



**American Clean Energy and
Security Act of 2009:
Analysis and Discussion**

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American Clean Energy and Security Act of 2009

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- 648-page discussion draft released March 31, 2009
 - ◆ Rep. Henry Waxman (D-CA)
Chairman, House Committee on Energy and Commerce
 - ◆ Rep. Edward Markey (D-MA)
Chairman, House Energy and Commerce Subcommittee on Energy and Environment
- Four days of Subcommittee hearings held April 21-24, 2009
 - ◆ NACAA testified Friday, April 24
- Markup possible this week
- Chairman Waxman has committed to completing Committee work on the bill by Memorial Day

Key Issues

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- ❑ Rights of States and Localities
- ❑ “Timeout” for State Caps
- ❑ Caps, Coverage and Offsets
- ❑ Performance Standards for Coal-Fired Power Plants
- ❑ Industrial Sources of GHGs
- ❑ Applicability of Title V
- ❑ Greenhouse Gas Registry
- ❑ Federal Low Carbon Fuel Standard
- ❑ Motor Vehicle and Mobile Source Standards
- ❑ Planning Requirements
- ❑ Federal Renewable Electricity Standard

Rights of States and Localities

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- ❑ NACAA positions (NACAA Global Warming Principles, adopted May 2007):
 - ◆ No preemption
 - ◆ Legislation should ensure that our actions decrease the cap (we should have the ability to retire allowances)
- ❑ State Summit on Climate Change and Preemption, convened in March 2009 by NACAA and the Center for Progressive Reform, reinforced importance of including strong language protecting state and local rights in legislation
- ❑ Submitted draft savings clause language to congressional Committee staff
- ❑ The bill expands the existing savings clause of the Clean Air Act (section 116)

Rights of States and Localities

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- ❑ The bill includes protection for the right of a state or local government to cap GHG emissions, require surrender of emission allowances or offset credits, and require the use of such allowances or credits as a means of demonstrating compliance with requirements established by a state or local government
- ❑ Existing savings clause in the Clean Air Act already protects the rights of states and localities to regulate GHGs just as they would a criteria pollutant
 - ◆ Supreme Court in *Mass. V. EPA* held that GHGs are an air pollutant under the Clean Air Act

NACAA response:

- ❑ Bill contains “generally strong language” protecting state and local rights. However....

“Timeout” for State Caps

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- ❑ Section 335 adding section 861: Notwithstanding section 116, no State or political subdivision thereof shall implement or enforce a cap that covers any capped emissions emitted during the years 2012 through 2017
- ❑ Still preserves all our other authorities during this time

NACAA response:

- ❑ Existing state and regional cap-and-trade programs should instead 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

Caps, Coverage and Offsets

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- Emission reduction targets:
 - ◆ 3% below 2005 levels in 2012
 - ◆ 20% below 2005 levels in 2020
 - ◆ 42% below 2005 levels in 2030
 - ◆ 83% below 2005 levels in 2050

NACAA response:

- These are significant reductions but may fall short of what is needed to avert dangerous warming
- Strongly consider strengthening targets; at a minimum, do not weaken them

Caps, Coverage and Offsets

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- ❑ Cap covers CO₂, methane, nitrous oxide, sulfur hexafluoride, HFCs emitted as a byproduct, PFCs and nitrogen trifluoride
- ❑ Sources covered include 85% of U.S. GHG emissions
- ❑ Cap begins April 1, 2013
- ❑ Capped sectors include the industrial sector, the electricity generation sector, the transportation sector (through fuels), the residential and commercial sectors (to the extent they burn oil or natural gas); NOT included – the agricultural or forestry sectors
- ❑ Emissions threshold for coverage is 25,000 tons of CO₂e per year

Caps, Coverage and Offsets

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- ❑ Different types of offsets allowed:
 - ◆ Domestic offsets (Title VI, Part D)
 - ◆ Avoiding international deforestation (Title VI, Part E)
 - ◆ International cap-and-trade programs (section 722(c)(2))
 - ◆ Developing countries (section 743)
- ❑ Provisions included to ensure the integrity of offsets
- ❑ Two billion tons in offset allowances available to be used each year, BUT
 - ◆ Source must use 1.25 offset credits per ton, rather than 1 allowance per ton and
 - ◆ Source is limited in how many offsets it can use

Caps, Coverage and Offsets

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NACAA response:

