Overview of State-Related Provisions, American Power Act (APA)
111th Congress, discussion draft released by Sens. Kerry and Lieberman, May 12, 2010 (May 19th summary)

Note: Not all subtitles and sections of the Act are included here, only those with provisions creating, limiting, or otherwise affecting a role for states.

Summary
The American Power Act provides support for development of nuclear power, state revenue sharing of offshore oil and gas, carbon capture and sequestration technologies, renewable energy and energy efficiency, clean transportation, and clean energy R&D. It requires the development of national transportation-related greenhouse gas (GHG) emission reduction goals, and caps GHG emissions from electricity generators and other stationary sources beginning in 2013, phasing in industrial sources and natural gas distributors in 2016.

Of particular interest to states:

- **Preemption.** Effective January 1 of the first calendar year for which federal allowances are allocated, the bill preempts implementation and enforcement of state cap-and-trade programs. It does not include language allowing states to restart such programs in the future (Sec. 2501).
- **Savings.** Clean Air Act "savings" provisions for state authority (under CAA Sec. 116) are amended such that state authority to adopt and enforce standards includes provisions to limit GHG emissions, require surrender to the state or political subdivision of the state of federal allowances or offset credits, or require the use of allowances or credits to demonstrate compliance with requirements of a state or political subdivision (Sec. 2305). The preemption provision in Sec. 2501 does not include a target or limit on GHGs implemented through a means other than cap and trade, or other standards, limits, regulations, or GHG reduction programs not implemented through a cap and trade. However, states may find themselves constrained by the limits on implementation of the Clean Air Act (see below). There is no preemption of automobile standards or those aimed at reducing lifecycle GHG emissions (Sec. 2501). However, the bill does direct EPA, the National Highway Transportation Safety Administration, California, the auto companies, and "other relevant parties" to use current authorities to set standards for post-2016 model years.
- **Allocation to states.** States receive allowances for home heating oil and propane consumers (CAA Sec. 781(a)(3)); renewable energy and energy efficiency programs (CAA Sec. 781(c)(5)(C)); natural resources adaptation programs (CAA Sec. 781(d)(1)(A)); compensation for revenues lost by preempted state cap-and-trade programs(CAA Sec. 781(e)); and transportation GHG emission reduction programs (CAA Sec. 781(f)(3));
- **Treatment of state and regional allowances.** Any individual or entity in the U.S. may exchange GHG emission allowances issued by the state of California, the Regional Greenhouse Gas Initiative (RGGI), or the Western Climate Initiative for federal emission allowances. The number of federal allowances received will be sufficient to compensate for the cost of obtaining and holding state allowances, where the cost of obtaining a state allowance is the average auction price for allowances issued in the year in which the allowance was issued.
- **Relevant federal CAA changes.** The bill limits EPA authority to regulate GHGs in order to control climate change under a number of CAA provisions (criteria air pollutant, hazardous air pollutant, international air pollutant, NSR, and Title V permitting) under Sections 2301-2307. It allows use of Sec. 111(d) performance standards for some existing sources (including existing electric generating units – "EGUs") and sets new source performance standards for coal plants contingent on commercialization of CCS technology or by 2020 (Sec. 1441). Provisions to accelerate phase-out of coal plants may include offering financial incentives and streamlining many CAA regulatory requirements.

The Georgetown Climate Center is grateful for support from our funders: Rockefeller Brothers Fund, Emily Hall Tremaine Foundation, Rockefeller Foundation, and Joyce Foundation that makes our work possible.

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Definition: In this Act, the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands. (consistent with section 302 of the Clean Air Act, 42 U.S.C. 7602)

<u>Title I – Domestic Clean Energy Development</u>

Subtitle A—Nuclear Power

Subtitle A aims to facilitate the continued development and growth of a safe and clean nuclear energy industry through a combination of reductions in financial and technical barriers to construction and operation, and incentives. It includes expedited licensing procedures (Sec. 1101), technology-neutral plant design specifications, increased funding for the 2009 Omnibus Appropriations Act's (Public Law 1118; 123 Stat. 619) loan guarantee program (Sec. 1102), spent-fuel recycling research (Sec. 1104), and a variety of tax provisions (Sec. 1121), among others. It also provides regulatory risk insurance for delays – including delays due to litigation in administrative hearings or courts (Sec. 1103).

Subtitle B—Offshore Oil and Gas

Subtitle B addresses offshore oil and gas production, proposing that a variety of protections (e.g., a moratorium on new offshore drilling, liability mechanisms, and new precautionary safety measures) be "considered".

Revenue sharing. For the Outer Continental Shelf (OCS) (Sec. 1202):

- States within 300 miles of the center of a leased drilling tract receive 37.5 percent without further appropriation or action required, not to exceed $500 million for each of fiscal years 2011-2055,1 of any lease rental payments, lease royalty payments, royalty proceeds, and other revenues. 20 percent of each state's share is paid directly to coastal subdivisions of the state, based on relative distance from the leased tract, in amounts that are inversely proportional to that distance.
- 12.5 percent of federal royalty revenue (not including the states' share) from these areas is deposited into the land and water conservation fund (16 U.S.C. 4601-5) to carry out state and federal programs. 50 percent of federal royalty revenue from these areas will be used for federal deficit reduction.

For the Alaska Adjacent Zone (Sec. 1203):

- Revenue from areas inside this zone shall be distributed in the same proportion and for the same uses as for the OCS (not to exceed $500 million for each of fiscal years 2011-2055), with 33 percent directly to regional corporations established under the Alaska Native Claims Settlement Act, based on distance from the leased tract, inversely proportional to that distance.

