

GEORGETOWN CLIMATE CENTER

Georgetown State-Federal Climate Resource Center

Overview of State-Related Provisions, Clean Energy Jobs and American Power Act

111th Congress, sponsored by Sens. Kerry and Boxer, released September 30, 2009 (*summary last updated October 14, 2009*)

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

Summary

The Clean Energy Jobs and American Power Act (S.1733, “Kerry-Boxer”) creates programs to reduce GHG emissions from the transportation sector and to promote nuclear power and carbon capture and storage technologies. It establishes grant and technical assistance programs for state recycling and renewable energy projects, as well as economic development. It creates a nationwide cap-and-trade program on GHGs, as well as a variety of transition and adaptation programs. The bill does not include a renewable electricity standard, transmission planning, or other energy provisions contained in S.1462, the American Clean Energy Leadership Act, reported by the Senate Energy and Natural Resources Committee in July 2009.

Of particular interest to states¹:

- **Preemption.**
 - If a federal allowance auction program begins promptly, then state cap-and-trade programs are preempted for the years 2012-2017. However, unlike HR.2454,² if no federal auction has been conducted by March 31, 2011 then preemption begins nine months after the first auction, and lasts until the end of 2017. Other state or regional energy and greenhouse gas programs are not affected.
 - Unlike HR.2454, the Act does not prevent the U.S. EPA from requiring performance standards on stationary sources under the federal cap, but EPA may not enact new-source performance standards on sources of uncapped GHGs that could qualify as an offset project until Jan. 1, 2020.
- **Allocation to states.** While allocation levels are not specified in this draft, states will receive allowances and auction revenue to protect consumers from home heating oil and propane price increases, to invest in renewable energy and energy efficiency, to increase energy efficiency in buildings.
- **Treatment of state/regional allowances.** Holders of allowances issued by California, the Regional Greenhouse Gas Initiative (RGGI) or the Western Climate Initiative (WCI) may exchange these for federal allowances, although not necessarily at a one-for-one ratio.
- **Transportation Efficiency.** The Act requires states and metropolitan planning organizations (MPOs) to create detailed strategies “likely to achieve” transportation-related targets, and requires states to consider specified transportation-related emissions strategies. The bill also creates a transportation efficiency grant program eligible to receive allowance funding.
- **Renewable Energy.** Kerry-Boxer creates a grant program for renewable energy projects in states with a renewable portfolio standard (RPS) or goal.
- **Adaptation.** Kerry-Boxer creates a number of new programs and funding to help states manage issues relating to water systems, flood control, and wildfires, with specific funding available to coastal and Great Lakes states, as well as to support drinking water utilities. Additionally, the bill maintains cost-share funds for state natural resources adaptation efforts, contingent upon state natural resources adaptation plans, and support for state public health planning and preparedness efforts.

¹ “State” is defined by reference to Sec. 302 of the Clean Air Act, and includes “states, 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.” (Sec. 4; same treatment as HR.2454 Sec. 2)

² HR.2454, The American Clean Energy and Security Act, passed by the House of Representatives on June 26, 2009.

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Division A – Authorizations for Pollution Reduction, Transition and Adaptation

Sec. 101 identifies programs authorized to receive allocation of allowances for pollution reduction, transition and adaptation, and programs which are authorized but do not receive allowances. This draft does not identify the level of allocation.

Title I – Greenhouse Gas Reduction Programs

Subtitle A – Clean Transportation

Greenhouse Gas Reductions through Transportation Efficiency.³ (Sec. 112) Amends Title VIII of the Clean Air Act to require the Environmental Protection Agency (EPA), in consultation with Department of Transportation (DOT), to set national transportation-related GHG emissions reduction goals, as well as standardized emission models and related methodologies to be used by states and metropolitan planning organizations (MPOs). Requires states and MPOs to set state and local targets, and include strategies “likely to achieve” targets in transportation plans. States must conduct “scenario analysis” that considers specific transportation efficiency strategies.

Savings. Nothing in this section infringes upon the existing authority of state or local governments to plan or control land use, or provides or transfers authority over land use to any other entity.