- ❑ Concerned about generous offset credit pool
 - ◆ Allowing up to 2 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
- ❑ Commend section that appears to prohibit sources from obtaining credits for activities that result in emissions reductions and that were otherwise required by law

Performance Standards for Coal-Fired Power Plants

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- ❑ New electric generating units (EGUs) permitted after January 1, 2015 can emit no more than 1,100 lb/MW-hour GHG
- ❑ New EGUs permitted after January 1, 2020 can emit no more than 800 lb/MW-hour GHG
- ❑ When carbon capture and sequestration (CCS) is commercially available, or by 2025 at the latest, new EGUs permitted between January, 1 2009 and January 1, 2015 are required to comply with the 1,100-lb/MW-hour limit
- ❑ EGU performance standards to be reviewed every 5 years after 2025

Performance Standards for Coal-Fired Power Plants

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NACAA response:

- ❑ New and reconstructed EGUs permitted between 2009 and 2015 – during which it is unlikely CCS will be available – should be subject to Best Available Control Technology (BACT) analysis and control for CO₂
- ❑ New and reconstructed EGUs permitted in 2015 and 2020 should also be subject to BACT

Industrial Sources of GHGs

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- ❑ Bill requires that industrial sources of GHGs below 25,000 tpy (i.e., outside the cap) be subject to New Source Performance Standards (NSPS)

NACAA response:

- ❑ GHG NSPS should also apply to industrial sources inside the cap (25,000+ tpy)
- ❑ Industrial sources should be subject to BACT as well

Applicability of Title V

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- ❑ Bill proposes that GHGs shall not be considered in determining applicability of Title V

NACAA response:

- ❑ A subset of GHG sources that emit 25,000 tpy are not now Title V-permitted
- ❑ Agencies overseeing these “orphan” GHG sources will need funding for monitoring, inspections, offset verification, enforcement
- ❑ Title V fees for GHG implementation (monitoring, allowances, etc.) should be provided for existing Title V-permitted sources adding GHGs

Greenhouse Gas Registry

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- ❑ EPA is to issue regulations, within 6 months of enactment, establishing a federal GHG registry
- ❑ Regulations must:
 - ◆ Require electronic submission by sources to EPA of GHG emissions data on a quarterly basis
 - ◆ Take into account best practices and protocols of The Climate Registry and others
 - ◆ Provide for “immediate dissemination” of data to states ASAP after audit by Administrator
 - ◆ Require certification by sources

Greenhouse Gas Registry

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NACAA response:

- ❑ Regulations should be reasonably consistent with protocols for measurement, accounting and reporting used by The Climate Registry
- ❑ Legislation should ensure no preemption of state reporting requirements
- ❑ Legislation should provide that states can collect GHG data from sources themselves, and transmit to EPA

Federal Low Carbon Fuel Standard ¹⁷

- ❑ Low Carbon Fuel Standard (LCFS) will reduce the lifecycle emissions intensity of transportation fuels
- ❑ Interim standard for 2014 through 2022 to prevent backsliding
- ❑ LCFS begins in 2023 with a 5% reduction in annual average lifecycle GHG emissions
- ❑ Reduction increases to 10% beginning in 2030
- ❑ Program covers all transportation fuels
- ❑ Fuel providers can generate credits for achieving greater reductions in a calendar year

Federal Low Carbon Fuel Standard ¹⁸

NACAA response:

- ❑ Support a comprehensive federal LCFS, particularly provisions that
 - ◆ Cover all transportation fuels
 - ◆ Provide safeguards against backsliding in the near term
 - ◆ Require establishment by EPA of a baseline
 - ◆ Set long-term carbon intensity reduction requirements
- ❑ Recommend that
 - ◆ Reduction requirements be more rigorous – at least equal to California’s LCFS of a 10-percent reduction by 2020
 - ◆ States in addition to California be authorized to adopt their own LCFS
 - ◆ Provisions be included to prevent “leakage” of high-carbon fuels into fuels not covered by the LCFS
 - ◆ EPA be required to address regional circumstances and differences when developing the national LCFS