Reservation of lands and rights (Sec. 1204). A state may enact a law prohibiting leasing for oil and gas, or natural gas, within 75 miles of its coastline. On enactment of that law, the state's governor may submit a petition to the Secretary of Energy requesting that any area within 75 miles of the coastline be withdrawn from the applicable five-year OCS oil and gas leasing program. The Secretary shall approve a petition within 90 days, and within 180 days, the federal plan shall be amended.

Impact studies (Sec. 1205). For areas off the coastline of a state eligible to receive revenue sharing:

- The Secretary shall prepare an assessment of the probability of an oil spill, the potential environmental impact on the state's coastline of an oil spill, the potential economic impact on the state of an oil spill, the potential impact "on the coastal economy" of any other states that would be directly affected, and the potential impact on any military operations in the coastal area.

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[1] If this limit is binding, revenues to each recipient are reduced on a pro rata basis, with the remainder of revenues reverting to the general fund of the Treasury.

- If an assessment indicates that a state would be significantly impacted by an oil spill resulting from drilling activities, the state may enact a law prohibiting oil and gas leasing in the area proposed. On enactment of the law, no federal leases may be issued for the area.

Subtitle C—Coal

Part I directs the creation of a national strategy (Sec. 1401) for carbon capture and sequestration (CCS), including identification of regulatory, legal, and other gaps and barriers that could be addressed at federal, state, tribal, or local levels; and identification of regulatory implementation challenges, including those relating to approval of state and tribal programs. It establishes a task force (including state and tribal agencies and attorneys general) to study the legal framework for geological storage sites including analysis of state common law and environmental statutes (Sec. 1402).

Part II creates a special funding program (Sec. 1412) for development and deployment of CCS and conversion technologies, only if the state regulatory authorities of at least 30 states (including the District of Columbia and Puerto Rico) submit written notices of approval. It also creates a CCS Program Partnership Council (Sec. 1413), with two representatives of state regulatory authorities as non-voting members, to advise on matters related to the special funding program. Among other entities, state research agencies are eligible for funding (Sec. 1414). To fund the program, the Secretary shall collect an assessment (Sec. 1415) on electric utilities for all fossil fuel-based electricity sold to electric consumers, not including residential consumers, at a level not less than $2 million and not more than $2.1 million.

Part III describes the distribution of emissions allowances (allocated in section 781(c)(1)) to support the commercial deployment of CCS technologies in electric power generation and industrial operations (Sec. 1431, CAA Sec. 794), and directs the comptroller general to conduct a study of the state of CCS technology and barriers to deployment (Sec. 1432).

Part IV adds to the Clean Air Act a Title VIII, creating greenhouse gas performance standards for new coal-fired power plants (Sec. 1441). Requirements begin four years after the Administrator of the Environmental Protection Agency reports that electric generating units (EGUs) equipped with CCS technology are in commercial operation in the U.S., but no later than 2020. Covered EGUs initially permitted on or after January 1, 2020 must achieve at least a 65 percent reduction in CO_2 emissions; covered EGUs permitted between January 1, 2009, and December 31, 2019, must achieve at least a 50 percent reduction in CO_2 emissions. The Administrator is to revise the standard every five years to reflect the best system of reduction demonstrated, taking cost and other energy and environmental requirements into account. Other programs to promote and accelerate the transition of existing coal-fueled power plants to lower GHG emissions include depreciation and investment tax credits.

Within 90 days of enactment, the Administrator shall establish a task force including federal, state, and local officials (CAA Sec. 802). Among other things, the task force will study existing state and federal environmental laws and their effects on the pace of transition of the fleet; and the effects of exempting sources from CAA Sec. 111(d)'s performance standards for existing sources, Sec. 112's hazardous air pollutant standards, and Sec. 169's new source review requirements to install pollution control equipment, in cases where a commitment is made to phase out a facility within a specified timeframe. Other federal CAA requirements are also evaluated to determine their effects on facility transition. Following a report (due one year post-enactment) on how to streamline transition to new facilities through funding and regulatory changes, implementation of the recommendations through final rulemaking is required within a specified period (actual date to be determined).

Subtitle D—Renewable Energy and Energy Efficiency

Subtitle D creates a Rural Energy Savings Program (Sec. 1602) to create and save jobs by providing loans to qualified entities (public power districts, public utility districts, electric cooperatives, or others receiving loans made or guaranteed by the Rural Utilities Service) to implement energy efficiency measures. It also describes the distribution of allowances to States to carry out renewable energy and energy efficiency programs, and expresses support for voluntary renewable energy markets.

Support of state renewable energy and energy efficiency programs (Sec. 1603). Emissions allowances given to states for renewable energy and energy efficiency programs (CAA Sec. 781(c)(5)(C)) will be distributed according to the following formula:

- 0.5 percent of these allowances to Indian tribes, on a competitive basis, to carry out renewable energy and energy efficiency programs;
- The remainder to states to carry out renewable energy and energy efficiency programs:
  - One third divided equally among states;
  - One third distributed among states according to population; and
  - One third distributed among states according to energy consumption.

Eligible projects include building codes and retrofits, energy-efficiency manufactured homes, building energy performance labeling, deployment of renewable energy technologies, enabling the development of a Smart Grid, and providing the non-federal share of support for surface transportation projects (although the last of these is limited to 10% of allowances distributed to each state).

States shall prioritize expansion of existing efficiency programs approved and overseen by the state, and demonstrate that allowances have been used to supplement not supplant existing and otherwise available state, local, and ratepayer funding. Each state receiving allowances (or allowance value) under this section shall include in biennial reports to the Administrator a list of entities receiving allowances, the purposes for which allowances were used, documentation of the quantity of energy savings, emission reductions, renewable energy deployment, and new or retooled manufacturing capacity resulting.

