Waxman-Markey
American Clean Energy and Security (ACES) Act of 2009

Implications for States

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Waxman-Markey State-Relevant Provisions

Four titles: clean energy, energy efficiency, global warming pollution, and transitioning to a clean energy economy

Some key state-relevant provisions:

- Combined efficiency and renewable electricity standard
- SEED funds
- Building codes
- Transportation efficiency
- Greenhouse gas registry
- Cap and trade

Combined Efficiency and Renewable Electricity Standard

20% by 2020, at least ¾ renewables

- States may petition
  - To increase the proportion of the target that comes from efficiency to 2/5
  - For delegation of authority to review and verify electricity savings
- Alternative compliance payments ($25/MWh) directly to states
- Savings provisions
  - States retain authority to adopt and enforce laws and regulations regarding renewable electricity and to regulate the use of federal RECs within their jurisdictions

State Energy and Environment Development (SEED) Funds

State funds for managing and accounting for federal clean energy, energy efficiency and climate change $

- Allowances given to states for energy efficiency and renewable energy purposes deposited here
  - 9.5% of allowances for EERE plus 0.5% for states with complying building codes
  - EERE allowances distributed 1/3 equally among states, 1/3 by population, 1/3 by energy consumption
  - Minimum % of allowances for various purposes specified, including distribution to local governments
- Annual plan for intended uses, and biannual report on activities required

Building Codes

New national target for average % improvements in building energy performance: 30% in 2010, 50% in 2014, additional 5% every 3 years

- National building codes established to meet targets
- States review and update codes or adopt national code
- States certify that code meets standards
- States certify that achieved compliance (90% of new and substantially renovated building space meets code)
- If in compliance, 0.5% of allowances
- If not in compliance, lose eligibility for other “excess funding” streams

Transportation Efficiency

States submit goals for transportation-related GHG emissions reductions to EPA

- States ensure that MPOs submit plan for achieving goals to EPA/DOT
- If a state fails to submit goals or ensure the submission of a plan for any area in the state, EPA may impose a prohibition on DOT approval of projects or grant awards.
  - Not based on content or adequacy of goal/plan, or failure to achieve goal.
- EPA and DOT may award competitive grants to MPOs to develop or implement plans.
- States maintain authority to plan or control land use.

Greenhouse Gas Registry

Within 6 months, EPA establishes a federal GHG registry

- Takes into account best practices from federal, state, tribal, and international protocols, including protocols from the Climate Registry and other mandatory state or multi-state authorized programs.
- Reporting begins in 2011 for the years 2007-2010, and is required quarterly starting in 2011.

Cap and Trade: Early Offsets

Offset credit issued for each credit issued under any state regulatory or voluntary GHG offset program established prior to January 1, 2009, provided that the program:

- has developed 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 3rd party;
- requires 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.

Cap and Trade: Allowance Allocation to States

States directly receive allowances to:

- **Make investments in renewable energy and energy efficiency**
  - 9.5% of allowances from 2012 through 2015; decreasing to 4.5% in 2022 and later
- **Protect consumers from home heating oil and propane price increases**
  - 1.875% of allowances in years 2012, declining to 0.3% in year 2029

States may receive allowances/allowance revenue for:

- **Greater Efficiency in Building Codes**
  - 0.5% of allowances: State must certify that it has complied with or made significant progress towards complying with energy efficiency building codes
- **State Programs to Build Resilience to Climate Change Impacts**
  - Contingent on the approval of a State Climate Change Adaptation Strategy. States will receive 0.9% from 2012-2021; 1.9% from 2022-2026; 3.9% from 2027-2050.
- **Natural Resources Adaptation**
  - Contingent on approval of State Natural Resource Adaptation Plans. Natural resources adaptation shall receive 1% of allowances from 2012-2021, 2% from 2022-2026; and 4% from 2027-2050. 38.5% of this funding goes to state agencies each year.

Cap and Trade: State-Issued Allowances

Any person in the U.S. can exchange GHG emission allowances issued before December 31, 2011 by California, RGGI, or WCI 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.

Cap and Trade: State GHG Standards

Modification to Clean Air Act: 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 capping GHG emissions and requiring the surrender of emission allowances or offset credits to demonstrate compliance with state requirements.

- However, the Act preempts states from implementing or enforcing a cap-and-trade program that covers any federally capped emissions in the years 2012-2017.
- Preemption does not include a target/limit on greenhouse gases implemented through means other than cap and trade

Questions?

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