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
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:
“(A) Crops, crop byproducts, or crop residues harvested from actively managed or fallow agricultural land that was cleared prior to the date of enactment of this section and is nonforested.

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

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

“(i) old-growth or mature forest;

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

“(iii) Federal land.

“(D) Algae.

“(E) Nonhazardous plant matter derived from waste such as separated yard waste, land scape right-of-way trimmings, or food waste (but not municipal solid waste, recyclable waste paper, painted, treated or pressurized wood, or wood contaminated with plastic or metals).
“(F) Animal waste or animal byproducts, including products of animal waste digesters.
“(G) Vegetative matter removed from within 200 yards of any manmade structure or campground.
“(3) DISTRIBUTED GENERATION FACILITY.—The term ‘distributed generation facility’ means a facility that—
“(A) generates renewable electricity other than by means of combustion;
“(B) primarily serves 1 or more electricity consumers at or near the facility site; and
“(C) is no larger than 2 megawatts in capacity.
“(4) FEDERAL ALTERNATIVE COMPLIANCE PAYMENT.—The term ‘Federal alternative compliance payment’ means a payment, to be submitted in lieu of 1 Federal renewable electricity credit, pursuant to subsection (c)(3).
“(5) FEDERAL LAND.—The term ‘Federal land’ means land owned by the United States, other than land held in trust for an Indian or Indian tribe.
“(6) FEDERAL RENEWABLE ELECTRICITY CREDIT.—The term ‘Federal renewable electricity 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,
navigation, or water supply purposes and did not produce hydroelectric power before January 1, 2001; “(ii) the hydroelectric project installed on the dam is licensed by the Commission and meets all other applicable environmental, licensing, and regulatory requirements, including applicable fish passage requirements; and “(iii) the hydroelectric project installed on the dam is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements that require changes in water surface elevation for the purpose of improving the environmental quality of the affected waterway.

“(10) RENEWABLE ELECTRICITY.—The term ‘renewable electricity’ means electricity generated (including by means of a fuel cell) from a renewable energy resource.
“(11) RENEWABLE ENERGY RESOURCE.—The term ‘renewable energy resource’ means each of the following:

(A) Wind energy.

(B) Solar energy.

(C) Geothermal energy.

(D) Biomass or landfill gas.

(E) Qualified hydropower.

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

“(12) RETAIL ELECTRIC SUPPLIER.—

(A) IN GENERAL.—The term ‘retail electric supplier’ means, for any given year, an electric utility that sold not less than 1,000,000 megawatt hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year.

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

(i) the sales of any affiliate of an electric utility to electric consumers for
purposes other than resale shall be consid-
ered to be sales of such electric utility; and
“(ii) sales by any electric utility to an
affiliate, lessee, or tenant of such electric
utility shall not be treated as sales to elec-
tric consumers.
“(13) RETAIL ELECTRIC SUPPLIER’S BASE
AMOUNT.—The term ‘retail electric supplier’s base
amount’ means the total amount of electric energy
sold by the retail electric supplier, expressed in
terms of megawatt hours, to electric customers for
purposes other than resale during the relevant cal-
endar year, excluding electricity generated by—
“(A) a hydroelectric facility that is not
qualified hydropower; or
“(B) combustion of municipal solid waste.
“(14) RETIRE AND RETIREMENT.—The terms
‘retire’ and ‘retirement’ with respect to a Federal re-
newable electricity credit, means to disqualify such
credit for any subsequent use under this section, re-
gardless of whether the use is a sale, transfer, ex-
change, or submission in satisfaction of a compliance
obligation.
“(b) ESTABLISHMENT OF PROGRAM.—Not later than
1 year after the date of enactment of this section, the Sec-
retary shall, by regulation, establish a program to imple
ment and enforce the requirements of this section. In es
tablishing such program, the Secretary shall, to the extent
practicable—
“(1) preserve the integrity, and incorporate best
practices, of existing State renewable electricity pro
grams;
“(2) rely upon existing and emerging State or
regional tracking systems that issue and track non-
Federal renewable electricity credits; and
“(3) cooperate with the States to facilitate co
ordination between State and Federal renewable
electricity programs and to minimize administrative
burdens and costs to retail electric suppliers.
“(c) ANNUAL COMPLIANCE REQUIREMENT.—
“(1) IN GENERAL.—Except as provided in para
graph (3), for each of calendar years 2012 through
2039, each retail electric supplier shall, not later
than April 1 of the following calendar year, submit
to the Secretary a quantity of Federal renewable
electricity credits equal to the retail electric sup
plier’s base amount for the calendar year multiplied
by the required annual percentage set forth in para
graph (2). The Secretary shall retire each Federal
renewable energy credit immediately upon submis
sion under this section.

