

**Testimony of  
Bill Becker, Executive Director  
National Association of Clean Air Agencies  
before the  
House Committee on Energy and Commerce  
on the March 31, 2009 Discussion Draft of the  
American Clean Energy and Security Act of 2009**

**April 24, 2009**

Introduction

Good afternoon. I am Bill Becker, Executive Director of NACAA – the National Association of Clean Air Agencies – an association of air pollution control agencies in 53 states and territories and more than 165 metropolitan areas across the country. On behalf of NACAA, I appreciate this opportunity to provide our association’s perspectives on the March 31, 2009 discussion draft of Chairman Waxman’s and Chairman Markey’s *American Clean Energy and Security Act of 2009*.

First and foremost, NACAA commends the Chairmen and their respective staff for the incredible amount of hard work that went into drafting this important legislative proposal and for the level of commitment being put forth to move this legislation quickly, yet thoughtfully. We believe this bill is a solid national response to the urgent challenges posed by greenhouse gas (GHG) emissions and their impact on the Earth’s climate.

Global warming is the most pressing environmental issue facing our generation. The Intergovernmental Panel on Climate Change (IPCC) stated in 2007 that the evidence that global warming is already affecting our planet is “unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.”<sup>1</sup> And since the IPCC report was released, even more compelling research and evidence have accumulated demonstrating that we need to act now to reduce GHG emissions.

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<sup>1</sup> Intergovernmental Panel on Climate Change, “Climate Change 2007 – A Synthesis Report,” (2007), at p. 2, *available at* <http://www.ipcc.ch/ipccreports/ar4-syr.htm>.

NACAA applauds this legislative effort and believes it sets the bar for future proposals. We have analyzed this comprehensive draft and developed comments that are intended to be helpful as you continue to refine the bill. In that spirit, I will focus my testimony on the following key issues:

- Emissions Reduction Goals and Offsets;
- Preservation of State/Local Authorities;
- Performance Standards for Stationary Sources of GHG Emissions;
- Applicability of Title V Requirements to GHG Sources;
- Clean Transportation and Transportation Efficiency;
- Promotion of the Deployment of Technologies in the Electric Power Sector;
- Black Carbon;
- Greenhouse Gas Registry; and
- Adaptation.

#### A. Emissions Reduction Goals and Offsets

The bill's cap-and-trade program covers the major GHG emitters in the U.S. economy and contains significant reduction targets. It would encompass 85 percent of U.S. GHG emissions and reduce these emissions to 3 percent below 2005 levels by 2012, 20 percent below 2005 levels by 2020, 42 percent below 2005 levels by 2030 and 83 percent below 2005 levels by 2050. NACAA recognizes that these reduction targets stem from the recommendations of the U.S. Climate Action Partnership (USCAP), a coalition of environmental groups and businesses, and are therefore grounded on sound scientific and economic considerations. We are concerned, however, that the reduction goals may fall short of what is needed to avert dangerous anthropogenic warming. Since the last IPCC report was released in early 2007, scientific developments have shown that global warming is proceeding more quickly and with greater impacts than previously described. Accordingly, NACAA urges this Committee to strongly consider strengthening the targets included in the proposal; at a minimum, it is imperative that they not be weakened as the bill moves through Congress.

The bill contains stringent offset integrity provisions designed to ensure that any offset credit represents permanent, enforceable, additional and verifiable emissions reductions. The bill also requires that 1.25 offset credits be used for any one emissions allowance, which gives more value to emissions reductions inside the cap than outside the cap. The percentage of offset credits that may be applied towards a source's compliance obligation is limited by section 722(c)(1)(B). We are also pleased that section 734(a)(1)(A)(i) appears to prohibit sources from obtaining offset credits if the activity that results in the emissions reduction was otherwise required by law. We do not believe sources should obtain offset credits because they were required – by federal, state or local government – to reduce GHG emissions or meet other environmental requirements.

We are concerned, however, about the generous offset credit pool, which allows capped sources to use up to two billion offset credits each year to meet their compliance obligations. To the extent capped sources purchase offset credits rather than reduce their own GHG emissions, this dilutes the effectiveness of the cap. Allowing up to two billion tons of GHG reductions from uncapped sources to substitute for GHG reductions from capped sources represents a lost opportunity to garner GHG reductions from capped sources. This provision is very troubling.

