

DRAFT COMPARISON OF KEY GENERAL PROVISIONS OF H.R. 2454 “THE AMERICAN CLEAN ENERGY SECURITY ACT OF 2009” (ACESA); S.1733, “THE CLEAN ENERGY JOBS AND AMERICAN POWER ACT” (discussion draft released September 30, 2009) (CEJAPA-DD); S.1733 (chair’s mark released October 23, 2009) (CEJAPA-Oct 23rd Mark); S. 1733 (chair’s mark released October 30, 2009) (CEJAPA Oct. 30th Mark); and the American Power Act/Kerry-Lieberman Bill (draft released May 12, 2010) (APA)

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GHG Emissions Cap/Reduction Goals	§§702-703, 721	<p>Within 2 years of enactment, the U.S. Environmental Protection Agency (EPA) must promulgate regulations to cap and reduce GHG emissions annually to the following levels:</p> <ul style="list-style-type: none"> • 3% below 2005 level in 2012 • 17% below 2005 level in 2020 • 42% below 2005 level in 2030 • 83% below 2005 level in 	§§702 (economy-wide reduction goals) and 703 (cap on specified sources)	Same, with the exception of the 2020 level (20% below 2005 level)	§ 3(economy-wide reduction goals)	Same	Same	Same	§2001	<p><u>Aspirational economy wide goals:</u></p> <ul style="list-style-type: none"> • 4.75% below 2005 level in 2013 • 17% below 2005 level in 2020 • 42% below 2005 level in 2030 • 83% below 2005 level in 2050 <p><u>Binding reduction targets for specified sources (“capped sources”):</u></p> <p>Same as above.</p> <p>Additionally, the “findings” section of the cap-and-trade</p>

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		2050								<p>section of the legislation refers to “climate change” instead of “global warming.” The term “global warming” was used, for example, in the Boxer bill.</p> <p>Finally, provisions in the Boxer bill requiring NAS studies of the sufficiency of GHG technology controls and compelling agencies to respond have been struck.</p>
Regulated GHGs	§ 711	<ul style="list-style-type: none"> The following gases are designated as GHGs: carbon dioxide (CO₂), methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons emitted from a chemical manufacturing 	Same	Same	Same	Definition of perfluorocarbon is modified to provide that Act covers and “perfluorocarbon that is an anthropogenic gas 1 metric ton of which makes the same or greater contribution to global warming over 100 years as 1	Same	Same	§2001	<p>Functionally identical, however, in comparison to the Boxer bill:</p> <ul style="list-style-type: none"> HFCs are defined with respect to a “stationary source” (compare Boxer, which referred to “industrial stationary source”)

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		<p>process at an industrial stationary source, any perfluorocarbon, and nitrogen trifluoride.</p> <ul style="list-style-type: none"> EPA on its own motion or as a result of a third-party petition may designate any other anthropogenic gas as a GHG provided that such gas has a global warming potential (GWP) greater than 1. 				metric ton of carbon dioxide”				<ul style="list-style-type: none"> Boxer’s reference to “[a]ny other anthropogenic gas” designated by EPA as a GHG has been dropped. (This deletion may be meaningless as EPA can still list other gases as GHGs.) Boxer’s requirement that the SAB be consulted on GHG designation matters has been dropped.

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Global Warming Potential	§ 712	Subject to periodic EPA review, the Act provides the GWPs of regulated GHGs. The Act uses the 100-year GWPs established by the IPCC in its Fourth Assessment Report and specifies that such GWPs shall be used for any GHG not initially listed in § 712.	Same	Same	Same	Same	Same	Same	§2001	Same
GHG Registry	§ 713	<ul style="list-style-type: none"> The Act requires EPA to establish a GHG registry within 6 months after enactment. “Reporting entities” are required to submit GHG emissions data to the registry. Reporting entities include entities subject 	Same	Same	Same	The provisions are the same, with the following exception: <ul style="list-style-type: none"> Provides beefed up protection to industry when CBI is to be provided to an Indian tribe in furtherance of the registry 	Same	Same	§2001	Functionally identical, however, in comparison to the Boxer bill: <ul style="list-style-type: none"> The definition of “reporting entity,” with respect to entities that deliver power to an energy-intensive facility, has been revised and broadened to include refiners, for example. The definition of