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

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<th>Calendar year</th>
<th>Required annual percentage</th>
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<tbody>
<tr>
<td>2012</td>
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<tr>
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<tr>
<td>2024</td>
<td>23.0</td>
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<tr>
<td>2025 through 2039</td>
<td>25.0</td>
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</tbody>
</table>

“(3) EFFICIENCY COMPLIANCE OPTION.—The
Governor of a State (including, for purposes of this
section, the Mayor of the District of Columbia), may
petition the Secretary to reduce, by up to one fifth,
the required annual percentage under paragraph (2)
in any given year that shall be applied to the portion
of any retail electric supplier’s base amount that is
sold to electric customers located within such State
for purposes other than resale. The Secretary shall
grant such petition if the Secretary determines that
the entities within the State that are subject to the
Federal Energy Efficiency Resource Standard estab-
lished under section 611 of this Act are in compliance with such standard for such year.

“(4) ALTERNATIVE COMPLIANCE PAYMENTS.—A retail electric supplier may satisfy the requirements of paragraph (1) (as modified, where applicable, under paragraph (3)) in whole or in part by submitting in lieu of each Federal renewable electricity credit that would otherwise be due, a payment equal to the lesser of—

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

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

“(5) USE OF PAYMENTS.—Alternative compliance payments submitted pursuant to paragraph (4) shall be deposited in the Fund established under subsection (f).

“(d) FEDERAL RENEWABLE ELECTRICITY CREDITS.—

“(1) IN GENERAL.—The regulations promulgated under subsection (b) shall include provisions
governing the issuance, tracking, and verification of Federal renewable electricity credits. Except as provided in paragraphs (2), (3), and (4) of this subsection, the Secretary shall issue to each generator of renewable electricity, 1 Federal renewable electricity credit for each megawatt hour of renewable electricity generated by such generator. The Secretary shall assign a unique serial number to each Federal renewable electricity credit.

“(2) GENERATION FROM STATE RENEWABLE ELECTRICITY PROGRAMS USING CENTRAL PROCUREMENT AND FROM STATE ALTERNATIVE COMPLIANCE PAYMENTS.—Where renewable electricity is generated with the support of payments from a retail electric supplier pursuant to a State renewable electricity program (whether through State alternative compliance payments or through payments to a State renewable electricity procurement fund or entity), the Secretary shall issue Federal renewable electricity credits to such retail electric supplier for the proportion of the relevant renewable electricity generation that is attributable to the retail electric supplier’s payments, as determined pursuant to regulations issued by the Secretary. For any remaining portion of the relevant renewable electricity genera-
1 tion, the Secretary shall issue Federal renewable
electricity credits to the generator, as provided in
paragraph (1), provided that in no event shall more
than 1 Federal renewable electricity credit be issued
for the same megawatt hour of electricity. In deter
mining how Federal renewable electricity credits will
be apportioned among retail electric suppliers and
generators in such circumstances, the Secretary
shall consider information and guidance furnished by
the relevant State or States.

“(3) CERTAIN POWER SALES CONTRACTS.—
When a generator has sold renewable electricity to
a retail electric supplier under a contract for power
from a facility placed in service before the date of
enactment of this section, and the contract does not
provide for the determination of ownership of the
Federal renewable electricity credits associated with
such generation, the Secretary shall issue such Fed-
eral renewable electricity credits to the retail electric
supplier for the duration of the contract.