Title IV, Subtitle A of the bill provides for measures to ensure domestic competitiveness while preventing increases in GHG emissions in other countries. We support this approach as a means to drive GHG emissions reductions here in the U.S. while attempting to alleviate the pressure to transfer production, employment and GHG emissions to countries without GHG emissions reduction programs.

The bill provides for a review by the National Academy of Sciences (NAS) in 2012, and every four years thereafter, to ascertain whether the measures in the bill are adequate to meet the reduction targets and whether U.S. action in concert with international action is sufficient to avoid dangerous global warming. We support these provisions.

#### B. Preservation of State/Local Authorities

A successful national climate protection program must be predicated on a strong local-state-federal partnership. In order for our nation to meet our GHG emissions reduction targets, we must ensure that all levels of government are fully engaged in the design and implementation of this program.

We are pleased that the bill contains generally strong language protecting the rights of states and localities to continue to exercise leadership in responding to global warming by enacting more stringent GHG reduction policies and programs. As you are well aware, states and localities are carrying out a stunning array of climate initiatives:

- More than 900 mayors to date have signed the U.S. Conference of Mayors Climate Protection Agreement, to strive to meet or beat the Kyoto Protocol targets in their own communities;
- Thirty-five states have completed or are in the process of completing climate action plans;
- Twenty states have adopted GHG reduction targets;
- Seventeen states have developed or are developing mandatory GHG reporting rules;
- Twenty-nine states have adopted Renewable Portfolio Standards;
- Thirteen states and Washington, DC have committed to opting into California's GHG motor vehicle emissions control program;
- California, Washington and Oregon have set GHG performance standards for new power plants;

- California has adopted probably the most comprehensive and robust GHG reduction program in the world; and
- Three regions of the country – the Northeast/mid-Atlantic (through the Regional Greenhouse Gas Initiative (RGGI)), the Midwest (through the Midwestern GHG Reduction Accord (MGGRA)) and the West (through the Western Climate Initiative (WCI)) – are in varying stages of their processes toward implementing regional GHG reduction programs.

These examples illustrate the scope and depth of progress at the state and local levels on climate change issues. It is critical to recognize the key role state and local innovations have played, and will continue to play, in a national climate program.

In addition, many other states and localities have implemented programs that indirectly reduce GHG emissions. These include programs to reduce vehicles miles traveled, land use planning that encourages smart growth, promotion of public transit, stringent building codes, promotion of energy efficiency measures and the like. These initiatives are all important to ensuring that the nation meets its GHG reduction goals in a cost-effective manner. A federal cap-and-trade program alone will not be enough to achieve the needed reductions.

The bill would amend the existing savings clause in the Clean Air Act to make clear that, along with preserving the authority to enact other GHG emissions reduction measures (such as source-specific GHG reduction requirements or performance standards), it would not preempt state or local authority to cap GHG emissions, require the surrender of allowances or offset credits to a state or local government or compel the use of allowances or offset credits to meet a state or local requirement. The ability to require a source to surrender an allowance or offset credit is crucial so that GHG reduction measures enacted in a state or locality do not translate into increased GHG emissions elsewhere.

We sincerely hope that the federal program will be strong enough and timely enough so that state or local governments do not need to exercise these kinds of authorities. We support a strong mandatory economy-wide federal climate program. But in the event the federal program does not reduce GHG emissions sufficiently or in a timely manner, or some other deficiencies in the legislation emerge, state and local governments must have the authority to step in and institute their own state or local rules, policies and strategies necessary to tackle global warming.

We note that section 335 adds a new section to the Clean Air Act that preempts state and local governments, from 2012 through 2017, from implementing or enforcing a cap that covers any federally capped emissions during this six-year period. Our understanding is that the prohibition is narrow – it only applies to a specific tonnage limit on the amount of GHGs that can be emitted by a group of sources over a specified time period. Thus, it would not prohibit other important state or local climate initiatives during this time period, including GHG performance standards or reduction

requirements for state or local capped sources, or requirements that state or local capped sources relinquish allowances to a state or local government, for example.