If the Administrator finds that a state is not in compliance with these requirements, up to twice the number of allowances that the state failed to use accordingly may be withheld in later years.

Subtitle E—Clean Transportation

Part I directs the Secretary to develop a national transportation low-emission energy plan that establishes a goal of achieving strategic deployment of electric vehicle infrastructure by January 1, 2020, and to establish pilot projects to demonstrate electric drive vehicles and infrastructure (Sec. 1701, CAA Sec. 803). Funding is authorized to be appropriated (not funded through allowance value).

Part II adds to Title VIII of the Clean Air Act a section on GHG emission reductions through transportation efficiency, and describes the distribution of allowances to states and metropolitan planning organizations (MPOs) for GHG reductions in the transportation sector.

GHG Emission Reductions through Transportation Efficiency (Sec. 1711, CAA Sec. 803). The Administrator, in consultation with the Secretary of Transportation, shall promulgate regulations to establish:

- national transportation-related GHG emission reduction goals commensurate with APA targets; and
- standardized emission models and methods to be used by states, MPOs, and air quality agencies.

The Secretary of Transportation, in consultation with the Administrator, shall promulgate and update regulations to:

- improve the ability of transportation planning models and tools to address GHGs;
- assess projected surface transportation-related travel activity and transportation strategies from state and regional transportation plans; and
- update transportation planning requirements and approval of transportation plans as necessary.

In promulgating the regulations, the Administrator and Secretary shall consult with states, Indian tribes, MPOs, and air quality agencies.

Metropolitan Planning Organizations. A variety of changes are made to the U.S. code sections on Metropolitan Planning Organizations (Sec. 134 of title 23) and Metropolitan Planning (Sec. 5303 of title 49) to incorporate goals of reducing reliance on oil, environmental impacts, and transportation-related GHGs; to promote sustainability and livability; and to adapt to the effects of climate change.

Each MPO that also serves as a transportation management area is required to develop surface transportation-related GHG emission reduction targets and strategies to meet the targets, in consultation with state air agencies and Indian tribes. Other MPOs may develop transportation GHG emission reduction targets and strategies. Each metropolitan transportation plan developed by these MPOs shall demonstrate progress in stabilizing and reducing transportation-related GHG emissions so as to contribute to the achievement of state targets. A variety of requirements for these plans are listed, and only MPOs certified by the Secretary and Administrator as meeting these requirements shall be eligible to receive performance grants through Sec. 1712.

Land use authority. Nothing in this section infringes on the existing authority of local governments to plan or control land use; or provides or transfers authority over land use to any other entity.

Investing in transportation GHG emission reduction programs (Sec. 1712). Allowances are distributed by the Secretary of Transportation to states and MPOs (CAA Sec. 781(f)(3)) to carry out the purposes of this section, including:

- supporting the development and updating of transportation GHG reduction targets and strategies; and
- providing financial assistance to implement approved plans.

Allowance distribution:

- Not more than 10 percent of this section's allowances per year shall be distributed to MPOs to develop and update transportation plans, in amounts based on MPOs' relative populations.
- The remainder of the section's allowances will be made available to states and MPOs to carry out this section, according to criteria developed by the Secretary and Administrator. These allowances may only be used to fund strategies that demonstrate a reduction in GHG emissions that is sustainable over the life of the transportation plan.

The federal share of the costs of a project receiving federal financial assistance under this section shall be 80 percent. Projects supported by these allowances shall be eligible to receive amounts collected through road-use and congestion pricing measures. Recipients of these allowances may enter into agreements providing for the transfer of allowances or allowance value to private transportation providers or other public entities.

Part III requires that allowances allocated to the Highway Trust Fund (CAA Sec. 781(f)(1)) be used to promote the safety, effectiveness, and efficiency of transportation in the U.S. through measures that are consistent with transportation efficiency planning under CAA Sec. 803 (the new transportation GHG emission reduction goals established under Sec. 1711) and other relevant laws (Sec. 1721, CAA Sec. 785).

Subtitle F—Clean Energy Research and Development (R&D)

Clean energy technology research and development (Sec. 1801). The Secretary shall distribute allowances on a competitive basis to institutions of higher education, companies, research foundations, trade and industry research collaborations, or other R&D entities to promote the development and deployment of clean energy technology (CAA Sec 781(c)(4)). This assistance shall be used to supplement rather than supplant any other federal resources available to these activities.

Title II—Greenhouse Gas Pollution Reduction

Subtitle A—Reducing Greenhouse Gas Pollution

Subtitle A adds to the Clean Air Act a Title VII establishing a GHG pollution reduction and investment program. Part A of this new title makes a variety of findings about the impacts of climate change and the need to control emissions, and establishes economy-wide emissions reduction goals:

- in 2013, 4.75 percent below 2005 levels;
- in 2020, 17 percent below 2005 levels;
- in 2030, 42 percent below 2005 levels; and
- in 2050, 83 percent below 2005 levels.

Targets for sources whose emissions are capped by this program are set at these same reduction percentages.

Funds made available under Sec. 5004 (emissions reductions through reduced deforestation) may be used to achieve reductions of GHG emissions from deforestation in developing countries to achieve reductions in addition to these targets. In 2013 and every four years thereafter, the Administrator shall submit a report to Congress on the state of the science of climate change, capabilities to monitor and verify GHG reductions globally, the status of domestic and worldwide GHG reduction efforts, and the technological feasibility of achieving additional GHG emissions reductions.