Transportation Greenhouse Gas Emission Reduction Program Grants. (Sec. 113)⁴ Requires DOT to provide grants to states and MPOs to support development and updating of transportation GHG reduction targets and strategies, and to support implementation of strategies.

- Not more than 5% of available grant funds are allocated to MPOs for development and updating of targets and strategies. Funds among MPOs are to be allocated based on proportion of population.
- Remainder of funds are to be provided as performance grants to states and MPOs. Factors to be considered include: total quantity of GHG reductions; per capita GHG reductions; cost-effectiveness; progress towards targets; previous achievement; and plans that increase mobility for disadvantaged groups. Funds may only be used for strategies that demonstrate a reduction in GHG emissions that is sustainable over the life of the applicable transportation plan.
- The federal share of project costs receiving federal funds is limited to 80%.
- DOT may set modal requirements for a project.

SmartWay Transportation Efficiency Program. (Sec. 114; similar treatment as HR.2454 Sec. 223)

This program supports technologies, products, fuels and strategies that reduce petroleum consumption, air pollution and GHG emissions from mobile sources. The program will include loans and leases to public and private entities (that may include state, tribal, and local governments, and regional organizations) for the purpose of adopting low-GHG technologies and strategies for mobile sources as well as electrifying freight transportation systems.⁵

³ In general Kerry-Boxer includes more detailed requirements for agency rulemaking than HR.2454 Sec. 222. HR.2454 also does not require “scenario analysis” that considers specific transportation emissions reduction strategies.

⁴ This funding stream, which is “eligible” to receive an allocation of allowances under the Kerry-Boxer cap-and-trade CAA Title VII, does not exist as an independent program in HR.2454. In HR.2454, however, Sec. 113 (c) (4) (e), authorizes a portion of allowances allocated to states through the SEED program (not more than 10%) to be used for non-federal share of support for surface transportation capital projects authorized certain federal statutes.

⁵ HR.2454 Sec. 223 does not include language requiring the use of funds for electrifying freight corridors.

Subtitle B – Carbon Capture and Sequestration

Subtitle B instructs the Environmental Protection Agency (EPA) to create a national strategy for CCS and a coordinated approach to the certification and permitting of geologic sequestration sites. It creates a program for demonstration and deployment of CCS technologies, and sets performance standards for emissions from new coal-fired power plants.⁶

National strategy. (Sec. 121) EPA, the Department of Energy (DOE), and other relevant agencies will submit a report to Congress within 1 year⁷ establishing a unified and comprehensive strategy to address key legal and regulatory barriers and implementation challenges to the commercial-scale deployment of CCS, including those that can be addressed by a federal agency and those that would best be addressed at the state or regional level.

Task force. (Sec. 123) The EPA will establish a task force composed of subject matter experts, environmental NGOs, environmental law academics, state environmental officials, representatives of state attorneys general, and members of the private sector to study federal and state statutes and state common law regarding geologic sequestration of CO₂.

Carbon Storage Research Corporation. (Sec. 125) Fossil-fuel-based distribution utilities may vote to establish a corporation to accelerate the commercial availability of CCS technology and methods, unless opposed by 40 percent or more of state regulatory authorities.

Subtitle C – Nuclear and Advanced Technologies

Subtitle C states that it is the policy of the U.S. to facilitate the continued development and growth of a safe and clean nuclear energy industry, establishes programs to provide assistance for training of workers, and instructs the Department of Energy (DOE) to establish a nuclear research and development program that examines safety and waste management issues, including the feasibility of operating nuclear reactors “substantially beyond” the first license period. The Subtitle does not address the role of states explicitly.⁸

Subtitle D – Water Efficiency

Subtitle D authorizes EPA's WaterSense program, a voluntary program for labeling water-efficient products and services, and directs federal agencies to make cost-effective water-efficient purchasing decisions (Secs. 141-142; same treatment as HR.2454 Secs. 215-216).

