



Metals Service Center Institute
100 YEARS STRONG

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Dear MSCI Member:

I am delighted to introduce a new monthly electronic newsletter, for MSCI members only. This newsletter will summarize the status of legislation, regulatory activity and other happenings in Washington, D.C., of particular importance to the metals industry.

The newsletter is prepared for us by Winston & Strawn, our general counsel, which maintains a very active legislative monitoring and lobbying presence in the capital city. We hope and believe that you will find this electronic publication to be informative, timely and useful. It should help all of us track legislation and regulations that are most meaningful to us and alert us to moments when an e-mail, fax or call to a member of Congress might be of greatest value.

MSCI has a very diverse membership base, and as such we are extremely sensitive to the issues associated with such diversity. This e-letter will focus on legislation that MSCI has taken positions on, as well as other issues that are important to the metals and manufacturing sectors. However because of sensitivities, we may refrain from taking a formal position on a number of issues.

We remain firmly committed, especially during these extremely difficult economic times, to increase the value of your membership. I would welcome any feedback you may have.

Thank you for your continued support of our 100-year-old community.

Best regards,

Bob Weidner



January 31, 2009

Economic Stimulus

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January, 2009: MSCI Inaugural Advocacy Newsletter

Welcome to MSCI's Inaugural Advocacy Newsletter. This issue marks the first in a series of monthly newsletters, a medium through which MSCI aims to keep its members updated with relevant information on federal legislative and regulatory issues of importance to the metals industry.

Economic Stimulus

Talk of economic recovery and stimulus legislation has dominated the headlines in Washington for the better part of a year. Prior efforts have fallen short of achieving economy-wide stimulus and experts agree that until President Obama signs an expansive "economic recovery" law, other policy priorities will struggle to find a place at the negotiating table. Even before taking the oath of office, President Obama directed his Presidential Transition Team to negotiate with the Congress over the form and amount of such a package with cost estimates ranging between \$750 billion and \$1 trillion.

Last Wednesday, the House passed its stimulus package with bipartisan opposition. The Senate is expected to vote on its own package this week. Late Wednesday, the Senate Appropriations Committee reported out a \$365 billion spending package that included \$142 billion for infrastructure and science programs (\$27 billion in highway construction). Wednesday night, the Senate Finance Committee followed with approval of its own \$522 billion tax and health spending package. One major addition in the Senate Finance measure was a \$70 billion provision that will exclude a large number of middle class Americans from the Alternative Minimum Tax. The House does not have a comparable AMT provision but many House Republicans and Democrats are supportive.

While the House and the Senate packages are substantially similar in content, there are differences that will need to be resolved after the Senate passes its measure. Additionally, both packages are coming under intense scrutiny by Congressional Republicans and many outside economists for not doing enough to ensure short term stimulus (citing a recent report from the Congressional Budget Office that only 64% of the funds



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will be spent 20 months from now). President Obama is clear on the point that he will pursue and expects a bi-partisan vote, as recently as last Tuesday visiting with Congressional Republican leadership to give them a chance to be heard and to lobby for their support. Many believe that the Senate floor is the last best chance for addressing some Republican concerns and salvaging a bi-partisan vote.

The Economic Stimulus packages currently under consideration in both the House and the Senate are divided into two broad sections -- a tax section and a spending section. While there are too many specific provisions to cover here, the following represents a brief summary of particularly relevant provisions for our industry. Where numbers are indicated, they refer to Senate amounts:

I. Spending Provisions

- ❖ **The package provides for \$142 billion in infrastructure and science spending, including:** \$27 billion for highway investments; \$16 billion for school repairs, renovations, and construction; \$9 billion to expand broadband infrastructure; \$8.4 billion in public transit; \$5.6 billion to Department of Defense physical infrastructure spending; \$3.7 billion to VA hospital and medical facility construction; \$5.1 billion to Department of Homeland Security projects; \$3.1 billion for investments in rail transportation; \$2.6 billion to the General Services Administration for construction and repair; \$1.3 billion for air transportation; and \$160 million in maritime transportation investments. In addition to the above \$142 billion, the package calls for \$49 billion in energy infrastructure spending.