The provision would require the dissolution of the regional cap-and-trade programs, including RGGI, WCI and MGGRA, as well as California's program. While we recognize that this provision may have been included in order to create a "breather," during which the federal GHG cap-and-trade program would be the only one in existence, we are concerned that this section takes away an important state and local authority (including revenue) and backstop to the national program. In particular, if the bill is weakened as it moves through the legislative process, and yet this section remains, it means states will be required to surrender their successful programs in exchange for a weak federal program. We believe instead that these path-breaking programs should be provided the *option* to decide whether the federal program is strong enough and, if so, they can *choose* to transition into the federal program.

### C. Performance Standards for Stationary Sources of GHG Emissions

#### 1. *New and Reconstructed Coal-Fired Power Plants*

NACAA believes that new/reconstructed coal-fired electric generating units (EGUs) should meet minimum emissions performance standards, even within a federal cap-and-trade program. The most cost-effective and efficient time to comply with environmental requirements is when a source is new or reconstructed. While NACAA supports the bill's performance standards, we believe they should be strengthened.

First, we are concerned that the bill allows significant EGU capacity that is permitted between 2009 and 2015 to be constructed without carbon dioxide (CO<sub>2</sub>) controls because it is unlikely that the required carbon capture and sequestration (CCS) commercial availability finding will be made for another 10 to 15 years. Accordingly, we recommend that new/reconstructed facilities permitted during this period undergo case-by-case Best Available Control Technology (BACT) analysis and control for CO<sub>2</sub> emissions, including consideration of CCS. Requiring BACT will ensure that all relevant site-specific factors will be taken into account and that CCS will be advanced for this sector.

Second, while NACAA supports the increasingly stringent performance standards that take effect in 2015 and 2020, respectively, we believe that these performance standards should be a floor, not a ceiling, and that EGUs constructed/reconstructed during this period should also be subject to BACT for CO<sub>2</sub>.

Finally, the bill should include incentives for early deployment of CCS.

## 2. *Other Major Sources of GHGs*

NACAA supports the bill's requirement for New Source Performance Standards (NSPS) for industrial sources that are not covered by the federal cap-and-trade program. These standards should apply to reconstructed sources, as well. For equity and other reasons, we believe that NSPS should also be developed for new/reconstructed major industrial sources inside the federal cap. Without such a requirement, new/reconstructed sources will be able to avoid reducing GHGs at their facilities and instead purchase offsets, two billion of which are available worldwide under this proposal. BACT should be required for these facilities, as well.

### D. Applicability of Title V Requirements to GHG Sources

The bill contemplates that Title V operating permit requirements shall apply to stationary sources only when criteria pollutants are at major source levels, and that GHG emissions shall not be considered in this determination. We are concerned that such an approach will allow major sources of GHGs, such as combined cycle turbines, that emit more than 25,000 tons per year of GHGs, but less than major source levels of criteria pollutants, to avoid any Title V requirements.

State and local air pollution control agencies will be required to carry out numerous activities related to major GHG sources, including among others, monitoring, inspections, verification of offsets and enforcement. Accordingly, we recommend that the bill provide substantial resources for state and local air pollution control agencies to implement these activities; otherwise, implementation costs will fall solely to states and localities. Additionally, for sources that already have Title V permits that will be modified to include GHG emissions, state and local air agencies should be authorized to collect additional Title V fees reflecting the sources' GHG emissions and the additional work that will be required.

### E. Clean Transportation and Transportation Efficiency

According to EPA, all told, the mobile source sector is responsible for 36 percent of total U.S. GHG emissions, taking into consideration upstream transportation fuel emissions, as well as nonroad mobile sources – a level that exceeds electricity generation, which accounts for 34 percent of all U.S. GHG emissions.<sup>2</sup> Given this significant contribution, it is imperative that a comprehensive strategy be developed and implemented to reduce GHG emissions from the mobile source sector. NACAA supports the provisions of this bill that work toward that goal.

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<sup>2</sup> EPA's Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions under the Clean Air Act, 73 *Federal Register* 44354, at 44355 (July 30, 2008).

