

Appendix C

Discussion Draft

American Clean Energy and Security Act of 2009

Title I, Subtitle A

Renewable Electricity Standard

1 TITLE I—CLEAN ENERGY

2 Subtitle A—Renewable Electricity

3 Standard

4 SEC. 101. FEDERAL RENEWABLE ELECTRICITY STANDARD.

5 (a) IN GENERAL.—Title VI of the Public Utility Reg

6 ulatory Policies Act of 1978 (16 U.S.C. 2601 and fol

7 lowing) is amended by adding at the end the following:

8 “SEC. 610. FEDERAL RENEWABLE ELECTRICITY STANDARD.

9 “(a) DEFINITIONS.—For purposes of this section:

10 “(1) AFFILIATE.—The term ‘affiliate’ when

11 used in relation to a person, means another person

12 that directly or indirectly owns or controls, is owned

13 or controlled by, or is under common ownership or

14 control with, such person, as determined under regu

15 lations promulgated by the Secretary.

16 “(2) BIOMASS.—The term ‘biomass’ means

17 each of the following:

1 “(A) Crops, crop byproducts, or crop resi
2 dues harvested from actively managed or fallow
3 agricultural land that was cleared prior to the
4 date of enactment of this section and is nonfor
5 ested.

6 “(B) Planted trees, brush, slash, and all
7 residues from an actively managed tree planta
8 tion located on land that was cleared prior to
9 the date of enactment of this section and is not
10 Federal land.

11 “(C) Pre-commercial-sized thinnings, slash,
12 brush, and residue from milled trees, from for
13 ested land that is not—

14 “(i) old-growth or mature forest;

15 “(ii) identified under a State Natural
16 Heritage Program as rare, imperiled, or
17 critically imperiled; or

18 “(iii) Federal land.

19 “(D) Algae.

20 “(E) Nonhazardous plant matter derived
21 from waste such as separated yard waste, land
22 scape right-of-way trimmings, or food waste
23 (but not municipal solid waste, recyclable waste
24 paper, painted, treated or pressurized wood, or
25 wood contaminated with plastic or metals).

1 “(F) Animal waste or animal byproducts,
2 including products of animal waste digesters.

3 “(G) Vegetative matter removed from
4 within 200 yards of any manmade structure or
5 campground.

6 “(3) DISTRIBUTED GENERATION FACILITY.—

7 The term ‘distributed generation facility’ means a
8 facility that—

9 “(A) generates renewable electricity other
10 than by means of combustion;

11 “(B) primarily serves 1 or more electricity
12 consumers at or near the facility site; and

13 “(C) is no larger than 2 megawatts in ca
14 pacity.

15 “(4) FEDERAL ALTERNATIVE COMPLIANCE PAY
16 MENT.—The term ‘Federal alternative compliance
17 payment’ means a payment, to be submitted in lieu
18 of 1 Federal renewable electricity credit, pursuant to
19 subsection (c)(3).

20 “(5) FEDERAL LAND.—The term ‘Federal land’
21 means land owned by the United States, other than
22 land held in trust for an Indian or Indian tribe.

23 “(6) FEDERAL RENEWABLE ELECTRICITY
24 CREDIT.—The term ‘Federal renewable electricity
25 credit’ means a credit, representing one megawatt

1 hour of renewable electricity, issued pursuant to sub
2 section (d).

3 “(7) FUEL CELL.—The term ‘fuel cell’ means a
4 device that directly converts the chemical energy of
5 a fuel and an oxidant into electricity by electro
6 chemical processes occurring at separate electrodes
7 in the device.

8 “(8) FUND.—The term ‘Fund’ means the Re
9 newable Electricity Deployment Fund established
10 under subsection (f).

11 “(9) QUALIFIED HYDROPOWER.—The term
12 ‘qualified hydropower’ means—

13 “(A) electricity generated solely from in
14 creased efficiency achieved, or additions of ca
15 pacity made, on or after January 1, 2001 at a
16 hydroelectric facility that was placed in service
17 before that date; or

18 “(B) electricity generated from generating
19 capacity added on or after January 1, 2001 to
20 a dam that did not previously have the capacity
21 to generate electricity, provided that the Com
22 mission certifies that—

23 “(i) the dam was placed in service be
24 fore the date of the enactment of this sec
25 tion and was operated for flood control,

1 navigation, or water supply purposes and
2 did not produce hydroelectric power before
3 January 1, 2001;

4 “(ii) the hydroelectric project installed
5 on the dam is licensed by the Commission
6 and meets all other applicable environ
7 mental, licensing, and regulatory require
8 ments, including applicable fish passage re
9 quirements; and

10 “(iii) the hydroelectric project in
11 stalled on the dam is operated so that the
12 water surface elevation at any given loca
13 tion and time that would have occurred in
14 the absence of the hydroelectric project is
15 maintained, subject to any license require
16 ments that require changes in water sur
17 face elevation for the purpose of improving
18 the environmental quality of the affected
19 waterway.