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		<p>to regulation under the Act's emission cap as well as any entity that, in 2008 or thereafter, emitted greater than 10,000 MtCO_{2e}.</p> <ul style="list-style-type: none"> Reporting on CCS is included and measurement protocols for CCS must be developed. 								<p>“reporting entity” is broadened by adding the new category of entity: “Any stationary source that produces, and any entity that (or group of 2 or more affiliated entities that, in the aggregate) imports, for sale or distribution in commerce in 2008 or any subsequent year, petroleum-based or coal-based liquid fuel, biofuels, or natural gas liquid, the combustion of which would emit more than 25,000 tons of carbon dioxide equivalent, as determined by the Administrator.”</p> <ul style="list-style-type: none"> The following language in the definition of

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										<p>“reporting entity” has been dropped: “provided that the figure of 25,000 tons of carbon dioxide equivalent is read instead as 10,000 tons of carbon dioxide equivalent and the figure of 460,000,000 cubic feet is read instead as 184,000,000 cubic feet”</p> <ul style="list-style-type: none"> • Deadlines for regulatory action have been relaxed and extended (to 18 months from 6 months, for example) • Language has been added to require reporting on “biomass-related emissions” for compliance purposes • CCS reporting is

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										<p>clarified to strike the reference to separate EPA regulation of storage</p> <p>Reporting on CCS is also authorized, but EPA has already proposed to require such reporting anyway.</p> <p>With respect to protocols, it seems that EPA only has to consider mandatory or government-based protocols. Industry developed protocols are not required to be considered (this is the same language as the Boxer bill).</p>
Emission Allowances	§ 721	<ul style="list-style-type: none"> The Act sets forth the number of emission allowances for each calendar year from 	Same	<p>The provisions are the same, with the following exceptions:</p> <ul style="list-style-type: none"> Changes have been made to 	Same	<p>The provisions are the same, with the following exception:</p> <ul style="list-style-type: none"> Changes have been made to the number of 	Same	Same	§2001	<p>Functionally identical, however, in comparison to the Boxer bill:</p> <ul style="list-style-type: none"> Allowances are allocated beginning in 2013

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		2012-2050 under the assumption that U.S. GHG emissions in 2005 were 7,206 MMtCO ₂ e. <ul style="list-style-type: none"> • EPA may adjust the cap by rule if it determines that 2005 emissions were not 7,206 MMtCO₂e. EPA may exercise such authority only once. • EPA may terminate or limit allowances or credits. • The Act states that an “emission allowance” established by the EPA Administrator does not constitute a 		the number of allowances for years 2017 through 2029. <ul style="list-style-type: none"> • The reference to offset credits’ lack of property rights status has been moved elsewhere in the bill; the blanket provision regarding the status of “other instruments” has been deleted. 		allowances for years 2017 through 2029.				(instead of 2012) <ul style="list-style-type: none"> • Per calendar year allocations are generally different • Bracketed text is used in provisions dealing with numerical thresholds for revising issuance of allowances

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		property right (nor does an offset credit or any other instrument established or issued under the Act).								
Compensatory Allowances	§ 721(f)	The Act requires EPA to promulgate regulations establishing “compensatory allowances” for the following activities that occur in or after 2012: <ul style="list-style-type: none"> • The destruction of fluorinated gases that are GHGs if such gases were otherwise not required to be destroyed and if emissions allowances or offset credits were retired for their production; 	Same	Same	Same	Same	Same	Same	§2001	Functionally identical, however, in comparison to the Boxer bill: <ul style="list-style-type: none"> • Allowances are allocated beginning in 2013 (instead of 2012) • Provisions added for international aviation

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		<ul style="list-style-type: none"> The conversionary use of fluorinated gases in a manufacturing process if emissions allowances or offset credits were retired for their production or importation; and The nonemissive use of petroleum-based or coal-based liquid or gaseous fuel, petroleum coke, LNG or natural gas as a feedstock if emission allowances or offset credits were retired for their combustion. 								
Covered	§ 722	The cap regulates	§ 722	Provisions	Same	The provisions are	Same	Same	§2001	Functionally

