

GEORGETOWN CLIMATE CENTER

Georgetown State-Federal Climate Resource Center

Comparison of Adaptation Provisions

Waxman-Markey Discussion Draft, March 31, 2009 and America's Clean Energy and Security Act of 2009 (HR 2454) as passed out of Committee May 21, 2009 (*summary updated May 29, 2009; includes Manager's Amendments*)

Topic	W-M Discussion Draft as of 3.31.09 ¹	HR 2454 as of 5.21.09 ²
Title III, Subtitle B – Disposition of Allowances		(section 782; pgs 561-563) Domestic Adaptation • <u>State Programs</u> - 2012-2021: 0.9% - 2022-2026: 1.9% - 2027-2050: 3.9% Allowances to be distributed to States in accordance with section 453, <i>State Programs to Build Resilience to Climate Change Impacts</i>. Proceeds to be deposited in the State Energy and Environment Development (SEED) Fund established by the bill. • <u>Public Health</u> 0.1% annually with proceeds deposited in the Climate Change Health Protection and Promotion Fund established by the bill. • <u>Wildlife and Natural Resources</u> - 2012-2021: 1.0% - 2022-2026: 2.0% - 2027-2050: 4.0% Proceeds from the sale of allowances are split between allocations to States and auction proceeds deposited in the Natural Resources Climate Change Adaptation Fund established in the bill to fund federal agency activities prescribed in the bill. International Adaptation - 2012-2021: 1.0% - 2022-2026: 2.0% - 2027-2050: 4.0%

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Subtitle E, Part I – Domestic Adaptation		
Subpart A – National Climate Change Adaptation Program		
Funding	Appropriations as needed from a National Climate Change Adaptation Fund for section 467 only.	Allowance allocation to States for section 453 only.
Governance	Sec. 462. Establishes a National Climate Change Adaptation Council with membership from all relevant Fed agencies and offices. Chaired by NOAA.	Sec. 451. Establishes a National Climate Change Adaptation Program in the U.S. Global Change Research Program. Removes the NCC Adaptation Council and associated provisions.
Adaptation Program	Sec. 463. Establishes a national adaptation program in NOAA to • Develop and publish National Assessments (vulnerability assessments) • Provide Climate Services (scientific information, research, technical support) • Advise federal agencies on climate change impacts, including development of agency adaptation plans	Sec. 451. No national adaptation program elements are provided.
Vulnerability Assessments	Sec. 464. Requires NOAA to create national and regional vulnerability assessments every 4 years, to include: • Vulnerability to impacts, including human health, natural systems, resources, infrastructure and social and economic sectors. • Prioritized list of vulnerable systems • Strategies to adapt to impacts • Research priorities • Assessment of communication and coordination capabilities between fed agencies and regional, state, local and tribal stakeholders.	No requirement for assessments is included.

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Climate Services	Sec. 465. Establishes a National Climate Service in NOAA for use by state, local and tribal government stakeholders, to include: • Climate information products, databases, decision tools and services • Technical assistance for assessments and planning • Facilitating coordination and communication • Education and outreach related to impacts and vulnerability • Conduct stakeholder workshops	Sec. 452. Establishes a National Climate Service within NOAA for use by State, local and tribal government stakeholders and the public, to include: • Climate information, data, forecasts, and warnings at national and regional scales.
Federal Agency Adaptation Plans	Sec. 466. Requires federal agencies with representation on the Council to create an agency climate change adaptation plan detailing current and projected efforts to address impacts, including budgetary and human resource requirements.	There is no requirement for federal agency adaptation plans.
State, Local and Tribal Projects	Sec. 467. Establishes a National Climate Change Adaptation Fund to provide financial assistance to State, local or tribal governments, individually or jointly, for implementation of projects to reduce vulnerability to impacts. Funding program requirements for President: • Consult with NOAA and the Council • Consider Assessment findings and federal agency plans • Identify the federal agency(s) to administer each program element • Identify priorities and objectives for building capacity to adapt using funds • Identify financial mechanisms through which funds will be used • Identify categories of eligible projects • Establish selection criteria • Establish criteria for allocating funds (regions, states, localities, etc) • Establish criteria and mechanisms for project performance.	Sec. 453. Distributes allowances to State governments, where amounts are determined on population and per capita income relative to the U.S. Distribution of allowances must begin no later than September 30, 2012 and annually thereafter through 2050. [Calculation: the product of each State's population and the State's "allocation factor" (Allocation Factor = Per capita income of all individuals in the U.S. divided by the per capita income of all individuals in the State, with minimum of 0.8 and max of 1.2).] Requires deposit of funds into State Energy and Environment Development (SEED) Funds (established in sect 131) or else forfeit the allowances back to the Administrator. Requires States to create, and have approved, a State Adaptation Plan every 5 years in order to receive allowances for projects. Funding must be used for the implementation of projects, programs or measures to build resilience to climate change impacts including: extreme weather, water scarcity, decreased water quality, heat waves, droughts, sea level rise, increased air