20 “(10) RENEWABLE ELECTRICITY.—The term
21 ‘renewable electricity’ means electricity generated
22 (including by means of a fuel cell) from a renewable
23 energy resource.

1 “(11) RENEWABLE ENERGY RESOURCE.—The
2 term ‘renewable energy resource’ means each of the
3 following:

4 “(A) Wind energy.

5 “(B) Solar energy.

6 “(C) Geothermal energy.

7 “(D) Biomass or landfill gas.

8 “(E) Qualified hydropower.

9 “(F) Marine and hydrokinetic renewable
10 energy, as that term is defined in section 632
11 of the Energy Independence and Security Act
12 of 2007 (42 U.S.C. 17211).

13 “(12) RETAIL ELECTRIC SUPPLIER.—

14 “(A) IN GENERAL.—The term ‘retail elec
15 tric supplier’ means, for any given year, an
16 electric utility that sold not less than 1,000,000
17 megawatt hours of electric energy to electric
18 consumers for purposes other than resale dur
19 ing the preceding calendar year.

20 “(B) INCLUSIONS AND LIMITATIONS.—For
21 purposes of determining whether an electric
22 utility qualifies as a retail electric supplier
23 under subparagraph (A)—

24 “(i) the sales of any affiliate of an
25 electric utility to electric consumers for

1 purposes other than resale shall be consid
2 ered to be sales of such electric utility; and
3 “(ii) sales by any electric utility to an
4 affiliate, lessee, or tenant of such electric
5 utility shall not be treated as sales to elec
6 tric consumers.

7 “(13) RETAIL ELECTRIC SUPPLIER’S BASE
8 AMOUNT.—The term ‘retail electric supplier’s base
9 amount’ means the total amount of electric energy
10 sold by the retail electric supplier, expressed in
11 terms of megawatt hours, to electric customers for
12 purposes other than resale during the relevant cal
13 endar year, excluding electricity generated by—
14 “(A) a hydroelectric facility that is not
15 qualified hydropower; or
16 “(B) combustion of municipal solid waste.

17 “(14) RETIRE AND RETIREMENT.—The terms
18 ‘retire’ and ‘retirement’ with respect to a Federal re
19 newable electricity credit, means to disqualify such
20 credit for any subsequent use under this section, re
21 gardless of whether the use is a sale, transfer, ex
22 change, or submission in satisfaction of a compliance
23 obligation.

24 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
25 1 year after the date of enactment of this section, the Sec-

1 retary shall, by regulation, establish a program to imple
2 ment and enforce the requirements of this section. In es
3 tablishing such program, the Secretary shall, to the extent
4 practicable—

5 “(1) preserve the integrity, and incorporate best
6 practices, of existing State renewable electricity pro
7 grams;

8 “(2) rely upon existing and emerging State or
9 regional tracking systems that issue and track non-
10 Federal renewable electricity credits; and

11 “(3) cooperate with the States to facilitate co
12 ordination between State and Federal renewable
13 electricity programs and to minimize administrative
14 burdens and costs to retail electric suppliers.

15 “(c) ANNUAL COMPLIANCE REQUIREMENT.—

16 “(1) IN GENERAL.—Except as provided in para
17 graph (3), for each of calendar years 2012 through
18 2039, each retail electric supplier shall, not later
19 than April 1 of the following calendar year, submit
20 to the Secretary a quantity of Federal renewable
21 electricity credits equal to the retail electric sup
22 plier’s base amount for the calendar year multiplied
23 by the required annual percentage set forth in para
24 graph (2). The Secretary shall retire each Federal

1 renewable energy credit immediately upon submis
2 sion under this section.

