

The discussion draft of the American Clean Energy and Security Act (ACES Act), released on March 31, 2009 by Representatives Waxman (D-CA) and Markey (D-MA) includes four distinct titles: I) clean energy, II) energy efficiency, III) reducing global warming pollution, and IV) transitioning to a clean energy economy. Title I contains provisions related to a federal renewable electricity standard, carbon capture and storage technology, performance standards for new coal-fueled power plants, a low carbon fuel standard, and smart grid advancement. Title II includes provisions related to building, lighting, and appliance energy efficiency programs, as well as efficiency standards for mobile sources and other transportation programs. Title IV includes proposals designed to preserve domestic competitiveness and support workers, provide assistance to consumers, and support domestic and international adaptation initiatives while transitioning to a clean energy economy. The following is a brief overview of the proposed greenhouse gas (GHG) cap-and-trade program contained in Title III.

### **Scope of Coverage**

The discussion draft would cover seven GHGs: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydro-fluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF<sub>6</sub>), and nitrogen trifluoride (NF<sub>3</sub>). Entities covered by the proposal would include: large stationary sources emitting more than 25,000 tons per year of GHGs, producers (i.e., refineries) and importers of all petroleum fuels, residential and commercial sellers of natural gas (i.e., local distribution companies), producers of “F-gases,” and other specified sources. The proposal also calls for regulations to limit black carbon emissions in the United States.

### **Targets**

The discussion draft would establish emission caps that would reduce aggregate GHG emissions for all covered entities to 3% below their 2005 levels in 2012, 20% below 2005 levels in 2020, 42% below 2005 levels in 2030, and 83% below 2005 levels in 2050. (Note that the emissions of individual entities could rise or fall at different rates; these numbers pertain to aggregate U.S. emission levels.) Commercial production of HFCs would be addressed under Title VI of the Clean Air Act (which provides for protection of the stratospheric ozone layer), covered under a separate cap, and reduced at 3 percent per year.

### **Distribution of Allowances**

The discussion draft does not specify whether allowances would be auctioned or distributed free of charge. Nor, with the exception of allocating 5% of allowance value for reducing international deforestation, does the draft specify how the allowance value would be distributed. Both of these topics, however, are expected to be addressed in the next version of the ACES Act. The transition title (Title 4) of the discussion draft does signal support for clean technology, industrial and worker transition, adaptation, international obligations, and consumers. In addition, the draft indicates that compensatory allowances would be provided for non-emissive use of feedstocks.

### **Offsets and Cost Containment Measures**

The discussion draft would allow up to 2 billion allowance equivalent tons of offsets to be used for compliance system wide (1 billion domestic and 1 billion international); the President would be authorized to recommend that Congress alter this total number up or down. For every ton of emissions, 1.25 offset credits would be submitted (2.5 billion offset credits submitted for 2 billion tons of emissions compliance). The EPA would determine the list of eligible projects based on recommendations from an Offsets Integrity Advisory Board. There would be a multi-year compliance period (rolling 2-year period) with unlimited banking and next year borrowing with no interest. Borrowing of up to 15% of compliance obligation in years 2-5 beyond the current calendar year at 8% interest would also be allowed. The discussion draft would set up a quarterly strategic reserve auction for the purposes of cost containment using a small percentage of allowances taken from the cap each year. The initial minimum price level for the auction would be set at two times the EPA’s price forecast for year 2012 allowances (increasing in subsequent years). Up to 5% of the total annual allowances in years 2012-2016 could be auctioned from the reserve, increasing to 10% in 2017, with proceeds from the strategic reserve to be used to buy international reduced deforestation offset tons.

### **Carbon Market Oversight**

The discussion draft would require the Federal Energy Regulatory Commission (FERC) to regulate the cash market in allowances and offsets. The President would designate regulatory responsibility for the derivatives market in allowances.

### **Interaction with State and Regional Programs**

The discussion draft would clarify that states could enact more stringent climate regulations (treated as in the Clean Air Act) with the exception of cap-and-trade programs. Under the proposal, state trading programs would be put on hold from 2012 - 2017 to give the federal system a chance to get started. If after that time, the federal system was not adequate, states would be allowed to restart their trading programs. Holders of allowances issued by California or RGGI before 12/31/2011 could be compensated through the federal program for the cost of purchasing those allowances.