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		pollution, effects on public health, and ecosystem disruption. States should consider prioritizing projects that reduce flood events.³ Funds are intended to supplement, not replace, existing sources of funding for climate change adaptation.⁴ Requirements for the content of state adaptation plans includes: • Assessment and prioritization of vulnerabilities; • Assessment of potential for carbon reduction through changes to land management policies;⁵ • Identification and prioritization of cost-effective projects, programs, and measures to build resilience; • Full consideration of initiatives to protect or enhance natural ecosystem functions, or the use of non-structural approaches;⁶ and • Be consistent with Federal conservation and environmental laws, and avoid environmental degradation to the maximum extent possible.⁷ States must report every 3 years: • on the use of allowance proceeds, • provide a third-party performance evaluation report, and • must identify the use of allowance toward flood reduction and storm damage and include the effects of climate change on water and flood protection infrastructure.⁸
Subpart B – Public Health and Climate Change		
Funding	Appropriations as necessary to develop and implement policies in Sections 471 and 472.	Sec. 467. Creates a Climate Change Health Protection and Promotion Fund in the Treasury to carry out this subpart. Funds made available are intended to supplement existing sources of funds for public health. Part H, Sec. 782 provides for the proceeds from .1% of total allowances to be deposited in this fund annually.

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Intent of Federal Government	Sec. 471. States that it is the policy of the Federal Government, in cooperation with State, tribal and local governments, to use all practical means and measures – • to assist efforts of public health professionals, first responders, States, tribes, municipalities, and local communities to...adapt health systems to address impacts • to encourage further research, interdisciplinary partnership, and collaboration between stakeholders - to understand and monitor health impacts - for preparedness activities - for improvement of health care infrastructure • to encourage Americans to learn about impacts of climate change on health.	Sec. 461. States that it is the sense of the Congress that the Federal Government, in cooperation with international, State, tribal and local governments, should use all practical means and measures – • to assist efforts of public health and health care professionals, first responders, States, tribes, municipalities, and local communities to...prepare health systems to respond to impacts • to ensure: - the nation's health professionals have sufficient information to prepare for and respond to adverse health impacts of climate change - the utility and value of scientific research for health impacts and for strategies to prepare for and respond to impacts - identification of vulnerable communities and development of response plans - improvement of health status and health equity - inclusion of health policy in development of climate change responses. • to encourage further research, interdisciplinary partnership, and collaboration between stakeholders - to understand and monitor health impacts - improve public health knowledge and response strategies - to enhance preparedness activities and public health infrastructure - to encourage Americans to learn about impacts of climate change on health. • to assist efforts of developing nations to prepare to respond to impacts of climate change.
Relationship to Other Laws	N/A	Sec. 462. Clarifies that nothing in subpart B limits authorities or responsibilities conferred by other laws.

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National Strategy / Plan	Sec. 472. Requires Sect of HHS to issue a national strategy to mitigate the impacts of climate change on public health in the U.S. Requires consultation with relevant federal agencies, Indian tribes, local governments, public health organizations, scientists and other stakeholders, and opportunity for public comment.	Sec. 463. Requires the Sect of HHS to issue a national strategic action plan to assist health professionals in preparing for and responding to the impacts of climate change on public health in the U.S. and other nations, particularly developing countries. Requires consultation with relevant federal agencies, Indian tribes, State and local governments, public health organizations, scientists and other stakeholders, and opportunity for public comment. Detailed provisions for the contents of the plan are provided in the following general topic areas in the bill: • Disease surveillance and monitoring • Predicting and monitoring tools • Communication strategies and interventions • Identifying and prioritizing vulnerable populations • Health communication, education, and outreach • Academic and regional centers of excellence • Preparedness and response strategies • State, regional and tribal planning and implementation support • Federal research • Technical assistance to developing nations Requires updates to the plan every 4 years. Calls for HHS and CDC to incorporate the goals and measures of the national action plan into the operations of the agency and center respectfully. This includes requiring CDC to conduct relevant research and provide appropriate research funding.
Reports	N/A	Sec. 465. Calls for the submission of new reports: Needs Assessment Report – by the National Research Council and the Institute of Medicine to assess the needs for health professionals to prepare for and respond to climate change impacts on public health and recommendations. Climate Change Health Protection and Promotion Reports –