Part B designates seven gases as GHGs: Carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, HFCs from a chemical manufacturing process at a stationary source, PFCs that are anthropogenic gases that make the same or greater contribution to global warming over 100 years as the equivalent amount of CO_2, and nitrogen trifluoride. (The Administrator may subsequently designate other gases as GHGs.) The global warming potential for each of the covered gases is defined. Within one year of enactment, the Administrator shall determine whether fluorinated gases that are GHGs emitted during the production of non-HFC fluorinated substances should be regulated, and if this determination is made, promulgate regulations within 18 months setting a best achievable performance standard for these gases.

Greenhouse gas registry (CAA Sec. 713). Within 18 months[2] of enactment, the Administrator shall revise GHG reporting regulations, taking into account the best practices from the most recent federal, state, tribal, and international protocols for the measurement, accounting, reporting, and verification of GHG emissions, including protocols from the Climate Registry and other mandatory state or multistate authorized programs. Regulations shall include an explanation of any major differences in approach between the system established under the regulations and such registries and programs.

Reporting would begin in 2011 for the years 2007-2010, and would be required quarterly starting in 2011.[3]

Part C establishes emission allowances for calendar years 2013-2050,[4] and defines the rules for the program. (See Box 1.)

[2] H.R. 2454 specifies 6 months.

[3] The list of “reporting entities” is identical to the list in H.R.2454, except that entities that sell electricity to an energy-intensive facility, and producers and importers of petroleum-based or coal-based liquid fuel, biofuels, or natural gas liquid are added.

[4] The Administrator may adjust the number of allowances if 2005 emissions are found to be other than assumed.

Box 1. Federal Program Design (Sec. 2001, CAA Secs. 721-730)

Scope of coverage and timing. Beginning in 2013, each covered entity[5] shall hold allowances to cover all GHG emissions and "attributable" emissions. Electricity generation and industrial stationary sources are covered at the point of emissions, refined fuels are covered at the refined product provider, and natural gas is covered at the local distribution company (LDC). Coverage of industrial stationary sources and natural gas LDCs begins in 2016. Refined product providers pay a fixed price for allowances, set at the beginning of each year at the clearing price of the most recent auction, and these allowances may not be traded, sold, banked, or borrowed.

Offsets. Covered entities may collectively use offsets[6] to demonstrate compliance for up to 2 billion tons[7] of emissions annually.[8] At least 75 percent of an entity's emissions covered by offsets must be covered by domestic offsets.[9] Beginning in 2018, 1.25 international offset credits are required to demonstrate compliance for a ton of emissions. An entity may hold an international emission allowance[10] or "compensatory allowance"[11] in lieu of an emission allowance.

Penalties. Failure to comply results in a penalty of twice the auction-clearing price from the last auction for each ton for which the entity failed to demonstrate compliance, due immediately. The entity must also offset the excess tons with an equal quantity of allowances.

Trading, banking, and borrowing. Holders of allowances or offset credits may sell, exchange, transfer, hold, or retire the allowances or offsets. Unlimited banking is allowed, although the Administrator may establish a system for expiring allowances, international allowances, or offsets if deemed necessary. Borrowing from the following year is allowed without interest or limitation; borrowing is allowed from 1-5 years in the future for up to 15 percent of a compliance obligation. At the time of borrowing, the borrower shall retire allowances equal to 8 percent per year for each allowance borrowed, effectively pre-paying the interest.

Cost containment reserve. The Administrator shall deposit 4 billion allowances into a reserve: 1.5 percent of all allowances established for each year from 2013-2021, 2.5 percent of 2022-2029 allowances, 5 percent of 2030-2050 allowances, and any allowances offered at an auction and not sold. Each year, reserve allowances are made available for sale to covered entities (700(12)(B)) during the last 90 days of the compliance period. Reserve allowances are sold for $25 in 2013, increasing by 5 percent plus inflation in subsequent years. Purchase of reserve allowances may not exceed 15 percent of an entity's compliance obligation in the year in which the allowances are sold, and reserve allowances may only be used in the year purchased. No covered entity may purchase a reserve allowance for a compliance period in which the entity also adds to its cumulative allowance bank, or within 90 days of selling an allowance or offset credit.

Proceeds from the sale of reserve allowances shall be used to purchase international offset credits for reduced deforestation, or for domestic offset credits to the extent that international credits are unavailable. The Administrator shall convert these offset credits to allowances at a rate of 80 percent of international credits and 100 percent of domestic credits, and use them to replenish the reserve (up to 4 billion tons). Excess allowances will be assigned to a future year, up to the amount of allowances from that year initially placed into the reserve.

[5] In 2020 and every 8 years after, the Administrator shall review the thresholds used to define covered entities and may lower the threshold to no less than 10 thousand tons if doing so could cost-effectively achieve greater emission reductions.
[6] The USDA oversees agriculture and forestry offsets; the EPA oversees all other offsets.
[7] The President may make a recommendation to Congress on whether the 2-billion-ton limit should be increased or decreased.
[8] An entity may not offset a greater share of these 2 billion tons than its share of the previous year's total emissions.
[9] If 1.5 billion tons of domestic offsets are not available, international credits may offset up to 1 billion tons of emissions.
[10] International allowances must come from a program run by a national or supranational foreign government that imposes a mandatory absolute tonnage limit on GHGs at least as stringent as this program, including provisions to ensure comparable monitoring, compliance, enforcement, quality of offsets, and restrictions on the use of offsets. The Administrator may decide to limit the quantity of international allowances that may be used for compliance.
[11] These may be created for the destruction or conversion of fluorinated gases, or the non-emissive use of fossil fuels.