“(4) CREDIT MULTIPLIER FOR DISTRIBUTED
GENERATION.—
“(A) IN GENERAL.—Except as provided in
subparagraph (B), the Secretary shall issue 3
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
proportion of the electricity that is attributable to
the renewable energy resource.

“(7) PROHIBITION AGAINST DOUBLE-COUNTING.—Except as provided in paragraph (4) of this
subsection, the Secretary shall ensure that no more
than 1 Federal renewable electricity credit will be
issued for any megawatt hour of renewable electric
city and that no Federal renewable electricity
credit will be used more than once for compliance
with this section.

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

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

“(2) BANKING.—A Federal renewable electric
ity credit may be submitted in satisfaction of the
compliance obligation set forth in subsection (c) for
the compliance year in which the credit was issued
or for any of the 3 immediately subsequent compli
ance years. The Secretary shall retire any Federal
renewable electricity credit that has not been sub
mitted under subsection (c) by the deadline for the
compliance year that is 3 years after the compliance year in which the credit was issued.

“(3) OVERSIGHT.—The Commission, in consultation with the Secretary and relevant Federal agencies, may prescribe such rules as the Commissioner determines necessary to ensure the transparency, fairness, and stability of the market in Federal renewable electricity credits and any derivative instruments based on such credits.

“(f) RENEWABLE ELECTRICITY DEPLOYMENT FUND.—

“(1) IN GENERAL.—There is established in the Treasury of the United States a Renewable Electricity Deployment Fund.

“(2) DEPOSITS.—All Federal alternative compliance payments submitted to the Secretary pursuant to subsection (c)(3) and civil penalties assessed under this section shall be deposited into the Fund.

“(3) USE.—

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

Energy Information Administration / Impacts of the 25-Percent RES in the ACESA Discussion Draft
“(B) ALLOCATION.—Not later than May 1 of each year from 2013 through 2040, the Secretary shall distribute amounts deposited in the Fund during the preceding 12-month period among the retail electric suppliers which have submitted Federal renewable electricity credits to the Secretary in total or partial compliance with their obligations under subsection (c) for the preceding calendar year. Each retail electric supplier shall receive a payment equal to the product of—

“(i) the total payments made to all retail electric suppliers under this subsection; and

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

“(I) The quantity of Federal renewable electricity credits submitted by the retail electric supplier for the preceding calendar year pursuant to subsection (c).

“(II) The total quantity of Federal renewable electricity credits submitted by all retail electric suppliers

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for the preceding calendar year pursuant to subsection (c).

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

“(h) ENFORCEMENT AND JUDICIAL REVIEW.—

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

“(A) double the Federal alternative compliance payment calculated under subsection (c)(3), and

“(B) the aggregate quantity of Federal renewable electricity credits (or equivalent Federal alternative compliance payments) that the person failed to submit to the Secretary in violation of the requirements of subsection (c).

“(2) ENFORCEMENT.—The Secretary shall assess a civil penalty under paragraph (1) in accordance 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
(B) regulate the acquisition and dispose
tion of Federal renewable electricity credits by
retail electric suppliers located within the terri
tory of such State or political subdivision, in
cluding the authority to require such retail elec
tric supplier to acquire and retire Federal re
newable electricity credits associated with elec
tric energy it sells to end-use customers; or
“(2) affect the application of, or the response
bility for compliance with, any other provision of law
or regulation, including environmental and licensing
requirements.
“(j) SUNSET.—This section expires on December 31,
2040.”.
(b) TABLE OF CONTENTS AMENDMENT.—The table
of contents of the Public Utility Regulatory Policies Act
of 1978 (16 U.S.C. 2601 and following) is amended by
adding at the end of the items relating to title VI the fol
lowing:
“Sec. 610. Federal renewable electricity standard”.