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		requires the Sect to ensure issuance of reports to help health professionals in preparing for and responding to adverse health effects of climate change. Report objectives are provided in the bill. Updates are required every 4 years.
Subpart C – Natural Resources Adaptation		Throughout this subpart the phrase “assist” natural resources is replaced with “protect, restore, and conserve” natural resources. Also, when referring to required functions or actions of a Federal “agency”, language was modified throughout this subpart to refer to Federal “departments and agencies.”
Adaptation Policy	Sec. 482. It is the policy of the Federal Government, in cooperation with State and local governments, tribal organizations, and other interested stakeholders to use all practical means and measures to assist natural resources to become more resilient and adapt to and withstand the impacts of climate change and ocean acidification.	Sec. 472. It is the policy of the Federal Government, in cooperation with State and local governments, Indian tribes, and other interested stakeholders to use all practical means and measures to protect, restore and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.
CEQ	Sec. 484. Assigns CEQ the oversight role of: • Advising the President on the Natural Resources Climate Change Adaptation Strategy and Federal agency natural resources adaptation plans • Chairing the Natural Resources Climate Change Adaptation Panel; and • Coordinating Federal agency strategies, plans, programs, etc. as it pertains to natural resources adaptation.	Sec. 474. Assigns CEQ the oversight role of: • Advising the President on the Natural Resources Climate Change Adaptation Strategy and Federal agency natural resources adaptation plans • Chairing the Natural Resources Climate Change Adaptation Panel; and • Coordinating Federal agency strategies, plans, programs, etc. as it pertains to natural resources adaptation.
Adaptation Panel	Sec. 485. Establishes a Natural Resources Climate Change Adaptation Panel, chaired by CEQ, with members from: • DOC, acting through NOAA • DOI • EPA • DOA • Army Corp of Engineers • Others as appropriate	Sec. 475. Establishes a Natural Resources Climate Change Adaptation Panel, chaired by CEQ, with members from: • NOAA • Forest Service • National Park Service • U.S. F&W • BLM • USGS

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		• Bureau of Reclamation • Bureau of Indian Affairs • EPA • Army Corp of Engineers • Others as appropriate
Adaptation Strategy	Sec. 486. Requires the Panel to create a Natural Resources Climate Change Adaptation Strategy: • based in best available science as identified by the Climate Change Adaptation Science and Information Program established under section 487 • in cooperation with States and Indian tribes • consulting with local governments, conservation organizations, scientists and other interested stakeholders • provide public notice and opportunity for comment Review and revise every 5 years. Detailed provisions for the content of the Strategy are provided in the following topic areas in the draft: • Impact Assessments • Current research, observation, and monitoring activities • Identification of natural resources with the greatest need for conservation • Protocols for integrating adaptation strategies and activities into conservation and management of natural resources by federal agencies and departments to ensure consistency across jurisdictions and resources • Actions that Federal departments and agencies should take with timelines • Mechanisms for communication and coordination among Federal departments and agencies, between Federal departments and agencies and State agencies, U.S. territories, and Indian Tribes	Sec. 476. Requires the Panel to create a Natural Resources Climate Change Adaptation Strategy: • based in best available science • in close cooperation with States and Indian tribes • consulting with local governments, conservation organizations, scientists and other interested stakeholders • provide public notice and opportunity for comment Review and revise every 5 years. Detailed provisions for the content of the Strategy are provided in the following topic areas in the bill: • Vulnerability Assessments • Current research, observation, and monitoring activities at Federal, State, tribal and local levels • Identification of natural resources with the greatest need for protection, restoration and conservation • Protocols for integrating adaptation strategies and activities into conservation and management of natural resources by Federal departments and agencies to ensure consistency across jurisdictions and resources • Actions Federal departments and agencies shall take and timelines for actions. • Mechanisms for communication and coordination among Federal departments and agencies, between Federal departments and agencies and State agencies, U.S. territories, Indian Tribes, private landowners, conservation organizations, and other nations that share jurisdiction over

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		natural resources with the United States • Natural Resources inventory and monitoring protocols through interagency coordination and collaboration • Process for development of agency and department adaptation plans Federal departments or agencies with representation on the Panel, shall consider the impacts of climate change and ocean acidification and integrate the elements of the Strategy into agency plans, environmental reviews, programs, and activities related to conservation, restoration, and management of natural resources.