II. Selected Business Provisions

- ❖ **Increase of Net Operating Loss Carry Back Period.** The proposal would extend the carry back period for NOLs from two years to five years for NOLs arising in taxable years 2008 and 2009. This provision would not apply to entities that received TARP funding.
- ❖ **Delayed Recognition of Certain Cancellation of Debt Income.** Certain businesses will be allowed to recognize cancellation of indebtedness income over 4 years for specified types of business debt repurchased by the business after December 31, 2008 and before January 1, 2011.
- ❖ **Duty Refund Recollection.** This proposal would prohibit U.S. Customs and Border Protection (CBP) from demanding that U.S. lumber, steel, and other companies repay duties that CBP collected on Canadian and Mexican imports, and then distributed to the companies between 2001 and 2005.
- ❖ **Extension of Bonus Depreciation.** The February 2008 stimulus bill allowed a trade or business to depreciate an additional 50 percent of the cost of an asset acquired and placed into service in 2008. This proposal would extend bonus depreciation for calendar year 2009 at 50 percent.



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- ❖ **Extension of Monetization of Accumulated AMT and R&D Credits in Lieu of Bonus Depreciation.** This provision extends the provision contained in the Foreclosure Prevention Act of 2008 and allows AMT and loss taxpayers in 2009 to receive 20 percent of the value of their old AMT or research and development (R&D) credits to the extent such taxpayers invest in assets that qualify for bonus depreciation.
- ❖ **Extension of Elective Expensing (Section 179).** The smaller stimulus bill enacted in February of 2008 increased the expensing limit to \$250,000 and the phase-out to \$800,000 for 2008. The current proposal would extend that provision to 2009.
- ❖ **Energy Tax Cuts and Incentives.** There are more than \$30 billion in tax cuts and incentives for investment in energy infrastructure and development of renewable sources of energy.

III. Bond Provisions

- ❖ **Improve Marketability of Tax Exempt Bonds.** The proposal would increase the marketability of tax exempt bonds issued by States and by local governments in 2009 and 2010, thereby increasing available financing in four ways: (1) it eliminates the tax exempt interest on tax exempt private activity bonds as a preference item of the alternative minimum tax; (2) it increases the market for bonds by expanding the ability of banks and brokers to invest in them; (3) it raises the amount of bonds a small issuer can issue from \$10 million to \$30 million; and (4) it expands the amount of bonds that can be issued by small issuers by applying this limit to each ultimate borrower.
- ❖ **Industrial Development Bonds.** The proposal would modernize certain tax exempt qualified small issue bonds or industrial development bonds (IDBs) for facilities that create or manufacture intangible property. The proposal would also clarify which physical components of any given facility are eligible for such tax exempt financing.
- ❖ **Build America Bonds.** The proposal would provide State and local governments with a new tax credit bond option for new capital projects. Because the market for tax credits is currently small given current economic conditions, the mark would allow the State or local government to elect to receive a direct payment from the Federal government equal to the subsidy that would have otherwise been delivered through the Federal tax credit for bonds issued in 2009, 2010, and 2011.
- ❖ **Qualified School Construction Bonds.** The proposal would create a tax credit bond to fund new construction of schools. The mark allocates \$5 billion for each of 2009 and 2010. The provision would also provide a specific allocation of \$200 million for Indian schools for each of those years.
- ❖ **Extension and Expansion of Qualified Zone Academy Bonds (QZAB).** The proposal would extend the QZAB program to 2010. The proposal would also allocate \$1.4 billion for 2009 and 2010.



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- ❖ **Creation of Recovery Zone Infrastructure Bonds.** There would be a new type of tax credit bond which would be used to finance public infrastructure improvements within national recovery zones that facilitate economic development within that zone. The total allocation would be \$10 billion.
- ❖ **Creation of Recovery Zone Facility Bonds.** This feature would be a new type of tax exempt private activity bond for capital investments in a national recovery zone. The total allocation would be \$15 billion.

