# SIDE-BY-SIDE OF CLIMATE BILLS 2009-2010

**Prepared by the National Association of Clean Air Agencies (NACAA)**

**June 4, 2010**

| SUBJECT | AMERICAN POWER ACT (KERRY-LIEBERMAN) | AMERICAN CLEAN ENERGY AND SECURITY ACT (WAXMAN-MARKEY) (H.R. 2454) | KEY DIFFERENCES |
|---|---|---|---|
| **GHG Reduction Targets** | - 4.75% below 2005 levels by 2013.<br>- 17% below 2005 levels by 2020.<br>- 83% below 2005 levels by 2050. | - 3% below 2005 levels by 2012.<br>- 17% below 2005 levels by 2020.<br>- 83% below 2005 levels by 2050. | APA cap begins in 2013; ACESA in 2012. |
| **Sector Coverage** | - 2013: power plants covered by cap & trade program.<br>- 2013: transportation sector included through fuel producers and importers; must buy allowances at fixed price.<br>- 2016: industrial sources (25,000 tons or more) and natural gas local distribution companies join cap & trade.<br>- Exempt: agricultural and forestry sectors. | - 2012: power plants and transportation sector through fuel producers and importers covered by cap & trade program.<br>- 2014: industrial sources (25,000 tons or more) covered by cap & trade program.<br>- 2016: natural gas local distribution companies join cap & trade.<br>- Exempt: agricultural and forestry sectors. | - APA does not include transportation sector in cap & trade program.<br>- APA delays inclusion of industrial sector longer (APA 2016; ACESA 2014). |

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| **Offsets** | - 2 billion tons in offset credits available each year.<br>- Preference for domestic over international offsets:<br>- covered entities may not use international offset credits to cover more than 25% of their offset-eligible compliance obligation,[1] unless there is an insufficient number of domestic offsets.<br>- 2018 and later: turn-in ratio of 1.25 international offset credits per ton.<br>- USDA runs offset program for agricultural and forestry projects; EPA runs for other types of projects.<br>- Includes list of eligible projects.<br>- All covered entities except fuel producers and importers can use offset credits for compliance<br>- Covered entities that are eligible to use offsets are limited by sliding percentage scale as to how much of their compliance obligation may be satisfied by offset credits. | Same as APA except<br>- the list of eligible projects only includes agricultural and forestry projects.<br>- includes provisions for "term offsets" (offsets that can meet less rigorous reversal requirements and that must be replaced with other types of offsets at the end of their terms).<br>- fuel producers and importers can use offset credits for compliance. | See previous column. |

[1] Covered entities are restricted in the amount of offsets they can use to offset their compliance obligation. The percentage of the compliance obligation that can be met through the use of offsets varies year by year according to the formula in sec. 722(d)(1)(B). Fewer offsets can be used as a percentage of the compliance obligation in the earlier years.

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| **Performance Standards for Power Plants** | - New coal-fired power plants initially permitted between 1/1/2009 and 12/31/2019 are required to achieve a 50% reduction in $CO_2$ emissions by earlier of (1) 1/1/2020 or (2) date that is 4 years after issuance of an EPA report stating that CCS technology penetration requirement has been met in the US (sufficient power plants and other sources equipped and using CCS technology).<br>- New coal-fired power plants initially permitted on or after 1/1/2020 shall achieve a 65% reduction in $CO_2$ emissions.<br>- EPA can make the emission limit more stringent after 1/1/2020; EPA review required every 5 years.<br>- EPA may set a GHG New Source Performance Standard (NSPS) for power plants not subject to the emission limits specified in the bill (i.e., natural gas-fired power plants or, for new or modified coal-fired plants, during the time before the technology penetration requirement is triggered). Through section 111(d), these would apply to existing power plants. | - New coal-fired power plants that are initially permitted between 2009 and before 2020 must achieve a 50% reduction in emissions by earlier of (1) 1/1/2025 or (2) 4 years after CCS technology penetration requirement has been met in the US.<br>- New coal-fired power plants initially permitted on or after 1/1/2020 must achieve a 65% reduction in emissions.<br>- EGU performance standards must be reviewed every 5 years beginning in 2025. | - The outside date for the first emissions reduction requirement (50% reduction) for coal-fired power plants initially permitted between 1/1/2009 and 12/31/2019 is earlier in APA (2020 rather than 2025).<br>- APA allows EPA to set a GHG NSPS for power plants not subject to the emission limits specified in the bill; ACESA does not.<br>- APA provides for an earlier review of the performance standard (2020 versus 2025). |