## 1. *Low-Carbon Fuel Standard*

NACAA endorses the inclusion, in section 121 of the bill, of a comprehensive, federal low-carbon fuel standard (LCFS) to reduce the lifecycle GHG emissions intensity of transportation fuels. An LCFS would not only reduce our nation's reliance on oil, but when implemented as part of a broader GHG reduction strategy, it would also hold great potential for easing the transition to a low-carbon economy. We are pleased that the proposed program covers all transportation fuels, contains safeguards against backsliding to dirtier fuels in the near term (2014 through 2022), requires the establishment by EPA of a baseline and sets long-term carbon intensity reduction requirements.

We do, however, have concerns with several aspects of this program. First, we believe the annual average lifecycle GHG emissions reduction requirements set forth in the bill – a 5-percent reduction beginning in 2023 and a 10-percent reduction beginning in 2030 – can and should be more rigorous. Second, we are concerned that by calling upon EPA to set a federal LCFS under section 211(c) of the Clean Air Act, the bill would preempt states other than California from implementing their own LCFS.

California is expected to adopt regulations this week to implement an LCFS that would reduce the carbon intensity of transportation fuels by 10 percent by 2020 – 10 years earlier than proposed in this bill. In addition, 11 Northeast and mid-Atlantic states have joined together to develop a regional LCFS. NACAA urges that a federal LCFS be at least as rigorous and timely as California's program – requiring a 10-percent reduction in annual average lifecycle GHG emissions beginning in 2020. Further, states in addition to California should be authorized to adopt LCFS programs that are no less stringent than the federal program. NACAA also recommends that the bill incorporate provisions to guard against “leakage” of fuels with high carbon content into fuels, such as home heating oil, that are not regulated under the LCFS. Finally, we recommend that the bill include provisions requiring EPA, in developing the national LCFS program, to address regional circumstances and differences.

## 2. *Mobile Source Standards*

NACAA agrees with the bill's authors that the Administration and EPA have broad statutory authority under the Clean Air Act to address emissions from mobile sources. Over the past four decades, utilizing the tools embodied in the Act, EPA has successfully developed comprehensive and effective programs that have very successfully and cost effectively reduced criteria pollutant and precursor emissions from mobile sources. In addition, the Act's wise provision of authority to states to go beyond federal standards has also been used to garner further important reductions and evaluate potential strategies. NACAA firmly believes that these same authorities can be used by EPA and the states with equal success to address the significant, long-term challenges associated with reducing mobile source GHG emissions.

We are pleased that section 221 of this bill calls upon EPA to utilize its Clean Air Act authorities to promulgate GHG emissions standards for an array of mobile sources, including new passenger cars, light trucks, heavy-duty vehicles and engines, marine vessels, locomotives, other classes of nonroad vehicles and engines, aircraft and aircraft engines.

NACAA also supports the language of section 221(a)(4) of the bill, which reaffirms California's legal authority to adopt and enforce its own mobile source emissions standards, and recommends that similar language be added to expressly reaffirm the legal authority of other states, under section 177 of the Clean Air Act, to adopt California's emissions standards.

Finally, with respect to motor vehicle emissions standards, we note in section 221(a)(3) that the expressed goal of the motor vehicle emissions reductions sought is to "achieve at least as much emissions reduction as would be achieved by implementation of the California law AB 1493 if enforced in the State of California and the other states that have adopted the standard." We recommend that this language be clarified to express clearly that national motor vehicle emissions standards under section 221(a) must be at least as stringent as California's standards under AB 1493, ensuring that California and the other states that have adopted California's standards will reap the full measure of anticipated emissions reductions.

### *3. Planning Requirements*

NACAA concurs with the authors' evident assessment that a successful national climate strategy must ensure that the transportation sector contribute its fair share of GHG emissions reductions. In addition to reducing emissions from vehicles, engines and fuels, such a strategy must also include alternative approaches for integrating transportation and land-use planning. Toward this end, we support the bill's inclusion of requirements for the establishment by each state of a transportation-related GHG emissions reduction goal and the development and submittal by each metropolitan planning organization (MPO) with a population greater than 200,000 of a plan to achieve the goal.

We are particularly pleased the bill requires that the GHG emissions reduction goal be developed with the concurrence of the state air quality agency, as well as the state transportation agency. We believe firmly that the concurrence of the state air quality agency is imperative in this regard and urge that the "equal partnership" between state air quality and transportation agencies be preserved. We further recommend that the applicable local air quality agencies also be given a concurrence role in developing regional GHG emissions reduction goals, rather than a consultative role, as is currently provided in the bill.