State Residential Water Efficiency Incentives. (Sec. 143; similar treatment to HR.2454 Sec. 217.) Authorizes grants to eligible entities, including states, local or county governments, tribal governments, wastewater or sewerage utilities, municipal water authorities, for programs offering incentives to consumers who purchase and install water-efficient products and services such as those labeled under WaterSense. Allocation of funds among entities shall consider population served, targeted population, effectiveness, unused previous allocations and per-capita water demand. Grants may fund up to 50% of the cost of a program.

⁶ This title receives nearly the same treatment as HR.2454 Title I, Subtitle B (Secs. 111-116). Kerry-Boxer does not include a section corresponding to HR.2454 Sec. 115, which would create an allowance-funded program to promote commercial scale deployment of CCS projects.

⁷ This one-year time period given in Kerry-Boxer is updated from a 120 day period requirement in HR.2454.

⁸ HR.2454 does not include this subtitle or these specific federal programs funding training of a nuclear workforce or nuclear safety and waste management. However HR.2454 Title I, Subtitle I (Secs. 181-191), Nuclear and Advanced Technologies, creates a Clean Energy Deployment Administration that would provide loan guarantees for qualifying nuclear energy projects.

Subtitle E – Miscellaneous

Among other actions, Subtitle E requires analysis of climate-change related risks to vulnerable areas (Sec. 157). Also:

State Recycling Programs. (Sec. 154)⁹ Establishes a state recycling grant program to reduce waste-associated GHG emissions through recycling. Identifies permissible uses and eligible entities for funds distributed to states through the program, and requires that at least ¼ of funding be distributed to county and municipal recycling programs; ¼ to recycling facilities; and ¼ to manufacturing facilities.

Economic Development Climate Change Fund. (Sec. 156)¹⁰ Authorizes the Economic Development Administration to provide up to \$50 million per year, 2009-2013, in technical assistance and grants to states, Indian tribes and other eligible recipients,¹¹ for projects that: promote energy efficiency to enhance economic competitiveness; use renewable energy to support economic development and job growth; support production of alternative transportation fuels, electricity and heat; develop sustainable infrastructure and promote sustainable development practices.

Subtitle F – Energy Efficiency and Renewable Energy

Renewable Energy Project Grants. (Sec. 161)¹² Authorizes EPA grant program for renewable energy projects (not including nuclear power) in states with either binding Renewable Portfolio Standards (RPS) or non-binding goals for adoption of renewable requirements. Eligible projects may be submitted by state and local governments, tribes, public utilities, regional energy cooperatives, or individual energy producers; preference is given to states with a binding RPS. The grant may not exceed 50% of the total cost, and the Governor must certify that non-federal funding has been secured.

Advanced Biofuels. (Sec. 162)¹³ Establishes grant program for advanced biofuel research and development projects. Eligible entities include state and local governments, institutions of higher learning, rural electric cooperatives and public utilities.

Energy Efficiency in Building Codes. (Sec. 163)¹⁴ Requires the EPA Administrator, or such other agency head as the President designates, to set targets for national average improvement of building energy performance, to promulgate rules establishing national energy efficiency building codes for residential and commercial buildings, and to annually report to Congress on progress in improving building efficiency, including the adoption of building codes by states and federal and state enforcement of codes.

⁹ There is no comparable program created by HR.2454.

¹⁰ There is no comparable program created by HR.2454.

¹¹ This section amends Title II of the Public Works and Economic Development Act of 1965, 42 U.S.C. Sec. 3141 et seq. The Public Works and Economic Development Act defines “eligible recipients” to include states, 42 U.S.C. Sec. 3122, prohibits any single state from receiving more than 15% of Sec. 3141 funding, and limits the federal share of project cost to 50% plus up to an additional 30% depending on the relative needs of the area where the project is located.

¹² There is no comparable program created by HR.2454, however HR.2454 allocates allowances for states through the SEED fund that may be used to fund renewable energy programs, regardless of whether a state has an RPS in Sec. 132 (c).

¹³ Although this program is not established by HR.2454, HR.2454 Sec. 197 creates a National Bioenergy Partnership to coordinate state, federal and private sector efforts that support the deployment of sustainable biomass fuels and bioenergy technologies.