IV. Worker Assistance

- ❖ **Premium Subsidies for COBRA Continuation Coverage for Unemployed Workers.** This proposal would provide a 65 percent premium subsidy for individuals who lost their jobs after September to help cover the cost of COBRA premiums. It would be administered by the Treasury Department through a mechanism that allows employers (or health plans if they administer COBRA benefits) to receive a credit against payroll taxes.
- ❖ **Extension of the Trade Adjustment Assistance (TAA) programs for two years.** The TAA for Workers program provides extended income support and training benefits for workers who lose their jobs because of increased imports or factory shifts to certain countries. The TAA for Firms program helps prevent layoffs entirely by assisting trade-distressed companies retool and become more competitive. Senate Chairman Baucus – along with Senator Grassley, House Chairman Rangel, and Representative Camp – continue to work together on a robust, efficient, bipartisan expansion of Trade Adjustment Assistance.

Congressional leaders have a self-imposed deadline of February 13th for final enactment of the stimulus package. All indications are that they will accomplish that goal despite opposition to the plan from Congressional Republicans.

Labor

Two amendments to labor laws deserve particular attention. The first, known as the "Ledbetter" Act, will substantially increase workers ability to fight pay discrimination in court. The second, commonly cited as "card check", would, if enacted, more easily enable employees to form, join, and assist labor organizations.

S.181, the Ledbetter Act, was signed by the President last Thursday, January, 29. This legislation is the result of a 2007 Supreme Court decision that frustrated many Democrats in Washington. In that case, Ms. Ledbetter had sued her employer, Goodyear Tire, after finding out that she had been paid less than her male counterparts over the course of twenty years. The Court found that pay discrimination claims must be filed within 180 days of when the alleged discrimination first took place. Since her alleged discrimination first took



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place 20 years prior, her right to sue was denied. Her lawyers argued that she should be able to sue after every instance of wage discrimination – not just the first one.

In reaction to the decision, Congressional Democrats introduced the Ledbetter Act, which will change the law in favor of employees by allowing the 180 day statute of limitation to renew with each new act (i.e. each paycheck) of discrimination. S.181 passed out of the Senate on Thursday, January 22nd after Democrats succeeded in defeating a series of employer friendly amendments offered by Senators Hutchison (R-TX), Enzi (R-WY), and Specter (R-PA). The House passed a similar but more aggressive measure on January 9th that would have, among other things, make it more difficult for employers to justify pay disparities. Rather than send the two bills to conference and prolong consideration, the House took up the Senate-passed version on the afternoon of January 27th and passed it.

The second important labor bill, The Employee Free Choice Act (EFCA) or "Card Check", is highly problematic for employers. However, it enjoys strong support from the Obama Administration and Congressional Democrats. In 2007 the House passed the EFCA and the Senate failed by only a few votes. Since then, Democrats have added significant margins in the House and between 7 and 8 new Members in the Senate. As a result, the legislation stands a very good chance of being enacted into law early this year with the House voting in March or April.

The EFCA would amend the "National Labor Relations Act" to: (1) eliminate secret ballot elections and replace them with card check recognition; (2) guarantee a first contract if no agreement is formed within 120 days of recognition (determined by arbitration); (3) provide for mandatory injunctions against employers alleged to have fired employees for organizing activities; and (4) provide for significant employer penalties for repeat violations. If enacted, the EFCA would more easily enable employees to form, join, or assist labor organizations with little to no advance warning to their employer. In contrast, current law calls for secret ballot National Labor Relations Board (NLRB) elections to be held if more than 30% of employees in a bargaining unit sign statements asking for representation by a union. Under the EFCA, employees would no longer have the opportunity to vote for a union by secret ballot. As long as a majority of employees sign union cards and the NLRB does not find illegal coercion, the employer must recognize the union.

As a result, many companies have begun to develop preemptive strategies, including planning as if they are constantly facing an organizing campaign, articulating to employees why they do not need a third-party representative, and educating employees on the consequences of signing cards without understanding the authority that they are potentially bestowing upon a third party union. The Metals Service Center Institute strongly opposes this legislation and will be working this spring with the National Association of Manufacturers, National Association of Wholesaler-Distributors, the U.S. Chamber of Commerce and the Coalition for a Democratic Workplace to organize education and opposition efforts in states with Senators who are key to efforts to defeating this legislation before it reaches President Obama's desk. For more information, see www.myprivateballot.com/facts.