We also support the designation of EPA as the lead agency in developing and promulgating regulations establishing standardized models and methodologies for developing goals, plans and strategies.

With respect to the GHG emissions reduction goals and plans, we are concerned that, beyond requiring that goals and plans be submitted (the goals to EPA and the plans to EPA and DOT), there are no requirements for ensuring that 1) the plan include provisions and strategies adequate to achieve the goal, 2) that the plan be implemented or 3) that the goal, or progress toward meeting it, be achieved. NACAA recommends that there be an element of enforceability, including performance and accountability provisions, incorporated into the bill. In addition, we commend the list of potential transportation and land use planning strategies included in the bill, and believe that a reduction target for vehicle miles traveled should be added to the list.

With respect to funding for this planning process, it is unclear what level of funding is intended under section 841(h), regarding competitive grants that EPA and DOT “may” award to MPOs “to develop or implement plans submitted under subsection (a)(2).” We urge that such funds be sufficient to cover infrastructure and software investments and personnel associated with implementation of projects identified in the plan.

#### F. Renewable Electricity Standard

Increasing the amount of electricity generated from renewable sources would significantly reduce GHGs from the electricity generating sector. NACAA supports the national renewable electricity standard (RES) included in the bill, which requires an increasing share of the electricity sold by retail electricity suppliers with annual sales greater than 1 million MW hours to come from renewable sources, starting with 6 percent in 2012 and ramping up to 25 percent beginning in 2025. Under the bill, renewable energy resources include wind, solar and geothermal energy, biomass or landfill gas, qualified hydropower and marine and hydrokinetic renewable energy.

In addition to reducing GHGs, such an RES would also create new jobs, stimulate capital investment, generate revenue and spur movement away from fossil fuels. Twenty-nine states have enacted standards for the use of renewables, and several others have put in place voluntary programs. We are pleased that while establishing a federal RES, the bill does not interfere with states’ authority in this regard.

#### G. CCS Demonstration, Early Deployment Program and Commercial Deployment

Section 114 of the bill establishes the Carbon Storage Research Corporation to administer a program to accelerate the commercial availability of CCS technologies and methods by providing funding through grants, awards and financial assistance to utilities, national laboratories, academic institutions, federal and state research agencies and non-profit organizations. The program is

funded through assessments on fossil fuel-based electricity, to generate between \$1 billion and \$1.1 billion per year. Section 115 directs EPA to promulgate regulations within two years to establish a program to distribute appropriated funds to support the commercial deployment of CCS technologies in electric power generation and industrial operations.

CCS technology allows for the capture and sequestration of CO<sub>2</sub> emissions from coal-fired power plants. Thus, the development and commercial deployment of CCS technology is critical to meeting the nation's GHG reduction goals. We support the bill's provisions regarding CCS deployment. We also support the assessment of fees on fossil fuel-based electricity generators to support the acceleration of the commercial availability of CCS technology, as it aligns financial responsibility with carbon accountability.

However, the bill lacks provisions to stimulate the deployment of emerging renewable energy technologies for power generation, which emit no GHGs or conventional air pollutants. We recognize that the bill contains an RES, which will promote the use of renewable energy, as we discuss above. Nevertheless, the bill contains both financial assistance and a performance standard for CCS; likewise, along with the RES, the bill should provide financial inducements to promote the deployment of renewable energy technology.

As Dr. Ralph Izzo, President, Chairman and CEO of PSEG Inc. testified before the Subcommittee on Energy and Environment earlier this year:

“[W]e need additional federal support for certain emerging renewable technologies . . . A market driven approach like the RES will appropriately drive investment toward what are currently the most cost-competitive forms of renewable generation. However, developing promising industries, like solar and offshore wind, is an important part of our long-term climate change solution.”<sup>3</sup>