¹⁴ In contrast to HR.2454, this provision provides the Administrator with broad discretion in adopting building codes and deciding whether any conditions are placed on state adoption of building codes. HR.2454 Sec. 201 requires states to adopt building codes or lose substantial federal funding.

Retrofit for Energy and Environmental Performance. (Sec. 164)¹⁵ Provides federal financial assistance to states as part of a program to retrofit existing buildings for improvements in energy efficiency, water use, and other environmental attributes.

- The program will include detailed descriptions of funding options for state and local governments, along with model forms, accounting aids, agreements and guides to best practices; and will support up to 50% of the costs of retrofits, with funding increasing in proportion to efficiency achievement.
- As a condition of receiving funding for REEP, states must adopt the standards for training, certification of contractors, certification of buildings, and post-retrofit inspection developed by DOE for residential and commercial buildings; and establish fiscal controls and accounting procedures sufficient to ensure proper accounting.

Subtitle G – Authority of States to Set Taxi Cab Fuel Efficiency Standards¹⁶

Subtitle G amends the Clean Air Act to allow state and local governments to set fuel economy requirements and emissions standards for taxi cabs and other vehicles that are at least as stringent as applicable federal standards. Eligible vehicles seat 10 or fewer passengers; are commercially available; are operated for hire pursuant to local regulation; charge a fare based on time or distance; and do not exclusively provide transportation to and from airports.

Subtitle H – Clean Energy and Natural Gas¹⁷

Subtitle H creates an incentive program for power generation projects that achieve GHG emissions reductions compared to the electric utility sector average, and establishes a grant program for research and development of advanced natural gas technologies, including carbon capture and storage.

Title II – Research

Title II creates a grant program for energy research,¹⁸ and a research program to be conducted by a non-profit foundation sponsored by water utilities to study the effects of climate change on drinking water.¹⁹

Title III—Transition and Adaptation

Subtitle A: Green Jobs and Worker Transition

Clean energy curriculum development grants (Sec. 301) The Secretary of Education is authorized to award grants to universities and colleges to develop programs of study that prepare students for careers in renewable energy, energy efficiency, and other forms of global warming mitigation and adaptation.

Climate change worker adjustment assistance. (Secs. 311-313) Any worker totally or partially separated from employment as a result of the Title VII of the Clean Air Act is entitled to 156 weeks of income supplement, 80% of their monthly health care premium, up to \$1,500 for job search assistance, up to \$1,500 for relocation assistance, and additional employment services for skills assessment, job counseling, training, and other services.

¹⁵ The language for this section in Kerry-Boxer is identical to HR.2454 Sec. 202, with the exception that references to the HR.2454 SEED fund (Title I, Subtitle D, Secs. 131-132) have been omitted.

¹⁶ There is no comparable program created by HR.2454.

¹⁷ There is no comparable program created by HR.2454.

¹⁸ Similar to allowance-funded program created by HR.2454 Sec. 172.

¹⁹ There is no comparable program created by HR.2454.

- Petitions for eligibility can be filed by groups of workers, certified unions, or employers on behalf of workers. Petitions must be filed simultaneously with the Governor of the state in which the employment is located, and with the Secretary of Labor. The Governor shall ensure rapid response activities authorized under federal laws and assist the Secretary of Labor in the review of the petition.
- States receive administrative funds through a fiscal-year payment equal to 15% of funds made available for the state to carry out the section. The States shall not use more than 2/3 of this amount for the administration of the climate change adjustment assistance for workers program and not more than 1/3 for information and employment services. States also receive payment from the Secretary of Labor to provide employment services.
- The Secretary may enter into agreements with states or state agencies who will then cooperate with the Secretary and with other state and federal agencies to provide payments and services. These agreements require that the state submit certain information and data (e.g., program performance indicators) to the Secretary of Labor. In states where there is no such agreement, the Secretary shall promulgate regulations for the performance of the section.
- The Secretary shall make payments from the Treasury to cooperating states for the administration of this program.