Transportation Efficiency: Motor Vehicle Standards

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- ❑ Calls on the President to use existing Clean Air Act authorities to set motor vehicle standards
 - ◆ “Achievable by automobile manufacturing companies”
 - ◆ Harmonize NHTSA CAFE, EPA and California standards “to the extent practicable”
 - ◆ “Achieve at least as much emissions reduction as would be achieved by implementation of California law AB 1493 if enforced in the State of California and the other states that have adopted the standards”
- ❑ Reaffirms California’s legal authority to adopt and enforce its own mobile sources emissions standards

Transportation Efficiency: Mobile Source Standards

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- Calls on EPA to set GHG emission standards for mobile sources
 - ◆ New heavy-duty vehicles and engines (by 12/31/10)
 - ◆ New marine vessels, locomotives and engines (by 12/31/12)
 - ◆ Other classes of nonroad vehicles and engines
 - ◆ New aircraft and new aircraft engines (by 12/31/12)
 - ◆ Other classes and categories of aircraft and aircraft engines
- Standards “shall achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be available at the time such standards take effect”

Transportation Efficiency: Motor Vehicle and Mobile Source Standards

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NACAA response:

- ❑ Concur with the basis of the requirements – that the Administration and EPA have broad Clean Air Act authority to regulate emissions from motor vehicles and other mobile sources
- ❑ Support promulgation of GHG emission standards for the wide range of mobile sources identified
- ❑ Support reaffirmation of California’s legal authority to adopt standards
- ❑ Recommend that the expressed goal of the federal motor vehicle standards – achieving the same reductions as if California and opt-in states enforced AB 1493 – be clarified

Transportation Efficiency: Planning Requirements

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- ❑ Bill includes planning requirements to achieve GHG emissions reductions through transportation efficiency
- ❑ Each state must develop goals for reducing transportation-related GHGs
 - ◆ Developed with “concurrence” of state air and transportation agencies, “in consultation” with MPO (>200,000 pop.) and applicable local air and transportation agencies and with public involvement
- ❑ MPO must develop a plan to achieve the goals
 - ◆ Developed with regional “coordination” among MPOs, the state, localities comprising MPO and state and regional air and transportation agencies; in “consultation with state and local environment, transp. and other public agencies
 - ◆ EPA to analyze the effects of each plan on GHG emissions and oil consumption and post plans and analysis on web site

Transportation Efficiency: Planning Requirements

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- ❑ If a state fails to submit goals or to ensure that the MPO submits the plan, the EPA Administrator can impose highway sanctions
- ❑ EPA is required to issue regulations establishing standardized models and methodologies for developing goals, plans and strategies
- ❑ A list of transportation and land use planning strategies for reducing GHGs is included – states and MPOs should “consider” these when developing goals and plans
- ❑ Funds are authorized for competitive grants to MPOs to develop or implement plans

Transportation Efficiency: Planning Requirements

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NACAA response:

- ❑ Agree that a successful national climate strategy must ensure the transportation sector contributes its fair share of GHG emissions reductions
- ❑ Support requirements for state GHG reduction goals and a plan to achieve the goals
- ❑ Support a concurrence role for state air agencies in developing goals; recommend a concurrence (vs. consultative) role for applicable local air agencies as well
- ❑ Support EPA as the lead agency in developing and issuing regulations on models and methodologies
- ❑ Commend the list of potential transportation and land use strategies; recommend that a VMT reduction target be added

Transportation Efficiency: Planning Requirements

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NACAA response:

- ❑ Concerned that there are no requirements regarding adequacy or implementation of the plan or achievement of the goals
 - ◆ Recommend the inclusion of performance and accountability requirements
- ❑ Seek clarity on what level of funding is intended for competitive grants for developing and implementing plans
 - ◆ Recommend that funds be sufficient to cover infrastructure and software investments as well as personnel

Federal Renewable Electricity Standard

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- ❑ Renewable Electricity Standard (RES) requires an increasing share of electricity sold to come from renewable sources
- ❑ Starts in 2012 with 6 percent renewables required
- ❑ Increases in phases to 25 percent renewables in 2025
- ❑ Renewable energy resources include wind, solar and geothermal energy; biomass or landfill gas; qualified hydropower; and marine and hydrokinetic renewable energy
- ❑ Utilities can meet their obligations by buying, selling or trading federal Renewable Energy Credits

Federal Renewable Electricity Standard

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NACAA response:

- ❑ Support the RES
- ❑ Twenty-nine states have enacted standards for the use of renewables; several others have voluntary programs in place
- ❑ Bill does not interfere with states' authority to enact and implement RES/RPS programs