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| **Performance Standards for Other Sources Covered by Cap** | EPA is prohibited from establishing NSPS (except as noted above for power plants). | EPA is prohibited from establishing NSPS. | APA provides EPA authority to set a GHG NSPS for power plants not covered by the Act's performance standard. |
| **Performance Standards for Sources Outside the Cap** | - EPA is permitted to set NSPS for sources outside the cap EXCEPT<br>- EPA may not set an NSPS prior to 1/1/2020 for uncapped sources that could quality for offset credits. | Sets a schedule for EPA for setting NSPS for uncapped GHG emissions; the provision focuses on categories of stationary sources that are responsible for at least 20% of uncapped GHG emissions (or 10% of uncapped methane emissions). | - APA prohibits EPA from setting an NSPS prior to 1/1/2020 for a source that may qualify for offset credits.<br>- APA does not set a schedule for NSPS rulemakings. |
| **Clean Air Act Exemptions** | - No GHG NAAQS.<br>- No listing of GHGs as HAPs.<br>- No GHG NSR.<br>- No GHG NSPS for covered sources except for power plants not subject to performance standards in section 801.<br>- Emissions of GHGs alone do not trigger permitting requirements. | Same as APA except no provision for GHG NSPS for power plants. | - APA provides EPA authority to set a GHG NSPS for power plants not covered by the Act's performance standard.<br>- APA prohibits the listing of a GHG as a NAAQS or HAP because of its effects on ocean acidification. |
| **Permitting** | Bill requires covered entities that are stationary sources subject to Title V to include a provision requiring the owner or operator of that entity to hold allowances or offset credits equal to its GHG emissions. | Same as APA. | No substantial differences. |

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| **Savings Clause for State/Local Rights** | Amends existing CAA section 116 to protect state and local authority to limit GHG emissions, require the surrender of emissions allowances or offset credits or require the use of such allowances or credits as a means of demonstrating compliance with a state or local requirement. | Amends existing CAA section 116 to protect state and local authority to cap GHG emissions, require the surrender of emissions allowances or offset credits and require the use of such allowances or credits as a means of demonstrating compliance with a state or local requirement. | See underlined words in previous columns. APA language is preferable since it uses more expansive term "limit" rather than "cap" and uses "or" rather than "and." The use of "and" in ACESA could be read to mean that all three elements must be in place in order for state and local authority to be protected. |
| **State and Local Cap-and-Trade Programs** | Preempts all state and local cap-and-trade programs in perpetuity beginning January 1 of the first calendar year for which the Administrator allocates allowances. | Preempts all state and local cap-and-trade programs between 2012 and 2017. | - APA preempts cap-and-trade programs in perpetuity.<br>- APA preemption delayed if Administrator delayed in issuing federal allowances. |

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| **National Transportation-Related GHG Reduction Goals** | Requires EPA, in consultation with U.S. DOT, to set national transportation-related GHG emission reduction goals commensurate with the overall emission reduction targets established under the bill. EPA and U.S. DOT also required, every six years, to assess progress toward reducing transportation-related GHG emissions and to consider this assessment when updating rules and guidance. | Similar to APA. | Criteria for assessing progress every six years differ. |
| **Transportation Planning** | States and large MPOs (>200,000 population), in consultation with state air agencies, required to set transportation-related GHG emissions reduction targets and develop and integrate into their short- and long-range transportation plans strategies to meet those targets. EPA and U.S. DOT to certify these plans if they comply with stipulated minimum requirements and are deemed likely to achieve the emissions target. Lack of a certified plan does not affect other state funding or MPO certification. | Similar to APA. | Minimum requirements for state and MPO GHG emissions reduction targets and strategies differ. |