Subtitle C: Adapting to Climate Change

Subpart B—Public Health and Climate Change

National Strategic Action Plan. (Sec. 353) The Secretary of Health and Human Services is required to consult with the states in developing a National Strategic Action Plan to assist health professionals in preparing for and responding to the impacts of climate change on public health. The Secretary is required to assist health professionals in responding to climate change, including through the development of health impact statements and response strategies at the state and local level; and through the development, implementation and support of state and local preparedness, communication and response plans to anticipate and reduce the health threats of climate change. In addition to this general mandate, the Secretary is required to perform specific activities²⁰ including providing funding for preparedness planning on the state and local level.

Subpart C—Climate Change Safeguards for Natural Resources Conservation

Natural Resources Climate Change Adaptation Strategy. (Sec. 366) The Natural Resources Climate Change Adaptation Strategy shall be developed by the Natural Resources Climate Change Adaptation Panel²¹ 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 plan shall include specific mechanisms for ensuring communication and coordination between federal departments and state natural resource agencies. The strategy is required to describe research, observation and

²⁰ HR.2454 Sec. 463 assigns these “specific activities” to the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention and the head of other relevant federal departments. Kerry-Boxer leaves the specific activities to the Secretary of Health and Human Services alone.

²¹ HR.2454 Secs. 475-76 give a greater role to the President in establishing this strategy, whereas Kerry-Boxer just requires the President to appoint the panel, which then establishes the strategy.

monitoring taking place at state and local levels, and to include specific mechanisms for ensuring communication and coordination between federal departments and state natural resource agencies.

Natural Resources Adaptation Science and Information. (Sec. 367) 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 agencies with research products, decision and monitoring tools, and information to help develop strategies to address these issues.

In addition, the Secretary of the Interior shall establish the National Climate Change and Wildlife Science Center within the United States Geological Survey. The center will work in collaboration with federal and state natural resources agencies and departments to assess and synthesize knowledge, prioritize scientific gaps in knowledge, develop models and scientific approaches to forecasting the impacts of climate change, and develop tools for adaptive management and monitoring. Within 180 days of the Act, the Secretaries of Commerce and Interior are required to establish a Science Advisory Board, including members who represent a balanced membership of state interests.

Federal Natural Resource Agency Adaptation Plans. (Sec. 368) Each federal agency is required to develop a natural resource adaptation plan that will be reviewed by the President and submitted to Congress for approval. The plans include a requirement to describe mechanisms for enhancing cooperation and coordination of natural resources adaptation efforts with state and local agencies.

State Natural Resources Adaptation Plans. (Sec. 369) In order to be eligible for natural resource allowance allocations, 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. 366. The Secretary of the Interior and, as applicable, the Secretary of Commerce have 180 days to approve the plan.²² Coastal states have additional requirements to address the impacts of climate change and ocean acidification on the coastal zone.²³

Natural Resources Climate Change Adaptation Fund. (Sec. 370) 38.5% of the amount available for each fiscal year to carry out this fund shall be available to the states.²⁴ Of the funds to states:

- 32.5% shall be available to state wildlife agencies in accordance with the Pittman-Robertson Wildlife Restoration Act apportionment formula.

²² The language of the requirements for these plans is slightly altered under Kerry-Boxer which refers to “ongoing and expected impacts of climate change”. HR.2454 Sec. 479 referred only to “impacts of climate change”. Kerry-Boxer also emphasizes “drought” and “flooding,” which were not spelled out in HR.2454. It also includes some new specific requirements for the plans such as a requirement that the states consider strategies that engage youth and young adults, and a requirement that the states include a timeframe for implementing conservation actions. There is also a requirement under Kerry-Boxer that the plan coordinate with state property insurance programs that was not included in HR.2454.

²³ The coastal requirements under Kerry-Boxer are slightly more demanding than under HR.2454 Sec. 479 requiring more measures and models.

²⁴ Unlike in HR.2454, under Kerry-Boxer, the funds available for state and federal natural resource adaptation are combined in a single fund, with 38.5% going to the states. Within this allocation for state adaptation, the breakdown of funds remains the same as it was in HR.2454: 84.4 % to State wildlife agencies and 15.6% to State coastal agencies.