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Entities	§ 700 (12)	the following downstream and upstream sources: <ul style="list-style-type: none"> • Any electricity source. (downstream) • Producers and importers of petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid (LNG) the combustion of which would emit ≥ 25,000 MtCO_{2e}. (upstream) • Producers and importers of ≥ 25,000 MtCO_{2e} of fossil-fuel based CO₂, nitrous oxide, and fluorinated gases. (upstream) • Any stationary source that 	§ 700 (13)	related to ownership of natural gas for compliance purposes have been altered.		the same, with the following exceptions: <ul style="list-style-type: none"> • For industrial gas producers and importers, fugitive emissions have been deleted. • For algae-based fuels, the methodology used to determine the number of allowances to be held has been modified. 				identical, however, in comparison to the Boxer bill: <ul style="list-style-type: none"> • Prohibitions begin in 2013 (instead of 2012) • New mechanism created for “a covered entity that is a refined product provider” to reflect that such entities will be purchasing their allowances directly from EPA; definition of “refined product” is provided • For a covered entity that is an electricity source, emissions from the combustion of the following fuels now must be considered: (i) petroleum- or coal-based liquid fuels, (ii) NGLs, and (iii) petcoke

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		<p>emits \geq 25,000 MtCO₂e of nitrogen trifluoride. (downstream)</p> <ul style="list-style-type: none"> • Geological sequestration sites. (downstream) • Industrial stationary sources as follows (downstream): <ul style="list-style-type: none"> ➤ Sources in specified industrial sectors, including cement production and petroleum refining; ➤ Sources in the chemical or petrochemical sectors that manufacture 								<ul style="list-style-type: none"> • Provisions added for “refined product providers” • For a covered entity that is an industrial stationary source, emissions from the combustion of fuels such as NGLs must now be included • For a covered entity that is an industrial fossil fuel-fired combustion device, emissions from the combustion of fuels such as NGLs must now be included • Petcoke has been dropped from the export exemption • A “rounding up” methodology has been added to ensure that anything less than

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		<p>acrylonitrile, carbon black, ethylene, ethylene dichloride, ethylene oxide, or methanol; and</p> <ul style="list-style-type: none"> ➤ Stationary sources in certain industrial sectors (e.g., iron and steel, pulp and paper) that emit ≥ 25,000 MtCO₂e. • Industrial fossil fuel-fired combustion devices that emit ≥ 25,000 MtCO₂e at an industrial source in the NAICS manufacturing codes (31-33) 							<p>1 on is treated as 1 ton</p>	

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		<p>that is not otherwise covered as a stationary source. (downstream)</p> <ul style="list-style-type: none"> Natural gas local distribution companies that deliver 460 million ft³ or more of natural gas to customers that are not otherwise covered by the cap. (upstream) 								
Phase In Prohibition	§ 722	<ul style="list-style-type: none"> Compliance obligations are phased in as follows: 2012: electricity sources; fuel producers and importers; fluorinated gas producers and importers; and geological sequestration 	Same	<p>The provisions are the same, with the following exceptions -- compliance obligations are phased in as follows:</p> <ul style="list-style-type: none"> 2014: certain industrial stationary sources 	Same	<p>The provisions are the same, with the following exception -- compliance obligations are phased in as follows:</p> <ul style="list-style-type: none"> 2015: small business refiners. 	Same	Same	§2001	<p>Functionally identical, however, in comparison to the Boxer bill:</p> <ul style="list-style-type: none"> 2016: Industrial stationary sources The pre 2015 exemption for small business refiners have been eliminated

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		sites. <ul style="list-style-type: none"> 2014: Industrial stationary sources and industrial fossil fuel-fired combustion devices. 2016: Natural gas local distribution companies 		<ul style="list-style-type: none"> 2016: natural gas local distribution companies 						
Use of Domestic and International Offset Credits to Satisfy Compliance Obligations	§ 722	Offset credits may be used by a covered entity to satisfy a portion of its compliance obligation as follows: <ul style="list-style-type: none"> First, offset credits may be used to satisfy only a percentage of a covered entity's compliance obligation. The percentage is determined as 	Same	The provisions are the same, with the following exceptions: <ul style="list-style-type: none"> ¾ of offset credits may be domestic and ¼ international, as opposed to half and half Provisions for modification are included. 	Same	The provisions are the same, with the following exceptions: <ul style="list-style-type: none"> Term offset credits may be used in some circumstances 	Same	Same	§2001	Functionally identical, however, in comparison to the Boxer bill: <ul style="list-style-type: none"> Term offset credit provisions have been struck Notification mechanism for refined product entities has been added

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		follows: ➤ In a given year, the percentage of an entity's compliance obligation that may be satisfied by offsets is determined by a formula calculated by reference to (i) the total emission allowances for the prior year, and (ii) a 2 billion cap on the total quantity of offsets allowed in any year: [2 billion ÷ (2 billion + prior year's emission allowances)]								