Trade & Currency

Chinese currency manipulation has long been a concern of U.S. industries struggling to compete with the low costs associated with Chinese imports. For some time, members of Congress have pushed the Bush Administration to address the issue without success. MSCI has long held that currency values should be determined by open markets. The Institute has been a leader in the China Currency Coalition, helping to draft and lobbying for the passage of legislation that would allow countervailing duties where currency exchange-rate manipulation is determined.

Last Thursday, the Senate Finance Committee approved incoming Timothy F. Geithner's nomination to be the next Secretary of the Treasury. In a written response to questions from Senate Committee Members, Geithner wrote that he believed China to be "manipulating" its currency. He went on to say that "President Obama has pledged as President to use aggressively all the diplomatic avenues open to him to seek change in China's currency practices...The question is how and when to broach the subject in order to do more good than harm.....The new economic team will forge an integrated strategy on how best to achieve currency realignment in the current economic environment."

While Geithner expressed a clear desire to address the issue, our best assessment is that this is not a priority issue for either the Administration or the Congress at the moment. Circumstances have changed substantially since the currency issue was at the forefront of Congressional debate. The credit crisis has had a devastating effect on world markets, the Chinese - U.S. trade deficit has narrowed, and the U.S. Government relies on China now more than ever to assume our ever increasing debt. Senator Schumer (D-NY) of the Senate Finance Committee and Senator Kerry (D-MA), Chairman of the Senate Foreign Relations Committee, have each downplayed the priority status of dealing with China on currency matters.

Health Care Reform

Most Washington experts agree that comprehensive health care reform, while a top domestic priority, is unlikely to be enacted in 2009. Instead, advocates may need to settle for incremental law changes in the coming months that pave the way for broader reform in 2010 or beyond.

To that end, the House recently passed a measure to expand the scope of the State Children's Health Insurance Program (SCHIP) and the Senate is expected to support that expansion by passing its own legislation today. Additionally, the Congress is expected to provide billions in funding in the Economic Stimulus package to improve health care information technology across the country. This is seen as an essential step in increasing patient safety and adding efficiency to a system prior to broader reform. Other incremental measures on the table include extensions of COBRA and additional Medicaid funds for states, each a part of the larger economic stimulus package.



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The real question at this juncture is what form comprehensive health care reform will take. While we know that President Obama would like to achieve cost reductions averaging \$2500 per family, details on his plan are intentionally vague. To date, the best insight into what comprehensive reform may look like comes from the Chairman of the Senate Finance Committee, Max Baucus (D-MT). On November 12th, 2008, Senator Baucus released a white paper entitled "Call to Action: Health Reform 2009". That white paper elaborates upon general health care reform principles that have been discussed in recent years and it provides a road map for the 111th Congress. The proposals included in his white paper should be given serious consideration by stakeholders as many, if not all, of them will be debated in the coming year. The most important proposals are as follows:

- ❖ Individual Insurance Mandates: In line with Massachusetts law, Senator Baucus would require all Americans to carry health insurance. The requirement would be triggered once a number of other components of his plan, including the creation of a health insurance exchange (see below), are created.
- ❖ Employer Mandate: Employers (with the exception of very small employers) would be required to offer coverage to employees and to partially subsidize the cost. If an employer chooses not to do this, they could alternatively pay into a fund that would help to cover the uninsured. The smaller the company, the less of a contribution they would be required to make. Small businesses would also receive a tax credit to assist in purchasing health care for employees.
- ❖ Creation of Regulated Insurance Exchanges: To ensure compliance with the individual and employer mandates, an "exchange" (e.g. "Massachusetts Connector") would be established through which individuals and businesses could access "affordable" and comprehensive insurance. The plans offered through the exchange would be required to meet certain benefit and plan requirements.
- ❖ Premium Subsidies: To assist in the cost of purchasing health insurance through the exchange, the "Insurance Exchange Board" would review plan costs and create subsidies based on income levels and affordability of plans.
- ❖ Government-Run Option: Perhaps most controversial, the Baucus plan would provide a government-run insurance option that competes with private coverage options on the exchange.
- ❖ Employer Coverage Tax Reform: This proposal would reduce the amount of contributions that can be excluded from wages to pay for health insurance in order to level the playing field and to cut spending that some argue is encouraged by the employer-based system.

