy.

Also in the Senate, John Kerry, the new head of the Senate Foreign Relations Committee, has expressed a strong desire to see the United States and the Obama administration reengage in the international negotiations for a post-2012 climate treaty.

Many industry groups have also begun to support congressional action on climate change, with most groups appearing to favor an emissions trading system. The U.S. Climate Action Partnership, a coalition of business and environmental groups, has proposed a detailed plan for a cap-and-trade system in the United States that recommends free distribution of a significant portion of allowances to regulated entities in the early years of the program, with a gradual phaseout of free distribution in favor of an auction system over time. Recently proposed climate legislation in Congress has favored greater use of auctions as a means to distribute allowances, and, as a candidate, President Obama endorsed auctioning 100 percent of allowances. A carbon tax is also gaining attention, particularly among Republican lawmakers and some large utilities and oil companies, as an alternative to a cap-and-trade system.

### State and Regional

Efforts to address climate change continue to proceed at the state and regional levels, and it is not yet clear if and how they may mesh with any future federal-level regulatory program. In the Northeast, the Regional Greenhouse Gas Initiative went into effect in January 2009, although a legal challenge to the program was filed in late January. A group of western states and Canadian provinces are working toward implementing a separate cap-and-trade system by 2012, and a similar regional program in the Midwest may also begin at around the same time. Meanwhile, California continues to work toward implementing its Global Warming Solutions Act of 2006, which relies on a complex suite of regulatory programs scheduled to begin in 2012.

### About Our Practice

Hunton & Williams' global climate change law and policy practice offers years of experience in the full spectrum

of litigation and transactional and regulatory services both in the U.S. and internationally. Our attorneys advise on issues ranging from carbon trading and corporate climate policies, to litigation defense, to risk assessment and response to legislative developments. Our practice comprises more than 35 attorneys focused exclusively on climate change issues, who are supported by dozens of other corporate and litigation practitioners. Hunton & Williams' interdisciplinary approach allows clients to navigate efficiently and successfully the risks and opportunities presented by this rapidly changing area of law. Hunton & Williams' climate change practice was listed by *Chambers USA* as one of the top two in the United States, and among the best in the EU. It was voted "Best Law Firm" for U.S. Emissions Markets by the readers of *Environmental Finance* magazine. For more information on Hunton & Williams' climate change law and policy practice, including a list of recent suits and transactions, [click here](#).

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