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| **Models and Methodologies** | Requires EPA, in consultation with U.S. DOT, to develop standardized models and related methods for use by states, MPOs and air quality agencies in developing transportation-related GHG reduction targets and assessing actual and projected emissions from transportation plans, programs and projects. Requires U.S. DOT, in consultation with EPA, to improve the ability of transportation planning models and tools to address GHG emissions. | Similar to APA. | APA provides EPA with an expanded role with respect to the development of standardized models and related methods by specifically identifying tasks for which the models and methods are to be used, and also requires DOT to improve the ability of transportation models and tools to address GHG emissions. |
| **Funding for Transportation Efficiency and Infrastructure** | Requires allocations totaling a maximum of $6.25 billion a year be directed to 1) a competitive grant program for implementing certified state and MPO GHG reduction plans, 2) U.S. DOT's discretionary Transportation Investment Generating Economic Recovery program and 3) the Highway Trust Fund. | None. | APA commits up to $6.25 billion annually for transportation efficiency and infrastructure |

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| **Mobile Source Standards** | - EPA to set GHG standards for new heavy- duty trucks and engines by 12/31/2010.<br>- EPA to identify classes and categories of new nonroad vehicles and engine that contribute significantly to total GHG emissions from the nonroad sector and provide the greatest potential for significant and cost-effective GHG reductions, and promulgate standards for these by 12/31/2012.<br>- EPA and DOT to set second round of light-duty GHG and CAFE standards in cooperation with California and automakers, to be implemented beginning in 2017. | - New heavy-duty trucks and engines: Same as APA.<br>- Light-duty vehicle standards: APA silent. | ACESA does not contain a requirement to set a second round of light duty GHG and CAFE standards. |
| **Averaging, Banking and Trading** | Authorizes EPA to allow for averaging, banking and trading of GHG emissions within or across classes or categories of motor vehicle and engines (including marine and aircraft). | Same as APA. | No substantial differences. |
| **Preservation of Mobile Source Authorities** | - Leaves CAA Section 209(b) waiver authority intact.<br>- Leaves CAA Section 177 waiver authority intact. | Same as APA. | No substantial differences. |

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| **Funding for Clean Vehicle Technology** | Establishes a Clean Vehicle Technology Fund, using funds from the auction of a certain quantity of emission allowances, to grants to vehicle manufacturers and component suppliers to refurbish or expand existing manufacturing facilities to produce advanced technology vehicles and support engineering integration of certain vehicles and components, including plug-in electric drive vehicles. Provides funds for a National Transportation Low-Emission Energy Plan pilot program. | Requires electric utilities to develop a plan to support the use of plug-in electric drive vehicles. Requires DOE to establish a program to deploy and integrate plug-in electric drive vehicles into the electricity grid and provides that DOE may offer financial assistance for this program. Requires DOE to provide financial assistance to auto makers to facilitate the manufacture of plug-in electric drive vehicles. | While both bills seek to facilitate the manufacture of clean vehicles, APA 1) more broadly encompasses "advanced technology vehicles" (versus an emphasis in H.R. 2454 on plug-in electric drive vehicles), 2) establishes a dedicated fund to provide grants for these efforts and 3) does not include specific provisions for vehicle deployment. |
| **Funding** | Provides authority to EPA to make section 105 grants to state and local air pollution control agencies to assist in implementing global warming pollution reduction programs. | Same as APA. | No substantial differences. |
| **Renewable Portfolio Standard** | None. | Retail electricity suppliers must meet an increasing percentage of their electricity demand through renewable energy sources and energy efficiency: 6% by 2012, ramping up to 20% by 2020. | APA has no standard. |