To complement these broad reform proposals, Senator Baucus would also seek to improve the current health care system. He offers a number of general proposals for accomplishing this goal, including: an option for people aged 55-64 to purchase coverage from Medicare while the above mentioned "exchange" is under development, and expansion of Medicaid and SCHIP eligibility to assist certain populations in meeting the



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individual insurance mandate. Finally, his proposal considers reforming physician reimbursement formulas, the Medical Malpractice system, and the manner in which we prevent fraud, waste and abuse.

It remains unclear when comprehensive health care reform legislation will be considered. A number of major issues remain unresolved and others will require a significant amount of added detail before they can be seriously debated. Importantly, given dire economic circumstances, many believe that we simply do not have the means to pay for such broad reform. To this last point, Congressional leaders and White House officials are already framing health care reform as an "investment", claiming that up-front spending will reap great economic and financial rewards in the out years. Most observers agree that this is code for suspending Congressional rules that require new spending items to be offset elsewhere in the budget. Generally speaking, this position has some support in that recent news accounts have linked every one percentage point rise in unemployment to about a million new eligible Medicaid or SCHIP participants.

Despite cynicism in the advocacy community, the Obama health care team, under the leadership of newly minted Health and Human Services Secretary and White House "Health Care Czar" Tom Daschle (the former senate Democratic Leaders from South Dakota), continues to reach out to an extensive grass roots network to build support and consensus for action in 2009. Additionally, in an effort to avoid the complex conflicts that characterized the last effort to reform our health care system, staff to Senator Kennedy (D-MA) (Chairman of the Senate Health, Education, Labor and Pensions Committee) and Senator Baucus (D-MT) (Chairman of the Senate Finance Committee) have held periodic meetings with a group of lobbyists and advocates representing divergent interests in the health care community. These meetings are intended to smooth the process, but many issues continue to vex industry. The most prominent among these issues are the notion that government-administered health care plans might compete with private sector plans, arguably increasing costs for those with private insurance because hospitals and providers would charge more to private insurance holders to compensate for losses assumed from government plans.

Put simply, the message is this - the Obama Administration and the Democratic Congress intend to aggressively pursue health care reform in 2009. Although enactment may not be realized by December, stakeholders should take heed of proposals now--while they have the opportunity to weigh the impact of various proposals and to advocate favorable positions where appropriate. Broad scale health care reform will affect nearly every U.S. employer, and while long-term efficiencies may prove beneficial, short-term cost impacts must be considered.



Environment / Carbon

Efforts to regulate and reduce greenhouse gas ("GHG") emissions, including carbon dioxide, have taken center stage in the United States. While various options have received consideration, "cap and trade" regulatory schemes appear to be the favored means for achieving these emission goals. Under a cap and trade system, the government would identify "covered entities", set aggregate caps for all GHG emissions, and establish carbon markets to facilitate the trading of emission allowances among covered entities. State and regional cap and trade laws have been enacted and federal proposals are now under consideration.

Many Washington insiders anticipate that cap and trade will become a reality in the United States within the next two years, eventually resulting in one of the world's largest commodities exchanges. Serious consideration will be given to legislation in the 111th Congress, and consensus could realistically be achieved as early 2010. In fact, on January 15th, the House Energy & Commerce Committee hosted the first climate change hearing of the 111th Congress. Henry Waxman (D-CA), the new Chairman, suggested that his Committee would complete action on legislation by Memorial Day, but his own senior advisors have acknowledged that final legislation is unlikely by the end of the year when the United States is expected to participate in the UN Climate Change Conference in Copenhagen (widely seen as an opportunity for President Obama to demonstrate a major shift in United States policy on its international environmental obligations).

In many ways, the train is leaving the station. Appearing before the January 15th House hearing, some of the nation's largest energy companies and manufacturers (as part of a coalition) reversed course by arguing in favor of a federal cap and trade scheme. This is a strong indication of the growing consensus that details are all that are left to negotiate.

Congress considered no less than 10 cap and trade bills in the 110th Congress, each aimed at dramatically reducing GHG emissions by mid-century. Two of those proposals received considerable attention. The "Lieberman-Warner Climate Security Act of 2008" went through regular order in the Senate and was reported out of the Senate Environment and Public Works Committee before receiving consideration on the Senate floor. The House Energy and Commerce Committee released its cap and trade "Discussion Draft" in October of 2008, triggering a flurry of activity around the issue and marking the starting point for 2009 discussions.