- 6% shall be available to state coastal agencies under the Coastal Management Act apportionment formula.

12% of the fund is deposited into the Land and Water Conservation Fund Act of 1965.²⁵ Of these funds:

- One sixth shall be allocated to the Secretary of the Interior to make available on a competitive basis to states in accordance with their natural resource adaptation plans.
- One sixth shall be allocated to the Secretary of Agriculture to make available to states to carry out natural resources adaptation activities through the acquisition of land and interests in land under the Cooperative Forestry Assistance Act.

Includes a 10% cost sharing provision, requiring states to use funds from non-federal sources to pay for 10% of each activity carried out under the grant.

National Wildlife Habitat and Corridors Information Program. (Sec. 371) Establishes a program in the Department of the Interior to support states and tribes in the development of a Geographic Information System (GIS) database of fish and wildlife habitat corridors, and to facilitate the use of database tools in wildlife management programs with the aim of informing planning and development decisions within each state 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.

Subpart D—Additional Climate Change Adaptation Programs

Water System Mitigation and Adaptation Partnerships. (Sec. 381)²⁶ Requires EPA to establish a program to provide funds to states for water system adaptation projects. Beginning in 2010, each state receiving funds will make grants to owners and operators of water systems to mitigate or adapt to the impacts of climate change. Funds are to be used exclusively to assist in the planning, design, construction, implementation, operation or maintenance of projects that increase the resilience of a water system to climate change. Owners of water systems wishing to receive funds must supply the state with a proposal citing recent research and data. Grants shall be distributed on a competitive basis by the states. Includes a 50% cost sharing provision, requiring states to use funds from non-federal sources to pay for 50% of each activity carried out under the grant.

Flood Control, Protection, Prevention and Response. (Sec. 382)²⁷ Requires EPA to establish a program to provide funds to states for flood control, protection, prevention, and response projects. States may use funds to address projected impacts of climate change, including climate-related increases in the duration, frequency, or magnitude of rainfall or runoff, including snowmelt runoff and hurricanes.

Wildfire. (Sec. 383)²⁸ Cost-share grants are available to local “fire-ready communities”—which have fulfilled the requirements of a cooperative fire agreement, local fire codes, a community wildfire protection plan, and additional collaborative processes—to assist in wildfire protection practices

²⁵ In HR.2454 Sec. 480, this was 19.5%.

²⁶ There is no comparable program created by HR.2454.

²⁷ There is no comparable program created by HR.2454.

²⁸ There is no comparable program created by HR.2454.

including education programs for citizens, training programs for local firefighters, acquisition of equipment to facilitate wildland fire preparedness, the implementation of community protection plans, and forest restoration to accomplish fuel reduction. In developing such a cost-share agreement, the Secretaries of Agriculture and Interior shall encourage the state and local communities to become fire-ready communities.

Coastal and Great Lakes State Adaptation Program. (Sec. 384²⁹) Coastal State economic protection funding shall be distributed among coastal states to plan for and address the impacts of climate change in the coastal watershed. The funds shall be distributed among states with:

- 25% based on proportion of shoreline miles.
- 25% based on population. and
- 50% divided equally between all coastal states.

In carrying out this subsection, a coastal state shall coordinate with other statewide climate change efforts in order to avoid duplication of such efforts. The states are required to submit regular reports providing a full accounting of the funding.

Division B – Pollution Reduction and Investment

Title I – Reducing Global Warming Pollution

Subtitle A – Reducing Global Warming Pollution

(Secs. 101-103) Amends the Clean Air Act to add Title VII to establish a declining limit on greenhouse gases.

CAA Title VII – Global Warming Pollution Reduction and Investment Program

Part A: Global Warming Pollution Reduction Goals and Targets

(CAA Secs. 702, 703, 711) This title creates economy-wide GHG emissions reduction goals, decreasing 3% below 2005 levels in 2012, 20% below 2005 levels in 2020; 42% below 2005 levels in 2030; and 83% below 2005 levels in 2050. It then applies these same targets to sources covered by the cap-and-trade program defined in this title.