Savings (CAA Sec. 721). Nothing in this part:

- affects or requires a change in any state or tribal law regulating electric utility rates and charges;
- limits state regulation (including any prudency review) under such a state or tribal law;
- modifies the Federal Power Act or affects the authority of the Federal Energy Regulatory Commission (FERC) under that Act; or
- interferes with or impairs any program for competitive bidding for power supply in a state in which such program is established.

Permits (CAA Sec. 727). For stationary sources subject to Title V that are covered entities, the GHG program shall be implemented by permits issued and enforced in accordance with Title V. Any such permit issued by the Administrator or by a state shall require the owner or operator of a covered entity to hold allowances or offset credits at least equal to its emissions. Each state or Indian tribe with an approved permit program and in which stationary covered entities are located shall submit revised permit programs for approval.

Regulations (CAA Sec. 730). In developing regulations to implement this program, and in the implementation, the Administrator shall consult with the states in the Regional Greenhouse Gas Initiative, the Western Climate Initiative, and the Midwest Greenhouse Gas Reduction Accord, and representatives of other states.

Part D defines the offset credit program for domestic emission reductions. An advisory committee representing land grant universities, academia, business, nongovernmental organizations, and federal, state, and local government shall be established to provide scientific and technical advice on the establishment and implementation of the offset project program.

Early offset supply (CAA Sec. 740). Administrators of regulatory or voluntary GHG offset programs may apply for approval as a qualified early offset program. The Administrator and the Secretary of Agriculture shall approve any regulatory or voluntary GHG offset program established prior to January 1, 2009 that:

- has developed offset project type standards, methodologies, and protocols through a public consultation or peer review process, requiring that credited emission reductions be measurable, additional, verifiable, enforceable, and permanent; and has made these available to the public;
- requires verification by a state regulatory agency or accredited third party;
- requires that all credits are registered in a publicly accessible registry;
- requires that offset project representatives meet applicable financial assurance requirements; and
- ensures that no credits are issued for reductions funded or solicited by the entity administering the program.

Offset credits shall be issued for projects that began after January 1, 2001, for emissions reductions achieved after January 1, 2004. Offset credits that have expired or been retired, cancelled, or used for state, local, or tribal compliance are not eligible. Early offset credits will not be issued for more than 10 years or the established crediting period for the project. Emission reductions shall not receive credits if they occurred before January 1, 2009, and were awarded payments under the carbon conservation program established in Sec. 4152.

Part E defines the offset credit program for international emission reductions.

Subtitle B—Disposition of Allowances

Subtitle B describes the distribution of allowances. (See Box 2.)

<u>Box 2. Disposition of federal allowances (Sec. 2101, CAA Sec. 781)</u>

Allowances are allocated for the following purposes:

(a) Consumer protection
- (1) Electricity consumers: allocation of 51 percent of allowances in 2013, declining to 8.5 percent in 2029
- (2) Natural gas consumers: allocation of 9 percent in 2016, declining to 1.8 percent in 2029
- (3) Home heating oil and propane consumers: allocation of 1.9 percent, declining to 0.3 percent in 2029
- (4) Consumer relief (auction)
    - Energy refund program (Sec. 3204) and working families refundable credit program (Sec. 3202(a)): 12.3 percent in 2013-2019, 10.6 percent in 2020-2029
    - Energy refund program only: 11.5 percent in 2030-2034, 12.5 percent in 2025 and after
- (5) Universal trust fund: auction of 8.1 percent in 2026, declining to 77.8 percent in 2035 and after

(b) Job protection and growth
- (1) Trade-exposed industries: allocation of 2 percent in 2013-2015, 15 percent in 2016-2025, declining to 3 percent in 2029
- (2) Industrial energy efficiency: allocation of 0.5 percent in 2013-2015, up to $1.55 billion
- (3) Refiners: allocation of 4.3 percent in 2013-2015, 3.75 percent in 2016-2025, declining to 0.75 percent in 2029

(c) Clean energy technology development and deployment
- (1) Commercial deployment of CCS (CAA Sec. 794): allocation of 0.8 percent in 2017-2018, 4.5 percent in 2020, increasing to 10 percent in 2030-2034
- (2) Clean vehicle technology (Sec. 4111): allocation of 1 percent in 2013-2020, 0.5 percent in 2021
- (3) Low-carbon industrial technologies R&D (Sec. 4143): allocation of 1 percent in 2013-2020, 0.5 percent in 2021
- (4) Clean energy technology R&D (Sec. 1801): allocation of 2 percent in 2013-2021
- (5) Energy efficiency and renewable energy: allocation of 2.5 percent in 2013-2015, declining to 0.5 percent in 2021
    - (B) Rural energy savings program (Sec. 1602): allocation of 0.5 percent in 2013-2015, up to $1 billion
    - (C) State programs (Sec. 1603(b), 1603(c)(4)): allocation of remainder not given to rural energy savings program

(d)(1) Adaptation: allocation of 1.5 percent in 2019-2020, increasing to 6 percent in 2030-2034
- (A) One half to carry out title VI of this Act (domestic adaptation programs)
- (B) One half in accordance with Sec. 5005 (international adaptation programs)

(e) Early action (CAA Sec. 788): allocation of 1 percent in 2013-2015

(f) Transportation infrastructure and efficiency: 12 percent in 2013-2015, declining to 5.8 percent in 2022-2029, increasing to 6.7 percent in 2030-2034
- (1) One third auctioned for Highway Trust Fund (CAA Sec. 785), up to $2.5 billion
- (2) One third allocated to Secretary of Transportation for Supplemental Discretionary Grants for National Surface Transportation System (ARRA, P.L. 111-5; 123 Stat. 203), up to $1.875 billion
- (3) One third to Secretary of Transportation to provide to states and MPOs (Sec. 1712), up to $1.875 billion

Exchange for state allowances (CAA Sec. 786). Any individual or entity in the U.S. will be allowed to exchange GHG emission allowances issued before December 31, 2012 (or January 1 of the first calendar year for which federal allowances are allocated, if this is later) by the state of California, the Regional Greenhouse Gas Initiative (RGGI), or the Western Climate Initiative for federal emission allowances.