The Energy & Commerce Draft is worthy of attention in that then Chairman Dingell's staff dedicated two full years to drafting it, producing four white papers and holding no less than 27 hearings in the process. Most experts agree that this legislation will be the benchmark from which all other discussions proceed in 2009. Included in this draft are a number of enumerated "covered entities" that emit more than 25,000 tons of GHGs annually. The draft also proposes granting the EPA authority to regulate additional entities, indicating that all significant GHG emitters may eventually be subjected to cap and trade regulation.

To best understand how the legislative process might evolve in the 111th Congress a number of influencing factors should be considered. First, state and regional efforts are already underway to develop cap and trade systems. Likely, a federal cap and trade system would preempt these state and regional initiatives (the



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Energy and Commerce "Discussion Draft" expressly calls for preemption), but the longer Congress waits to act, the more ground the Federal Government relinquishes to state and regional authorities who are "shaping" the debate. Second, a recent Supreme Court decision in Massachusetts v. EPA found that the EPA does in fact have the obligation to address climate change under the Clean Air Act, placing added pressure on the Congress to enact legislation before the White House seeks to use executive authority to achieve its goals. Third, Republicans no longer have the strength to oppose climate change legislation or to substantially influence the process.

Outweighing any Republican opposition is a generally pro-environment leadership in both the Congress and the Obama Administration. Senator Boxer (D-CA) continues to head up the Senate Environment and Public Works Committee. She has vowed to work with President Obama before releasing a proposal of her own (expected Tuesday of this week). Senator Boxer is considered one of the more environmentally friendly members of the Senate. Additionally, Representative Dingell (D-MI), a supporter of the auto industry, lost his long held chairmanship of the House Energy and Commerce Committee to Representative Waxman (D-CA), a more liberal Democrat and a strong supporter of aggressive GHG emission reductions. Representative Boucher (D-VA), a coal-state Democrat, also lost his Chairmanship of the Air Quality Subcommittee to Representative Markey (D-MA), one of the strongest advocates of climate change legislation in the House. Finally, incoming Subcommittee Chairman Markey will also maintain his Chair of the House Select Committee on Climate Change and Energy Independence, provided to him two years earlier by Speaker Pelosi (D-CA). If one theme has emerged it is that California Democrats are in the Congressional Climate Change driver's seat.

President Obama has also made clear that he intends to make cap and trade legislation a priority in the 111th Congress. His choices for EPA Director (Lisa Jackson), Energy Secretary (Steven Chu), and White House Environmental Advisor (Former EPA Administrator Carol Browner) reinforce his emphasis on environmental issues through their strongly "green" credentials.

The final prognosis is a Congress and Executive Branch dedicated to enacting federal cap and trade legislation in the next two years while guaranteed a strong Democratic majority in the Congress. As a result, many industries are beginning to consider their short and long-term exposure to statutory mandates and regulation. The first step for individual companies and industries alike is to understand their own carbon profile, therefore enabling quantification of direct and indirect costs associated with regulation.

Whether or not a company is subject to climate change regulation, it will be affected as an energy user and therefore may have significant cost exposure. GHGs in a company's value chain could result in increased upstream cost or reduced downstream sales even if the company itself is not subject to regulations. Companies that figure out their own GHG reduction strategies early, whether regulated or not, will be ahead of the cost curve and will be in the best position to influence the debate by closely analyzing and monitoring the implications of various legislative proposals.



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Looking Ahead

- Surface Transportation Reauthorization: New legislation to reauthorize expiring federal surface transportation programs must be passed this year. The House Transportation & Infrastructure Committee Chairman James L. Oberstar, (D-Minn) hopes that it can be completed by June.
- Budget: Expect the 2010 Budget Resolution to begin to move in February with completion as early as April. Tax reconciliation instructions could be included in the Budget, pending outcome of the economic stimulus package and the desires of the White House.
- Energy: While we addressed Climate Change regulation above, the reality is that we are likely to see swifter action on efforts to increase the country's renewable energy production to 25% by 2025, an Obama Administration goal.

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