#### H. Black Carbon

Carbonaceous aerosols are produced by the incomplete combustion of fossil and biomass fuel and are composed both of light-scattering organic carbon and light-absorbing black carbon. Black carbon warms the planet by absorbing heat in the atmosphere and by reducing albedo (the reflection of sunlight from snow and ice). We are pleased that the bill requires EPA to take action on black carbon within one year of enactment. Strategies that reduce black carbon emissions will reduce global warming as well as various adverse human health impacts associated with exposure to

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<sup>3</sup> Dr. Ralph Izzo, Testimony Before the House Committee on Energy and Commerce, Subcommittee on Energy and Environment, (February 26, 2009) *available at* [http://energycommerce.house.gov/Press\\_111/20090226/testimony\\_izzo.pdf](http://energycommerce.house.gov/Press_111/20090226/testimony_izzo.pdf).

black carbon. According to the Institute for Governance and Sustainable Development, reducing black carbon emissions has the potential to save up to three million lives per year.<sup>4</sup>

Black carbon particles only remain airborne for weeks at most. Therefore, reducing emissions of these particles has an almost immediate benefit (compared to carbon dioxide, which remains in the atmosphere for more than a century). According to Professor Mark Jacobson of Stanford University, control of black carbon “particularly from fossil-fuel sources, is very likely to be the fastest method of slowing global warming” in the immediate future.<sup>5</sup>

### I. Greenhouse Gas Registry

NACAA believes that accurate, verifiable GHG emissions data are the cornerstone of a cap-and-trade regime. The bill requires EPA to draft GHG reporting regulations “from scratch,” and states that such regulations should “take into account...the protocols from the Climate Registry...” This language should be modified to provide that EPA’s regulations be reasonably consistent with the protocols for the measurement, accounting and reporting of GHGs utilized by The Climate Registry (TCR).

Moreover, some states have implemented (or are planning to implement) GHG reporting requirements of their own that address the particular needs in their states, and may exceed federal requirements in terms of sectors covered, data required, emissions thresholds and other divergent provisions. These programs provide essential information to policy-makers, who need to understand GHG emissions trends, and should not be curtailed or preempted by federal regulatory requirements. Language should be incorporated into the bill to ensure no direct or indirect preemption of state GHG reporting programs.

The bill also provides that reporting entities submit data directly to the EPA Administrator, bypassing states. However, some states will likely collect GHG data from sources themselves, and the bill should include provisions allowing states to do so.

### J. Adaptation

NACAA commends the inclusion of Title IV, Subtitle E on adapting to global warming. No matter what trajectory our GHG emissions take, all regions and communities in the U.S. will need to adapt to a warmer and different climate. The impacts we all must plan for include sea level rise,

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<sup>4</sup> Institute for Governance and Sustainable Development, “Reducing Black Carbon May Be the Fastest Strategy for Slowing Climate Change,” December 2008, at p.6, citing C. A. Pope III and D. W. Dockery, *Epidemiology of particle effects*, in S. T. Holgate, *et al.*, eds., AIR POLLUTION AND HEALTH 673– 705 (1999) and statistics from the World Health Organization.

<sup>5</sup> Mark Z. Jacobson, Testimony for the Hearing on Black Carbon and Climate Change, U.S. House Committee on Oversight and Government Reform 12 (18 October 2007), *available at* <http://oversight.house.gov/documents/20071018110606.pdf>.

more extreme weather events, migrations and possible extinctions of species, droughts and wildfires, and the acidification of oceans, to name a few.

For air quality regulators, warmer weather will make it even more difficult to fulfill our responsibility under the Clean Air Act to reduce ozone levels. Thus, we urge Congress to recognize that adapting to global warming will affect a myriad of activities under other programs and, accordingly, to adjust funding levels to account for the impacts of global warming on our work.

### Conclusion

Once again, NACAA thanks the Committee for the opportunity to present our comments and perspectives on the *American Clean Energy and Security Act of 2009*. Taken together, the key components of the bill, including a mandatory, economy-wide GHG emissions reduction program with quantifiable and enforceable limits and significant near-, mid- and long-term reduction targets; a renewable electricity standard; a low-carbon fuel standard and requirements for cleaner, more efficient transportation, among other meaningful provisions, comprise a realistic and effective foundation for a federal program. It is our desire to work with this Committee to refine and further strengthen the bill and then move it through Congress and to President Obama's desk for signature. We stand ready to be of assistance.