The number of federal allowances received will be sufficient to compensate for the cost of obtaining and holding state allowances, where the cost of obtaining a state allowance is the average auction price for allowances issued in the year in which the allowance was issued.

Early action (CAA Sec. 788). One third of allowances allocated to early action are to be exchanged for offset credits issued before January 1, 2009, by a state, local, or voluntary offset program; and used to compensate entities, including local government, that have made other early reductions.

Two thirds of early action allowances are to be distributed among states that have established, by the time of enactment of this title, a mandatory GHG cap-and-trade program. Allowances will be distributed annually based on the proportion of allowances issued by each state before enactment of this bill relative to the total number of state-issued allowances. States shall use these allowances exclusively for entities and programs designed to decrease GHG emissions or for research, development, and deployment of technologies that reduce GHG emissions, giving priority to cost-effective programs, such as energy efficiency programs. Each state receiving these allowances shall submit to the Administrator a report containing a list of entities and programs receiving allowances and a description of the activities undertaken and benefits delivered. If a state is not in compliance with this requirement, the Administrator may withhold up to twice the number of allowances that the state failed to use as required, that the state would otherwise be eligible to receive under this title in later years. Any allowances held shall be distributed among the remaining eligible states.

Auction procedures (CAA Sec. 790). This section, which sets a reserve price for auctions beginning at $12 in 2013 and increasing annually at the rate of inflation plus 3 percent, does not explicitly reference states but may be interesting to states that have developed or are developing their own auction procedures.

Subtitle C—Achieving Fast Mitigation

Subtitle C adds to Title VI of the CAA a variety of sections regulating production and consumption of hydrofluorocarbons (Sec. 2201), regulating black carbon (Sec. 2201) and establishing a voluntary grant program to reduce black carbon emissions (Sec. 2213), and directing the Secretary of Agriculture to provide grants relating to enhanced soil sequestration (Sec. 2214). It also includes a Sense of the Senate provision that the U.S. should redouble efforts to address anthropogenic methane emissions (Sec. 2221) and an interagency study of existing and potential policies to reduce non-CO_2 GHGs (Sec. 2231).

Subtitle D—Ensuring Regulatory Predictability for Greenhouse Gases

Subtitle D amends the Clean Air Act to limit its use for regulating greenhouse gas emissions.

Criteria pollutants (Sec. 2301). CAA Sec. 108(a) is amended such that the Administrator may not add any greenhouse gas to the list of criteria pollutants on the basis of its effect on climate change or ocean acidification.

GHG performance standards (Sec. 2302). CAA Sec. 111(d) is amended such that no performance standard shall be established for capped GHG emissions from a capped source other than for effects that do not include climate change. However, EGUs can be regulated. In promulgating performance standards for capped sources of non-GHG air pollutants, emissions of GHGs by those entities shall be treated as a non-air quality public health and environmental impact. Before January 1, 2020, the Administrator shall not promulgate new source performance standards for GHGs for uncapped sources that qualify as an eligible offset project. Requirements of this section do not apply to sources of enteric fermentation.

Hazardous air pollutants (Sec. 2303). CAA Sec. 112(b) is amended such that no GHG may be added to the list of hazardous air pollutants unless the GHG meets the criteria independent of its effect on climate change or ocean acidification.

International air pollution (Sec. 2304). CAA Sec. 115 is amended to state that the section that involves endangerment to another country from emissions here does not apply to any air pollutant with respect to its contribution to climate change or ocean acidification.

Retention of state authority (Sec. 2305). CAA Sec. 116 is amended such that states' authority to "adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution" includes any provision to limit GHG emissions, require surrender to the state or political subdivision of the state of federal emission allowances or offset credits, or require the use of such allowances or credits to demonstrate compliance with requirements established by a state or political subdivision of a state. However, the Act preempts states (or political subdivisions of a state) from implementing or enforcing a cap-and-trade program. (See CAA Sec. 806 below.) And the following two provisions may affect some states' administration of other regulatory programs, depending on state enabling statutes, delegation, and/or limitations on state ability to exceed federal authorities.

New source review (Sec. 2306). CAA Sec. 169 amends the "major emitting facility" definition such that NSR shall not apply to any facility initially permitted or modified after January 1, 2009, on the basis of its GHG emissions.

Permit programs (Sec. 2307). CAA Sec. 502 is amended such that no stationary source shall be required to apply for, or operate pursuant to, a permit under this title solely on the basis of its GHG emissions due to climate change impacts.

Subtitle E—Regulation of Greenhouse Gas Markets

Subtitle E gives jurisdiction over the trading of greenhouse gas instruments to the Commodity Futures Trading Commission, and describes a variety of provisions related to the regulation of the market. This subtitle does not explicitly reference states but may be interesting to states that have developed or are developing their own emissions market rules.