3 “(2) REQUIRED ANNUAL PERCENTAGE.—For
4 each of calendar years 2012 through 2039, the re
5 quired annual percentage shall be as follows:

Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	8.5
2015	8.5
2016	11.0
2017	11.0
2018	14.0
2019	14.0
2020	17.5
2021	17.5
2022	21.0
2023	21.0
2024	23.0
2025 through 2039	25.0

6 “(3) EFFICIENCY COMPLIANCE OPTION.—The
7 Governor of a State (including, for purposes of this
8 section, the Mayor of the District of Columbia), may
9 petition the Secretary to reduce, by up to one fifth,
10 the required annual percentage under paragraph (2)
11 in any given year that shall be applied to the portion
12 of any retail electric supplier’s base amount that is
13 sold to electric customers located within such State
14 for purposes other than resale. The Secretary shall
15 grant such petition if the Secretary determines that
16 the entities within the State that are subject to the
17 Federal Energy Efficiency Resource Standard estab-

1 lished under section 611 of this Act are in compli
2 ance with such standard for such year.

3 “(4) ALTERNATIVE COMPLIANCE PAYMENTS.—

4 A retail electric supplier may satisfy the require
5 ments of paragraph (1) (as modified, where applica
6 ble, under paragraph (3)) in whole or in part by
7 submitting in lieu of each Federal renewable elec
8 tricity credit that would otherwise be due, a payment
9 equal to the lesser of—

10 “(A) 200 percent of the average market
11 value of a Federal renewable electricity credit
12 for the previous compliance year, as determined
13 by the Secretary; or

14 “(B) \$50, adjusted on January 1 of each
15 year following calendar year 2009 based on the
16 Gross Domestic Product Implicit Price
17 Deflator.

18 “(5) USE OF PAYMENTS.—Alternative compli
19 ance payments submitted pursuant to paragraph (4)
20 shall be deposited in the Fund established under
21 subsection (f).

22 “(d) FEDERAL RENEWABLE ELECTRICITY CRED
23 ITS.—

24 “(1) IN GENERAL.—The regulations promul
25 gated under subsection (b) shall include provisions

1 governing the issuance, tracking, and verification of
2 Federal renewable electricity credits. Except as pro
3 vided in paragraphs (2), (3), and (4) of this sub
4 section, the Secretary shall issue to each generator
5 of renewable electricity, 1 Federal renewable elec
6 tricity credit for each megawatt hour of renewable
7 electricity generated by such generator. The Sec
8 retary shall assign a unique serial number to each
9 Federal renewable electricity credit.

10 “(2) GENERATION FROM STATE RENEWABLE
11 ELECTRICITY PROGRAMS USING CENTRAL PROCURE
12 MENT AND FROM STATE ALTERNATIVE COMPLIANCE
13 PAYMENTS.—Where renewable electricity is gen
14 erated with the support of payments from a retail
15 electric supplier pursuant to a State renewable elec
16 tricity program (whether through State alternative
17 compliance payments or through payments to a
18 State renewable electricity procurement fund or enti
19 ty), the Secretary shall issue Federal renewable elec
20 tricity credits to such retail electric supplier for the
21 proportion of the relevant renewable electricity gen
22 eration that is attributable to the retail electric sup
23 plier’s payments, as determined pursuant to regula
24 tions issued by the Secretary. For any remaining
25 portion of the relevant renewable electricity genera-

1 tion, the Secretary shall issue Federal renewable
2 electricity credits to the generator, as provided in
3 paragraph (1), provided that in no event shall more
4 than 1 Federal renewable electricity credit be issued
5 for the same megawatt hour of electricity. In deter
6 mining how Federal renewable electricity credits will
7 be apportioned among retail electric suppliers and
8 generators in such circumstances, the Secretary
9 shall consider information and guidance furnished by
10 the relevant State or States.

11 “(3) CERTAIN POWER SALES CONTRACTS.—

12 When a generator has sold renewable electricity to
13 a retail electric supplier under a contract for power
14 from a facility placed in service before the date of
15 enactment of this section, and the contract does not
16 provide for the determination of ownership of the
17 Federal renewable electricity credits associated with
18 such generation, the Secretary shall issue such Fed
19 eral renewable electricity credits to the retail electric
20 supplier for the duration of the contract.