- The six Kyoto gases are covered, plus NF_3 and any other anthropogenic gas designated as a GHG by the EPA.
- The program covers a hybrid of up-, down-, and mid-stream sources, with some sources phasing in over the first 5 years of the program.
- Along with other cost-containment mechanisms, limited domestic and international offsets are allowed (up to 2 billion compliance tons annually). International offsets may only be used for 1/4 of these 2 billion tons,³⁰ and are worth only 80% of an allowance.³¹

Greenhouse gas registry. (CAA Sec. 713; same treatment as HR.2454.) Within 6 months of enactment, the EPA shall issue regulations establishing a federal GHG registry that takes 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 multi-state authorized programs. Regulations shall include an

²⁹ There is no comparable program created by HR.2454.

³⁰ This proportion may be changed if the Administrator determines that availability of domestic offsets is limited.

³¹ This treatment varies slightly from HR.2454, which did not discount international allowances until 2018.

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.

Savings provision. (CAA Sec. 721; same treatment as HR.2454) Nothing in this title shall be construed as:

- affecting or requiring a change in any state law regulating electric utility rates and charges;
- limiting state regulation under such a state law;
- modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission (FERC) under that Act; or
- interfering with or impairing any program for competitive bidding for power supply in a state in which such a program is established.

Permits. (CAA Sec. 727; same treatment as HR.2454) For covered entities that are stationary sources subject to Title V of the CAA, the cap-and-trade program is implemented by permits issued by the EPA or a state with an approved permit program in accordance with Title V.

Offset Audits. (CAA Sec. 738) The President³² will conduct audits of offset projects and credits and third-party verifiers, but may delegate this responsibility to a state or tribal government.

Early offset supply. (CAA Sec. 740) The President³³ will issue an offset credit for each credit issued for an offset project started after January 1, 2001, under any regulatory or voluntary GHG offset program established by state or tribal law or regulation prior to January 1, 2009 (and for offsets issued by other programs that are at least as stringent), provided that the program:

- has developed offset project type standards, methodologies, and protocols through a public consultation process or peer review, and has made these available to the public;
- requires verification by a state regulatory agency or accredited third party;
- require that all credits are registered in a publicly accessible registry; and
- ensures that no credits are issued for reductions funded or solicited by the entity administering the program.

(Offset credits that have expired or been retired, cancelled, or used for compliance are not eligible, and early offset credits will only be issued for three years after enactment.)

Subtitle B – Disposition of Allowances

(Sec. 111.) Amends Title VII to add the following (CAA Secs. 771-783) Allowances are allocated and auctioned for a variety of purposes, with levels not yet specified.

Allocation of allowances to states. States will receive allowances to:

- Protect consumers from home heating oil and propane price increases. (Sec. 774.)
- Make investments in renewable energy and energy efficiency.³⁴ (Sec. 202 of division B.) 62.5% of these allowances will be provided to the states (of which 30% will be divided equally among states, 30% will be distributed based on population, 30% will be distributed based on energy consumption, and 10% will be based on an energy-efficiency formula developed by the EPA). 25% of these

³² While HR.2454 assigned audit responsibility to the EPA rather than the President, the potential for delegation to states is the same.

³³ While HR.2454 assigned responsibility for this issuing early offset credits to the EPA rather than the President, the provision is otherwise the same.

³⁴ Note that this program replaces the SEED program described in HR.2454.

allowances will be provided to local governments, 10% reserved by the Department of Transportation for grants to states and metropolitan planning organizations for GHG reductions in the transportation sector, and 2.5% provided to renewable energy generating companies.³⁵

- Implement and enforce energy-efficient building codes. (Sec. 163 of division A and Sec. 203 of division B.)³⁶

Contingent allocation of allowances to states. In addition, states may receive allowances for the following program if they meet eligibility requirements:

- **Retrofit for energy and environmental performance** (Sec. 164 of division A and Sec. 204 of division B)

Auction revenue provided to states. States will receive funds from the auction of allowances for the following purposes:

- Investment in energy efficiency and renewable energy (Sec. 202 of division B)
 - Programs for greenhouse gas reduction and climate change adaptation (Sec. 211 of division B)
- From 2012-2050, 25% of allowances will be auctioned with the proceeds dedicated to ensuring that the program does not contribute to the deficit.