Subtitle F—Miscellaneous

Miscellaneous (Sec. 2501). This section adds a variety of sections to the CAA, including Sec. 806, State Programs. CAA Sec. 806 states that:

- The Administrator may provide grants to air pollution control agencies pursuant to section 105 for purposes of assisting in the implementation of programs to address climate change under the APA.
- A state, local, or tribal government may meet planning and other requirements of the CAA by submitting a consolidated plan that describes how the government will implement or meet the requirements, in lieu of submitting separate plans or reports. A government submitting a consolidated plan may use a reasonable portion of any allowances or other funding it receives under the CAA to prepare and submit the consolidated plan. (Requirements for contents of the plan are listed.)
- Effective January 1 of the first calendar year for which federal allowances are allocated, no state or political subdivision of a state may implement or enforce a cap-and-trade program on GHGs. The preemption does not include a target or limit on greenhouse gases implemented through means other than cap and trade, or any other standard, limit, regulation, or program to reduce GHG emissions that is not implemented through cap and trade, any fleet-wide motor vehicle emission requirement that allows greater emissions with increased vehicle production, or requirements that fuels or other products meet an average pollution emission rate or lifecycle GHG standard.

Title III—Consumer Protection

Subtitles A-C of Title III describe the distribution of allowances and/or auction revenue to

- Electricity local distribution companies for the benefit of retail ratepayers (Sec. 3001, CAA Sec. 782, as provided in CAA Sec. 781(a)(1))
- Natural gas local distribution companies for the benefit of retail ratepayers (Sec. 3101, CAA Sec. 783, as provided in CAA Sec. 781(a)(2))
- States for the benefit of consumers of home heating oil or propane for residential or commercial purposes, including through cost-effective energy efficiency programs or rebates (Sec. 3102, CAA Sec. 784, as provided in CAA Sec. 781(a)(3))
    - These allowances are distributed based on the ratio of the carbon content of home heating oil and propane sold to consumers within each state relative to the carbon content of all home heating oil and propane sold to consumers within the U.S. during the preceding year for residential and commercial uses.
    - Each state must use at least 50 percent of these allowances for cost-effective energy efficiency programs to reduce the overall fuel costs to consumers; to the extent possible, deliver support under this section through existing energy efficiency and consumer energy assistance programs; and seek to coordinate the administration and delivery of energy efficiency and consumer energy assistance programs supported under this section. Within one year of receiving these allowances, states must submit to the Administrator a report describing the use of these allowances, and demonstrating the cost-effectiveness of the energy efficiency programs supported under this section and the energy savings achieved.
    - The Administrator (after consultation with the Secretary of the Interior) shall distribute a percentage of these allowances to Indian tribes, through a method to be determined.
    - If a state or Indian tribe is not in compliance with this section, the Administrator may withhold up to twice the number of allowances that the state or tribe failed to use as required, that it would otherwise be eligible to receive under this title in later years. Any state allowances held shall be distributed among the remaining eligible states, and any tribal allowances held shall be distributed among the remaining eligible tribes.
- The Working Families Relief Program (Sec. 3201-3202)
- The Energy Refund Program (Sec. 3203-3204)
- The universal refund and deficit reduction (Sec. 3205-3207)

Subtitle D establishes an Office of Consumer Advocacy to serve as an advocate for the public interest.

Title IV—Job Protection and Growth

Subtitle A—Protecting American Manufacturing Jobs and Preventing Carbon Leakage

Subtitle A adds to the new Title VII of the CAA a Part F, Ensuring Real Reductions in Industrial Emissions. The subtitle aims to promote a strong global effort to reduce greenhouse gas emissions and prevent emissions leakage due to the new GHG program, in part by rebating allowances to energy-intensive and trade-sensitive industrial sectors to compensate them for compliance costs (CAA Sec. 773-774).

Subtitle B—Clean Energy Technology and Jobs

Subtitle B provides support for clean energy career development (Sec. 4101) and clean vehicles (Secs. 4111-4124); requires that hydraulic fracturing service companies disclose all chemical constituents used; and directs the Administrator to promulgate standards applicable to GHG emissions from new heavy-duty motor vehicles and engines, and non-road vehicles and engines (Sec. 4141, CAA Sec. 804). The

Administrator and Administrator of the National Highway Transportation Safety Administration are also directed to consult with the State of California and representatives of the automotive industry and other relevant parties on standards for motor vehicles for the model years after 2016.

The subtitle also establishes a program for investing in agriculture and forestry projects to sequester carbon and reduce GHGs (Secs. 4152-4153), and establishes an R&D center to improve the competitiveness of and job creation in the domestic manufacturing sector (Secs. 4161-4162).

Title V—International Climate Change Activities

Title V addresses international climate change activities, and does not include an explicit role for states.

Title VI—Community Protection from Climate Change Impacts

Natural Resources Climate Change Adaptation Strategy (Sec. 6004). A Natural Resources Climate Change Adaptation Strategy shall be developed by the Natural Resources Climate Change Adaptation Panel (Sec. 6003) in close cooperation with the states and tribes. The strategy is to protect, restore, and conserve natural resources so that they become more resilient and able to adapt to climate change, and also to identify opportunities to mitigate the current and expected impacts of climate change. The strategy is required to assess vulnerability of natural resources to climate change; describe research, observation and monitoring activities taking place at all levels, including state and local; to identify and prioritize needs; to develop protocols; and to include specific mechanisms for ensuring communication and coordination between federal departments and state natural resource agencies. The Panel shall review and revise the Strategy every 5 years.

Natural Resources Adaptation Science and Information (Sec. 6005). The Secretary of the Interior shall establish the National Climate Change and Wildlife Science Center within the United States Geological Survey. NOAA and the National Climate Change Wildlife Center, as co-administrators, are required to establish coordinated procedures for developing and providing science and information related to climate change. This includes a responsibility to provide technical assistance to state governments that are addressing the impacts of climate change on natural resources, as well as to provide state and local governments with research products, decision and monitoring tools, and information to help develop strategies to withstand climate change impacts.

