

Climate Change Legislation Before Congress: Key Legal Provisions

BILL	H.R. 2454: American Clean Energy & Security Act	KERRY-BOXER: Clean Energy Jobs & American Power Act	CANTWELL-COLLINS: Carbon Limits & Energy for Am.'s Renewal	KERRY-LIEBERMAN: American Power Act
Status	ACESA passed House on June 26, 2009.	Reported out of EPW Committee on Nov. 5, 2009.	Introduced to Senate on Dec. 11, 2009.	Introduced to Senate on May 12, 2010.
Covered Entities	Manufacturing, utilities, and fuel producers and importers with 25,000 tons or more annually of attributable emissions in carbon dioxide equivalent. About 13,000 entities.	Manufacturing, utilities, and fuel producers and importers with 25,000 tons or more annually of attributable emissions in carbon dioxide equivalent. About 13,000 entities.	2,000 to 3,000 fossil fuel producers of coal, natural gas and oil.	Utilities beginning in 2013; manufacturing phased-in in 2016; linked fee for transportation fuels starting in 2013. About 13,000 entities.
GHG Emissions Reductions Versus 2005 Baseline	2012, 3% 2020, 17% 2030, 42% 2050, 83%	2012, 3% 2020, 20% 2030, 42% 2050, 83%	2020, 20% 2025, 30% 2030, 42% 2050, 83%	2013, 4.75% 2020, 17% 2030 42% 2050, 80%
PREEMPTION AND DISPLACEMENT OF STATE AND EPA AUTHORITY				
New Source Review (NSR)	NSR will not apply to facility initially permitted or modified after January 1, 2009 on the basis of its GHG emissions.	NSR will be triggered by emissions of GHG greater than 25,000 tons per year of carbon dioxide equivalent.	Not preempted.	NSR will not apply to facility initially permitted or modified after Jan. 1, 2009 on the basis of its GHG emissions; GHG BACT may still apply to sources subject to PSD based on other pollutants.
National Ambient Air Quality Standard (NAAQS)	GHGs may not be listed as criteria pollutants on basis of their effects on climate change.	GHGs may not be listed as criteria pollutants on basis of their effects on climate change.	Not preempted.	GHGs may not be listed as criteria pollutants on basis of their effects on climate change or their effects on ocean acidification.
Title V Operating Permit Program	Permit not required due to GHG emissions based on impact to climate change.	Permit not required due to GHG emissions based on impact to climate change.	Not preempted.	Permit not required due to GHG emissions based on impact to climate change.

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New Source Performance Standards (NSPS)	No NSPS for capped sources on basis of their effects on climate change. EPA required to issue NSPS for sources emitting 10,000 to 25,000 tons of GHG per year. New coal power plants subject to strict performance standards.	No NSPS until 2020 for uncapped sources that qualify for offsets. Otherwise no preemption. New coal power plants subject to strict performance standards.	Not preempted.	No NSPS for capped sources apart from EGUs, although EPA may consider GHGs in establishing NSPS for other pollutant. NSPS retained for uncapped sources. New coal power plants subject to strict performance standards.
Hazardous Air Pollutants (HAPs)	GHGs may not be listed as HAPs on basis of their effects on climate change.	GHGs may not be listed as HAPs on basis of their effects on climate change.	Not preempted.	GHGs may not be listed as HAPs on basis of their effects on climate change or ocean acidification.
International Air Pollution (CAA § 115)	§ 115 does not apply to GHGs on basis of their effects on climate change.	§ 115 does not apply to GHGs on basis of their effects on climate change.	Not preempted.	§ 115 does not apply to GHGs on basis of their effects on climate change or ocean acidification.
State Regulation	State GHG cap & trade programs are prohibited from 2012-2017. Other types of state GHG limiting programs are allowed including state performance standards, renewable electricity standards, and low carbon fuel standards.	State GHG cap & trade programs are prohibited from 2012-2017. Other types of state GHG limiting programs are allowed including state performance standards, renewable electricity standards, and low carbon fuel standards.	Not preempted.	State GHG cap & trade programs are prohibited. Other types of state GHG limiting programs are allowed including state performance standards, renewable electricity standards, and low carbon fuel standards.