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Adaptation Science and Information Program	Sec. 487. Directs NOAA and USGS to establish a Natural Resources Climate Change Adaptation Science and Information Program (within 90 days of enactment). The Program shall be implemented by the National Global Warming and Wildlife Science Center within the USGS, and through counterpart programs established within NOAA. Detailed provisions of the Functions NOAA and USGS shall provide are prescribed in the following topic areas in the draft: • technical assistance to Federal departments and agencies, State and local governments, Indian tribes in their efforts to assess and address impacts of climate change.. • conduct and sponsor research and provide Federal departments and agencies, State and local governments, Indian tribes with research products, decision and monitoring tools and information, to develop strategies for assisting natural resources... • assist Federal departments and agencies in the development of adaptation plans. Climate Change Impacts Survey required every 5 years.	Sec. 477. Directs NOAA and USGS to establish a coordinated process (within 90 days of enactment) for developing and providing science and information needed to assess and address the impacts of climate change and ocean acidification on natural resources. The process shall be led by the National Climate Change and Wildlife Science Center, established within the USGS and the National Climate Service of NOAA. Detailed provisions for the functions NOAA and USGS shall provide are prescribed in the following topic areas in the bill: • technical assistance to Federal departments and agencies, State and local governments, Indian tribes and interested private landowners in their efforts to assess and address impacts of climate change. • conduct and sponsor research and provide Federal departments and agencies, State and local governments, Indian tribes and interested private landowners with research products, decision and monitoring tools and information to develop strategies for assisting natural resources. • assist Federal departments and agencies in the development of adaptation plans. Climate Change Impacts Survey required every 5 years. Establishes a National Climate Change and Wildlife Science Center within the USGS to perform specified functions, in collaboration with Federal and State natural resources agencies and departments, Indian tribes, universities and other partner organizations.
Federal Agency Adaptation Plans	Sec. 478. Requires Federal departments and agencies with representation on the Panel to create an adaptation plan within 1 year of enactment. No later than 30 days after approval of a plan by the President, the department or agency shall submit the plan to the Committee on	Sec. 478. Requires Federal departments and agencies with representation on the Panel to create an adaptation plan within 1 year of enactment that implement the Strategy under Sec. 476 and consistent with the Policy in Sec. 472. No later than 30 days after approval of a plan by the President, the

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	Energy and Commerce of the House of Representatives, the Committee on Environment and Public Works in the Senate, and the committees of the House of Representatives and the Senate with principal jurisdiction over the relevant agency. Requirements for the contents of the plans are detailed in the draft, and include a provision for cooperation and coordination mechanisms between federal agencies and State and local governments. As it pertains to the implementation of adaptation plans: "To the maximum extent practicable and consistent with applicable law, implementation shall be conducted in a way that protects, maintains, and restores the resilience of natural resources under the jurisdiction of other agencies and their ability to adapt and withstand the impacts of climate change and ocean acidification."	department or agency shall submit the plan to the Committee on Natural Resources of the House of Representatives, the Committee on Energy and Natural Resources in the Senate, and the committees of the House of Representatives and the Senate with principal jurisdiction over the relevant agency. Requirements for the contents of the plans are detailed in the bill, and include a provision for cooperation and coordination mechanisms between federal agencies and State and local governments. Other provisions were only slightly modified in the bill to be more specific as it pertains to habitats, ecosystems, linkages, corridors, species range, and protection of health. However, one new requirement was added: Establish methods for assessing the effectiveness of strategies and conservation actions taken...and for updating those strategies and actions to respond to new information and changing conditions. As it pertains to the implementation of adaptation plans and the consideration of impacts: "To the maximum extent practicable and consistent with applicable law, every natural resource management decision made by the department or agency shall consider the impacts of climate change and ocean acidification on those natural resources." CEQ is required to issue guidance for Federal departments and agencies for considering those impacts.

