



# Overview of the American Clean Energy and Security Act

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**Environmental  
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# Van Ness Feldman

- n Energy, environment, and natural resources law firm
- n Leading climate change and emissions trading practice
  - § Emissions trading transactions
  - § Regulatory advice
  - § Policy advocacy

# Coalition for Emission Reduction Projects (CERP)

- n American Electric Power
- n Blue Source\*
- n C-Quest Capital
- n C-Trade
- n Deutsche Bank
- n Dominion\*
- n DTE Energy\*
- n Duke Energy\*
- n EcoSecurities\*
- n Element Markets\*
- n El Paso Corporation
- n Environmental Credit Corp
- n Equator LLC\*
- n John Deere
- n Leaf Clean Energy Company
- n MGM International
- n Natsource
- n Noble Carbon Credits
- n PG&E
- n Stark Investments

\* EMA members

# Status of ACES

- n Reported from the House Energy & Commerce Committee
- n Six weeks of negotiations before mark-up
- n 87 amendments offered during mark-up; 33 accepted
- n Reported by a vote of 33-25

# RES/Efficiency Standard

## n Standard

- § Starting in 2012, 6% of a retail supplier's base must come from renewables or "energy savings"
- § Starting in 2020, requirement is 20%
- § At least  $\frac{3}{4}$  of requirement must be met through renewables

## n Eligible sources

- § Wind, solar, geothermal, qualified hydropower, marine and hydrokinetic energy, landfill gas, and certain types of biomass
- § Waste energy allowable under certain conditions

## n Compliance through submission of RECs

## n States still can enforce own RPS, RES

# Other Clean Energy Provisions

## n Carbon Capture and Sequestration

- § Regulations for sites

- § Demonstration program funded by fee on generation (Boucher programs)

- § Bonus allowances for commercial deployment

## n Performance standards for new coal-fired power plants

- § Permitted after January 1, 2020

  - § Must capture 65%

- § Possible requirements for plants permitted 2009-2015

  - § 50% capture requirement

# Clean Energy Development Administration

## n Funding for clean energy resources

- § loan guarantees

- § additional credit enhancements for clean energy resources

## n Open to any form of technology

- § But no technology can receive more than 30% of total

# Cap-and-Trade Program: Targets and Timetables

- n 2012: 3% below 2005 levels
- n 2020: 17% below 2005 levels
  - § Original draft: 20%
  - § Obama proposal: 14%
- n 2030: 42% below 2005 levels
- n 2050: 83% below 2005 levels

# Distribution of Allowances

- n Electric power sector (mostly to LDCs)\*
- n Natural gas LDCs\*
- n Trade-sensitive industry rebates\*
- n Refiners\*
- n CCS incentives
- n Promotion of clean energy and efficiency
- n Supplemental reductions from international forestry activities
- n Low-income assistance

\* *Transitions to auction*

# Offsets

- n 2 billion ton limit

  - § Translates into 30% limit on use

- n 50/50 domestic and international split

  - § Up to 1.5 billion tons international if EPA determines that domestic supply < 0.9 billion tons

- n Credit for 2009-2012 reductions under EPA-approved programs

- n International offset credits

  - § 5:4 penalty on use starting in 2018

  - § Host country agreement required

  - § Emphasis on “sectoral” crediting for major countries

  - § International forestry

# Market Oversight

## n FERC regulation of spot markets

- § Can impose position limits or margin requirements
- § Standards for trading facilities and clearing organizations

## n Regulation of derivatives

- § President to designate regulator agency; CFTC has “backstop” authority
- § Default rules
  - § No market participant can control more than 10% of open interest in a derivative
  - § All derivative contracts must be executed on a regulated exchange
- § “Offset creation contracts” are excluded from derivative definition

# Other Key Provisions

## n Strategic reserve allowances

- § Limited reserve of future vintage allowances periodically auctioned to moderate price volatility
- § Reserve can be replenished with international forest offset credits
- § Auction price
  - § 2012: \$28
  - § Starting in 2015: 60% higher than average price in previous 36 months

## n Limited preemption of state climate programs

- § States may not have cap-and-trade programs for sources capped under federal program for 2012-2017
- § Still may enforce other climate policies (standards)

# Next Steps for ACES

## n Other committees

- § Ways & Means

- § Agriculture

## n Floor vote

- § Possibly before July 4

## n Senate

- § Timetable and pathway is unclear



For more information

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