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| **Climate Registry** | - Directs EPA to establish federal GHG registry within 18 months of enactment; reporters include those covered by the cap-and-trade program and those that have emitted, produced, imported or delivered more than the applicable threshold of a covered entity.<br>- Reporting begins in 2011 for 2007-2010 emissions. | - Directs EPA to establish federal GHG registry within 6 months of enactment; reporters include those covered by the cap-and-trade program and sources emitting 25,000 tons or more of $CO_2$ equivalent annually.<br>- Reporting begins in 2011 for 2007-2010 emissions. | APA gives EPA 18 months to set up registry; ACESA provides only 6 months. |
| **Consultation Requirement** | Requires EPA to consult with all states in developing regulations to implement the GHG provisions of the bill and to consult with states in implementation of the provisions. | None. | No consultation requirement in ACESA. |
| **Exchange of State Allowances** | RGGI, California and WCI allowances issued before 12/30/2012 shall be exchanged for federal allowances. | RGGI, California and WCI allowances issued before 12/31/2011 shall be exchanged for federal allowances. | APA provides for exchange of state-issued allowances issued through 2012; ACESA only through 2011. |

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| **Early Action Recognition** | - 2/3 of the allowances allocated for early action (1% in 2013-2015) will go to states that have implemented a carbon cap and trade program.<br>- 1/3 of the allowances allocated for early action may be used to compensate entities, including local governments, that took early action. Early actors are those who did not receive offset credits from an approved state or voluntary program but reduced GHG emissions prior to 1/1/2009; criteria for early actors include entity-wide GHG reductions and that reductions occurred between 1/1/2001-1/1/2009. | - 1% of 2012 allowances are allocated to compensate early actors who did not receive offset credits from an approved state or voluntary program but reduced GHG emissions prior to 1/1/2009.<br>- Early action criteria are similar to APA but does not include local governments. | - ACESA lacks a special provision providing allowances to states with existing cap-and-trade programs.<br>- ACESA does not include local governments in its provision for early actors. |

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| **Early Action Offsets** | - Offset credits shall be issued for emissions reductions achieved after 1/1/2004 under a project started after 1/1/2001 that was approved by a state or voluntary offset program established before 1/1/2009.<br>- Credits shall be issued only for a crediting period that began not later to the date regulations for APA offset methodologies take effect; the crediting period can be no longer than 10 years.<br>- The offset program must meet certain criteria in the Act.<br>- One third of allowances allocated to early action (§788 – 1% in 2013-2015) may be exchanged for offset credits issued before 1/1/2009, by a state, local, or voluntary offset program. | - Offset credits shall be issued for emission reductions achieved after 1/1/2009 under a project started after 1/1/2001 that was approved by a state or voluntary offset program established before 1/1/2009.<br>- Credits shall be issued only for 3 years or date regulations for ACESA domestic offsets program take effect.<br>- The offset program must meet certain criteria in the Act.<br>- One percent of 2012 allowances are allocated to compensate early actors for offset credits issued by an accredited state or voluntary offsets program prior to 1/1/2009 for reductions 1/1/2001-1/1/2009. | - ACESA has more stringent requirements for early action offset credits.<br>- Emission reductions achieved by offset projects between 1/1/2004 and up to 10 years after date of enactment can receive offset credits under APA; ACESA provides that emission reductions achieved after 1/1/2009 and up to 3 years later can receive offset credits. |
| **Submission of a Consolidated Plan** | Allows state, local or tribal government to meet planning and other requirements applicable to government in the act by submitting a consolidated plan. | None. | No such provision in ACESA. |

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| **Coal-Fired Utility Task Force to Review Clean Air Act Rules** | Section 802(b) creates a coal-fired utility task force that appears to be designed to identify federal, state and local regulations that should be changed in order to expedite the transition of coal-fired utilities to less GHG-emitting technologies or to expedite their retirement. | No similar provision. | No such provision in ACESA. |