21 “(4) CREDIT MULTIPLIER FOR DISTRIBUTED
22 GENERATION.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the Secretary shall issue 3
25 Federal renewable electricity credits for each

1 megawatt hour of renewable electricity gen
2 erated by a distributed generation facility.
3 “(B) ADJUSTMENT.—Except as provided
4 in subparagraph (C), not later than January 1,
5 2014, and not less frequently than every 4
6 years thereafter, the Secretary shall review the
7 effect of this paragraph and shall, as necessary,
8 reduce the number of Federal renewable elec
9 tricity credits per megawatt hour issued under
10 this paragraph, but not below 1, to ensure that
11 such number is no higher than the Secretary
12 determines is necessary to make distributed
13 generation facilities cost competitive with other
14 sources of renewable electricity generation.

15 “(C) FACILITIES PLACED IN SERVICE
16 AFTER ENACTMENT.—For any distributed gen
17 eration facility placed in service after the date
18 of enactment of this section, subparagraph (B)
19 shall not apply for the first 10 years after date
20 of enactment. For each year during such 10-
21 year period, the Secretary shall issue the facil
22 ity the same number of Federal renewable elec
23 tricity credits per megawatt hour as are issued
24 to that facility in the year in which such facility
25 is placed in service. After such 10-year period,

1 the Secretary shall issue Federal renewable en
2 ergy credits to the facility in accordance with
3 the current multiplier as determined pursuant
4 to subparagraph (B).

5 “(5) CREDITS BASED ON INCREMENTAL HY
6 DROPOWER.—For purposes of this subsection, the
7 number of Federal renewable electricity credits
8 issued for qualifying hydropower described in sub
9 section (a)(9)(A) shall be calculated—

10 “(A) based solely on the increase in aver
11 age annual generation directly resulting from
12 the efficiency improvements or capacity addi
13 tions described in subsection (a)(9)(A); and
14 “(B) using the same water flow informa
15 tion used to determine a historic average an
16 nual generation baseline for the hydroelectric
17 facility, as certified by the Secretary or by the
18 Commission.

19 “(6) GENERATION FROM MIXED RENEWABLE
20 AND NON-RENEWABLE RESOURCES.—If electricity is
21 generated using both a renewable energy resource
22 and an energy source that is not a renewable energy
23 resource (as, for example, in the case of co-firing of
24 biomass and fossil fuel), the Secretary shall issue
25 Federal renewable electricity credits based on the

1 proportion of the electricity that is attributable to
2 the renewable energy resource.

3 “(7) PROHIBITION AGAINST DOUBLE-COUNT
4 ING.—Except as provided in paragraph (4) of this
5 subsection, the Secretary shall ensure that no more
6 than 1 Federal renewable electricity credit will be
7 issued for any megawatt hour of renewable elec
8 tricity and that no Federal renewable electricity
9 credit will be used more than once for compliance
10 with this section.

11 “(e) TRADING, BANKING, AND MARKET OVER
12 SIGHT.—

13 “(1) TRADING.—The lawful holder of a Federal
14 renewable electricity credit may sell, exchange,
15 transfer, submit for compliance in accordance with
16 subsection (c), or submit such credit for retirement
17 by the Secretary.

18 “(2) BANKING.—A Federal renewable elec
19 tricity credit may be submitted in satisfaction of the
20 compliance obligation set forth in subsection (c) for
21 the compliance year in which the credit was issued
22 or for any of the 3 immediately subsequent compli
23 ance years. The Secretary shall retire any Federal
24 renewable electricity credit that has not been sub
25 mitted under subsection (c) by the deadline for the

1 compliance year that is 3 years after the compliance
2 year in which the credit was issued.

3 “(3) OVERSIGHT.—The Commission, in con
4 sultation with the Secretary and relevant Federal
5 agencies, may prescribe such rules as the Commis
6 sioner determines necessary to ensure the trans
7 parency, fairness, and stability of the market in
8 Federal renewable electricity credits and any deriva
9 tive instruments based on such credits.

10 “(f) RENEWABLE ELECTRICITY DEPLOYMENT
11 FUND.—

12 “(1) IN GENERAL.—There is established in the
13 Treasury of the United States a Renewable Elec
14 tricity Deployment Fund.

15 “(2) DEPOSITS.—All Federal alternative com
16 pliance payments submitted to the Secretary pursu
17 ant to subsection (c)(3) and civil penalties assessed
18 under this section shall be deposited into the Fund.