Exchange for state-issued allowances. (CAA Sec. 777; same treatment as HR.2454) Any person in the U.S. will be allowed to exchange GHG emission allowances issued before December 31, 2011 by the state of California, the Regional Greenhouse Gas Initiative (RGGI), or the Western Climate Initiative (“state allowances”) 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 in the year in which the allowance was issued.

Early action recognition (CAA Sec. 782; same treatment as HR.2454 CAA Sec. 795) Offset credits issued by a state or voluntary offset program before January 1, 2009 for activities in the U.S. from January 1, 2001–January 1, 2009, may be exchanged for emissions allowances. The number of allowances given will be based on the average monetary value of the credits from January 1, 2006–January 1, 2009, adjusted for inflation, with 0.75% of 2012 allowances distributed for this purpose. Other documented GHG reductions or sequestration resulting from actions in the U.S. in the same time period are also eligible for allowances, with the amount based on the CO₂/ton value received by entities in exchange for credits (adjusted for inflation), with 0.25% of 2012 allowances distributed for this purpose. (The credits are then retired.)

Subtitle C – Additional Greenhouse Gas Standards

(Sec. 121.) Amends the Clean Air Act to add Title VIII to achieve additional greenhouse gas reductions outside of Title VII.

³⁵ This formula is described in Division B, Sec. 202.

³⁶ In contrast to HR.2454 Sec. 201, Kerry-Boxer does not expressly make the receipt of funds for the purpose of implementing energy efficient building codes conditional on state adoption or enforcement of building codes meeting national standards. However, Kerry-Boxer's broad grant of discretion to the EPA to adopt national energy efficiency building codes authorizes the EPA to “include provisions for state adoption of the national building code standards and certification of state programs,” and this language might authorize conditional or qualified distribution of emissions allowances under Kerry-Boxer, Division B, Sec. 203.

CAA Title VIII – Additional Greenhouse Gas Standards

Part A – Stationary Source Standards

HFC Regulation. (Sec. 122) Amends Title VI of the Clean Air Act by adding a new section 619 to phase down the consumption of hydrofluorocarbons (HFCs) under a separate cap under a separate limit and reduction schedule. The section states that in relation to state laws, these requirements be treated as requirements for the control and abatement of air pollution.

States. (Sec. 124; same treatment as HR.2454 Sec. 334) Section 116 of the Clean Air Act is modified to state explicitly 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 provisions to limit GHG emissions, and to require the surrender of federal emission allowances or offset credits.

State programs. (Sec. 125) Adds to Title VIII of the Clean Air Act a section 861, which prevents states (or political subdivisions of a state) from implementing or enforcing a cap-and-trade program that covers any federally capped emissions in the years 2012-2017 if a federal auction has been conducted by March 31, 2011. If this deadline is not met, the preemption begins nine months after the first federal auction and continues through the end of 2017.³⁷

- The preemption does not include, among other things, a target or limit on greenhouse gases implemented through means other than cap and trade or fleet-wide motor vehicle emission requirements that allow greater emissions with increased vehicle production, or requirements that fuels, or other products, meet an average pollution emission rate or lifecycle greenhouse gas standard.

Adds to Title VIII of the Clean Air Act a section 862, which allows the Administrator to make grants to state air pollution agencies for purposes of assisting in the implementation of the Act.

Title II – Program Allocations

Title II describes the formulae by which allowances will be distributed among recipients for each of the programs described above.

³⁷ The inclusion of a deadline for a federal allowance auction in Kerry-Boxer is a significant change from HR.2454 Sec. 861, and ensures that states will not be preempted in the absence of an operational federal cap-and-trade program.