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State Adaptation Plans	Sec. 489. In order to be eligible for state adaptation funds, within 1 year of the development of the Natural Resources Climate Change Adaptation Strategy, states must create a State natural resource adaptation plan. Plans must include a strategy for addressing impacts of climate change and ocean acidification on fish, wildlife, plants, habitats, ecosystems, wildlife health, and ecological processes. Detailed provisions for what the plans must include are provided in the bill and include: • Description of the impacts • Establishes impact monitoring programs • Describe and prioritize proposed conservation actions • Include conservation actions and timeframes for implementing actions • Establish methods for assessing the effectiveness of, and for updating, strategies and actions • Incorporate the plan into a revision of the State's wildlife action plan • Parties who should participate in the planning effort (e.g. State coastal agency) • Parties with whom the plan should be coordinated, including the Sect of the Interior, and where applicable, the Sect of Commerce. For coastal states plans must also address impacts to the coastal zone. Detailed provisions are provided in the draft. Plans must consider the research and information that already exists in other plans (e.g. plans approved under the Coastal Zone Management Act). See draft for details.	Sec. 479. In order to be eligible for state adaptation funds, within 1 year of the development of the Natural Resources Climate Change Adaptation Strategy, states must create a State natural resource adaptation plan for review by the Secretary of Interior, and if applicable, the Secretary of Commerce. Plans must include a strategy for addressing impacts of climate change and ocean acidification on fish, wildlife, plants, habitats, ecosystems, wildlife health, and ecological processes Detailed provisions for what the plans must include are provided in the bill and include: • Description of the impacts • Establishes impact monitoring programs • Describe and prioritize proposed conservation actions • Include strategies, conservation actions and timeframes for implementing actions • Establish methods for assessing the effectiveness of, and for updating, strategies and actions • Incorporate the plan into a revision of the State's wildlife action plan • Parties who should participate in the planning effort (e.g. State coastal agency) • Parties with whom the plan should be coordinated, including the Sect of the Interior, and where applicable, the Sect of Commerce and other States that share jurisdiction over natural resources with the State. For coastal states plans must also address impacts to the coastal zone. Detailed provisions are provided in the bill. Plans must consider the research and information that already exists in other plans (e.g. plans approved under the Coastal Zone Sec. Management Act). See bill for details. Plans must be updated no less than every 5 years.

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Funding	Sec. 490. Establishes the Natural Resources Climate Change Adaptation Account in the Treasury. Funds deposited are available without further appropriations or fiscal year limitations. Allocation of amounts from the sale of allowances on an annual basis include: • States 40% - 32.5% to state wildlife agencies - 7.5% to state coastal agencies • Dept of Interior 23% - 17% for agency adaptation activities - 5 % for cooperative grant programs - 1% for Indian tribe financial assistance • Land and Water Conservation Fund – 12% for acquisition of lands and land interests • Forest Service – 5% • Dept of Commerce – 7.5% • EPA – 5% • Corp of Engineers – 7.5% 10% cost sharing provision for States and tribes.	Sec. 480.⁹ Allocates to states amounts from the sale of allowances on an annual basis, to be distributed as follows: • States 100% - 84.4% to state wildlife agencies - 15.6% to state coastal agencies Establishes the Natural Resources Climate Change Adaptation Account in the Treasury for the deposit of auction proceeds established in Part H, Sec. 782. Congress must appropriate to federal agencies at least as much as the estimated annual deposits into the Fund. Appropriations are offset by the amounts deposited. Allocation to Federal Agencies: • Dept of Interior 40.6% - 27.6% for agency adaptation activities(departments added in the language include National Park Service, Bureau of Indian Affairs and Bureau of Land Management) - 8.1 % for cooperative grant programs - 4.9% for Indian tribe financial assistance • Land and Water Conservation Fund – 19.5% for acquisition of lands and land interests • Forest Service – 8.1% • Dept of Commerce – 11.5% • EPA – 12.2% • Corp of Engineers – 8.1% 10% cost sharing provision for States. Federal departments and agencies must use funds only for activities consistent with their approved adaptation plans.

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Habitat and Corridors Information Program	N/A	Sec. 481. Requires the Sect of Interior in coordination with States and Indian tribes to establish a National Fish and Wildlife Habitat and Corridors Information Program. Funds the development and support of a Geographic Information System database of fish and wildlife habitats and corridors to enhance and improve state and federal plans that affect fish and wildlife including adaptation plans, land management plans, and so on. Detailed provisions for the GIS database and its use are provided in the bill.

¹ Waxman-Markey Discussion Draft of the American Clean Energy and Security Act of 2009, March 31, 2009.

² HR 2454 American Clean Energy and Security Act of 2009, Manager's amendment passed out of Committee on May 21, 2009.

³ Added by Manager's amendment on May 21, 2009.

⁴ Added by Manager's amendment on May 21, 2009.

⁵ Added by Manager's Amendment on May 21, 2009.

⁶ Added by Manager's Amendment on May 21, 2009.

⁷ Added by Managers Amendment on May 21, 2009.

⁸ Added by Manager's Amendment on May 21, 2009.

⁹ Amended by Manager's amendment on May 21, 2009. The Manager's amendment separated out allocations for natural resources adaptation to states from allocation for federal agencies for natural resources adaptation. The amendment preserved the allocation disposition amounts, however, with States receiving 0.385% of the total natural resources allocation and federal agencies receiving the remaining portion through the Natural Resources Climate Change Adaptation Account.