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NEPA/CWA/ ESA	Not preempted.	Not preempted.	Not preempted.	Not preempted.
Climate Tort Suits	Not preempted.	Not preempted.	Not preempted.	Not preempted.
OFFSETS				
Offsets Cap	2 billion tons per year.	2 billion tons per year.	No offsets.	2 billion tons per year.
International Offsets	Capped at 1 billion tons, with the exception that when there are insufficient domestic offsets the cap may rise to 1.5 billion tons. After 2017, 1.25 international offsets needed to equal 1 domestic offset.	Capped at 500 million tons, with the exception that when there are insufficient domestic offsets the cap may rise to 1.25 billion tons. After 2017, 1.25 international offsets needed to equal 1 domestic offset.	No offsets.	Capped at 500 million tons, with the exception that when there are insufficient domestic offsets the cap may rise to 1.5 billion tons. After 2017, 1.25 international offsets needed to equal 1 domestic offset.
Administering Agency	USDA Secretary as “appropriate official” for “domestic agricultural and forestry sources” and EPA for all others.	President, “in consultation with appropriate Federal agencies.”	No offsets.	USDA Secretary as “appropriate official” for “any domestic agriculture or forest offset project,” and EPA for all others.
AUCTION PROVISIONS				
Allowance Price Floor	Sets an escalating allowance price floor, with an initial price of \$10/ton, and increasing at inflation plus 5%.	Sets an escalating allowance price floor, with an initial price of \$10/ton, and increasing at inflation rate plus 5%.	Sets an escalating permit price floor, with an initial price of \$7/ton, and increasing at inflation, plus the rate of capital investment return, plus 0.5%.	Sets an escalating allowance price floor, with an initial price of \$12/ton, and increasing at inflation rate plus 3%.

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Allowance Price Ceiling	No ceiling on prices. Uses a “strategic reserve pool” to stabilize prices when they exceed 60% of the historical price. Strategic Reserve allowances are pulled from the overall allowance pool, thus tightening the overall emissions cap.	No ceiling on prices. Uses a “strategic reserve pool” to stabilize prices when they exceed 60% of the historical price. Strategic Reserve allowances are pulled from the overall allowance pool, thus tightening the overall emissions cap.	Sets an escalating permit price ceiling, with an initial price of \$21/ton, and increasing at inflation, plus the rate of capital investment return, plus 0.5%.	Sets an escalating allowance price floor, with an initial price of \$25/ton, and increasing at inflation rate plus 5%.
OTHER PROVISIONS				
Trade-Related Provisions	Allocates free allowances to carbon- and trade-intensive US industries to discourage carbon leakage, with possible imposition starting in 2020 of allowance requirement on imports at border.	Allocates free allowances to carbon- and trade-intensive US industries to discourage carbon leakage, with placeholder for possible imposition of border measures.	Requires border equalization fees for the “production-process carbon” in imported, energy-intensive commodities.	Allocates free allowances to carbon- and trade-intensive US industries to discourage carbon leakage, with possible imposition of allowance requirement on imports at border.
Lowering Cap Threshold	In 2020, EPA may lower cap threshold to 10,000 tons.	In 2020, EPA may lower cap threshold to 10,000 tons.	No EPA process to lower threshold.	In 2020, EPA may lower cap threshold to 10,000 tons.
GHG Reporting	Reporting required for all sources with 10,000 tons or more annually of attributable emissions in carbon dioxide equivalent.	Reporting required for all sources with 10,000 tons or more annually of attributable emissions in carbon dioxide equivalent.	No reporting provision.	Reporting required for all sources with 25,000 tons or more annually of attributable emissions in carbon dioxide equivalent. EPA directed to consider lowering threshold.