The National Climate Change and Wildlife Science Center will work in collaboration with federal and state natural resources agencies and others to assess and synthesize knowledge, identify scientific gaps, develop models and scientific approaches to forecasting the impacts of climate change, develop tools for adaptive management and monitoring, and develop a means of sharing standardized data.

The Secretaries of Commerce and Interior are charged with conducting surveys of climate change impacts and are required to establish a Science Advisory Board, including members who represent a balanced membership of interests, including state and local governments. The Board will advise the Secretaries on expected impacts of climate change and strategies for protecting natural resources.

Federal Natural Resource Agency Adaptation Plans (Sec. 6006). Each federal agency with representation on the panel is required to develop a natural resource adaptation plan that will be reviewed by the President and submitted to Congress. The plans require a number of elements, including a description of mechanisms for enhancing cooperation and coordination of natural resources adaptation efforts with other agencies and state and local governments.

State Natural Resources Adaptation Plans (Sec. 6007). In order to be eligible for federal funding assistance under Sec. 6009, each state must prepare a natural resources adaptation plan detailing current and projected efforts to address the potential impacts of climate change and ocean acidification on natural resources and coastal areas within the state's jurisdiction. Each plan must be consistent with the federal Natural Resources Climate Change Adaptation Strategy created under Sec. 6004. The Secretary of the Interior and, as applicable, the Secretary of Commerce have 180 days to approve the plan. There are many requirements, with coastal states having additional requirements to develop strategies to address the impacts of sea-level rise and ocean acidification on the coastal zone. States may receive funding for up to 3 years prior to the approval of a State Natural Resources Adaptation Plan, for adaptation activities consistent with a state strategy and with a workplan developed in coordination with the Secretary of Interior and Secretary of Commerce.

Natural Resources Climate Change Adaptation Fund (Sec. 6008).[12] Allowances allocated under CAA Sec. 781(d)(1)(A) shall be provided to states to carry out natural resources adaptation activities in accordance with adaptation plans (approved under Sec. 6007), with the following distribution:

- 84 percent shall be available to state wildlife agencies in accordance with the Pittman-Robertson Wildlife Restoration Act apportionment formula.
- 16 percent shall be available to state coastal agencies under the Coastal Management Act apportionment formula.

Of the amounts made available under new CAA Sec. 781(d)(1)(A):

- 28 percent are allocated to the Secretary of Interior for carrying out natural resource adaptation under a number of existing federal programs;
- 8 percent are allocated to the Secretary of Interior for natural resources adaptation activities carried out under cooperative grant programs; and
- 5 percent are allocated to the Secretary of the Interior to provide financial assistance to Indian tribes to carry out natural resources adaptation activities.
- 20 percent are deposited into the Land and Water Conservation Fund for the acquisition of lands or land interests. Of these land acquisition funds:
    - One sixth shall be allocated to the Secretary of the Interior to make available on a competitive basis to states and Indian tribes in accordance with their natural resource adaptation plans.
    - One third shall be allocated to the Secretary of the Interior to carry out natural resources adaptation activities through the acquisition of lands and interests in land under the Land and Water Conservation Fund Act;
    - One sixth shall be allocated to the Secretary of Agriculture to make available to states and Indian tribes to carry out natural resources adaptation activities through the acquisition of land and interests in land under the Cooperative Forestry Assistance Act; and
    - One third shall be allocated to the Secretary of Agriculture to carry out natural resources adaptation activities through the acquisition of land and interests in land under the Land and Water Conservation Fund Act.
- 8 percent is allocated to the Secretary of Agriculture (acting through the Forest Service) to, in part, carry out natural resources adaptation activities on State and private forest lands; and
- 11 percent is allocated to the Secretary of Commerce to fund natural resources adaptation activities that protect, maintain, and restore coastal, estuarine, and marine resources, habitats, and ecosystems.
- 12 percent shall be allocated to the Administrator of the EPA and 8 percent shall be available to the Secretary of the Army for use by the Corps of Engineers for use in natural resources adaptation activities restoring and protecting estuarine and freshwater ecosystems.

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[12] This section seems to allocate the same pool of allowances (CAA Sec. 781(d)(1)(A)) to both states and federal agencies. In previous bills, the domestic adaptation allowances were split between these recipients, but this bill does not do so explicitly.

Funds allocated to federal departments shall only be used for natural resources adaptation consistent with plans approved under Sec. 6006.

State cost sharing provisions require that a state receiving a grant under this section must use funds from non-federal sources to pay for 10 percent of each activity carried out under the grant.

National Wildlife Habitat and Corridors Information Program (Sec. 6009). The Secretary of Interior is required to establish a National Wildlife Habitat and Corridors Information Program in coordination with states and tribes. The program will support states and tribes in the development of a database of fish and wildlife habitat corridors, and facilitate the use of database tools in wildlife management programs with the aim of informing planning and state development decisions and enabling climate impact and adaptation modeling. The section aims to encourage the development of collaborative plans by federal and state agencies, and includes mechanisms to support collaborative research, mapping, and planning of habitats and corridors. The Secretary of Interior may provide support to states, including financial and technical assistance.

Additional Climate Change Adaptation Programs (Sec. 6011). This section allows the Administrators of NOAA and Director of USGS to establish additional adaptation programs for water systems, flood control, wildland fire education, and coastal state economic protection, including addressing impacts on coastal watersheds.

Title VII—Budgetary Effects

Title VII states that the budgetary effects of this Act shall be determined by reference to the latest statement entitled "Budgetary Effects of PAYGO Legislation" for this Act, submitted in the Congressional Record by the Chairman of the Senate Budget Committee.