19 “(3) USE.—

20 “(A) IN GENERAL.—Amounts deposited in
21 the Fund shall be available exclusively for use
22 by the Secretary, subject to appropriations, to
23 make payments to retail electric suppliers in ac
24 cordance with subparagraph (B).

1 “(B) ALLOCATION.—Not later than May 1
2 of each year from 2013 through 2040, the Sec
3 retary shall distribute amounts deposited in the
4 Fund during the preceding 12-month period
5 among the retail electric suppliers which have
6 submitted Federal renewable electricity credits
7 to the Secretary in total or partial compliance
8 with their obligations under subsection (c) for
9 the preceding calendar year. Each retail electric
10 supplier shall receive a payment equal to the
11 product of—

12 “(i) the total payments made to all re
13 tail electric suppliers under this subsection;
14 and

15 “(ii) the quotient obtained by dividing
16 the quantity specified in subclause (I) by
17 the quantity specified in subclause (II):

18 “(I) The quantity of Federal re
19 newable electricity credits submitted
20 by the retail electric supplier for the
21 preceding calendar year pursuant to
22 subsection (c).

23 “(II) The total quantity of Fed
24 eral renewable electricity credits sub
25 mitted by all retail electric suppliers

1 for the preceding calendar year pursu

2 ant to subsection (c).

3 “(g) INFORMATION COLLECTION.—In accordance
4 with section 13 of the Federal Energy Administration Act
5 of 1974 (15 U.S.C. 772), the Secretary may require any
6 retail electric supplier, renewable electricity generator, or
7 such other entities as the Secretary deems appropriate, to
8 provide any information the Secretary determines appro
9 priate to carry out this section.

10 “(h) ENFORCEMENT AND JUDICIAL REVIEW.—

11 “(1) CIVIL PENALTY.—If any person fails to
12 comply with the requirements of subsection (c), such
13 person shall be liable to pay to the Secretary a civil
14 penalty equal to the product of—

15 “(A) double the Federal alternative compli
16 ance payment calculated under subsection
17 (c)(3), and

18 “(B) the aggregate quantity of Federal re
19 newable electricity credits (or equivalent Fed
20 eral alternative compliance payments) that the
21 person failed to submit to the Secretary in vio
22 lation of the requirements of subsection (c).

23 “(2) ENFORCEMENT.—The Secretary shall as
24 sess a civil penalty under paragraph (1) in accord
25 ance with the procedures described in section 333(d)

1 of the Energy Policy and Conservation Act of 1954
2 (42 U.S.C. 6303).

3 “(3) JUDICIAL REVIEW.—Any person who will
4 be adversely affected by a final action taken by the
5 Secretary under this section, other than the assess
6 ment of a civil penalty under this subsection, may
7 use the procedures for review described in section
8 336(b) of the Energy Policy and Conservation Act
9 (42 U.S.C. 6306). For purposes of this paragraph,
10 references to a rule in section 336(b) of the Energy
11 Policy and Conservation Act shall be deemed to refer
12 also to all other final actions of the Secretary under
13 this section other than the assessment of a civil pen
14 alty under this subsection.

15 “(i) SAVINGS PROVISIONS.—Nothing in this section
16 shall—

17 “(1) diminish or qualify any authority of a
18 State or political subdivision of a State to—

19 “(A) adopt or enforce any law or regula
20 tion respecting renewable electricity, including
21 programs that exceed the required amount of
22 renewable electricity under this section, pro
23 vided that no such law or regulation may relieve
24 any person of any requirement otherwise appli
25 cable under this section; or

1 “(B) regulate the acquisition and dispose
2 tion of Federal renewable electricity credits by
3 retail electric suppliers located within the terri
4 tory of such State or political subdivision, in
5 cluding the authority to require such retail elec
6 tric supplier to acquire and retire Federal re
7 newable electricity credits associated with elec
8 tric energy it sells to end-use customers; or
9 “(2) affect the application of, or the response
10 bility for compliance with, any other provision of law
11 or regulation, including environmental and licensing
12 requirements.

13 “(j) SUNSET.—This section expires on December 31,
14 2040.”.

15 (b) TABLE OF CONTENTS AMENDMENT.—The table
16 of contents of the Public Utility Regulatory Policies Act
17 of 1978 (16 U.S.C. 2601 and following) is amended by
18 adding at the end of the items relating to title VI the fol
19 lowing:

“Sec. 610. Federal renewable electricity standard”.