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		<p>x 100 = %].</p> <ul style="list-style-type: none"> ➤ For example, in 2013, a covered entity could use offset credits to satisfy approximately 29.75% of its compliance obligation: ➤ 2012 allowances = 4,770,000,000 – 1% strategic reserve set aside (47,700,000) = 4,722,300,000 ➤ 2,000,000,000 + 4,722,300,000 = 6,722,300,000 								

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		<p>➤ 2,000,000,000 ÷ 6,722,300,000 = 29.75%</p> <ul style="list-style-type: none"> • Second, of the total compliance obligation that an entity may meet with offset credits, up to half may be domestic offset credits and up to half may be international offset credits. That is, an entity that emits 100,000 MtCO₂e will be entitled to use up to 29,750 offset credits to satisfy its compliance obligations, of which, up to 14,875 may be domestic and 14,875 may be 								

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		<p>international.</p> <ul style="list-style-type: none"> Third, the Act discounts international offsets: beginning in 2018, a covered entity must hold <u>1.25</u> international offset credits for each emission allowance. In contrast, the Act provides a 1:1 domestic offset credit-to-allowance ratio. International offset credits only benefit from such a 1:1 ratio from 2012-2017. By way of example, if an entity's allocation under the cap in 2013 permits it to emit 100,000 MtCO₂e, the 								

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		entity could use credits in lieu of 29,750 allowances. If the entity chose to offset all such allowances, it would be required to hold approximately 14,875 domestic offsets and 14,875 international offsets. However, assuming the same scenario in 2018, the entity would be required to hold approximately 14,875 domestic offsets and 18,594 international offsets.								
Strategic Reserve / Market Stability	§ 726	<ul style="list-style-type: none"> Within 2 years of enactment, EPA must reserve the 	Same	The provisions are the same, with the following	Same	The provisions are the same, with the following	Same	Provisions dealing with “filling the market stability reserve initially”	§2001	Provision broadly rewritten and relabeled a “cost containment

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Reserve Allowances		following percentages of emission allowances to be auctioned quarterly as strategic reserve allowances: ➤ 2012-2019: 1% ➤ 2020-2029: 2% ➤ 2030-2050: 3% • Only covered entities are eligible to purchase strategic reserve allowances. The number of allowances available for purchase, and the minimum price at which they may be purchased, are subject to certain		exceptions: • The phrase “market stability reserve” replaces the phrase “strategic reserve.” • The specific percentages/a mount of allowances used to fund the pool has been omitted. Percentages of allowances that can be auctioned initially and in subsequent years have been increased. • Changes have been made to the market stability reserve auction price provisions. The initial		exceptions: • Initial price remains \$28 but is pegged off 2005 dollars as opposed to 2009 dollars. • Authority is explicitly provided for the establishment of a Market Stability Reserve Fund in the Treasury of the United States.		have been beefed up and rewritten		reserve”

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		limitations.		price remains \$28 but is pegged off 2009 dollars as opposed to 2005 dollars.						
Trading, Banking, and Borrowing	§ 724 § 725	<ul style="list-style-type: none"> The Act provides for trading, banking, and borrowing of emission allowances. An allowance or credit established under the Act does not expire unless (i) retired, or (ii) extinguished by EPA through rulemaking to ensure the authenticity and integrity of allowances or the allowance tracking system. 	Same	Same	Same	Same	Same	Same	§§2001, 2401	Functionally identical, however, in comparison to the Boxer bill: <ul style="list-style-type: none"> Clause stating that trading is not limited to between/among covered entities has been struck Trading must be conducted in accordance with the Commodity Exchange Act Trading (and swaps) is broadly regulated by the CFTC; exemptions for trading of carbon futures are prohibited Speculation in the carbon markets is

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										broadly regulated
Offsets Program	§ 731 § 732 § 733 Title V	<ul style="list-style-type: none"> In consultation with the USDA GHG Emission Reduction & Sequestration Advisory Committee, the U.S. Department of Agriculture must establish by rulemaking an agriculture and forestry offsets program within 1 year of enactment. In consultation with an Offsets Integrity Advisory Board established under the Act, EPA must establish an offsets program by rulemaking within 2 years of enactment. EPA's 	Same	<p>The provisions are the same, with the following exceptions:</p> <ul style="list-style-type: none"> Lists project types to be considered for offset eligibility, including a wide variety of methane-related projects, agriculture and forestry project, and projects related to land-use change. Delegates authority to implement offset program to President, who would then have 	Same	<p>The provisions are the same, with the following exception:</p> <ul style="list-style-type: none"> Bracketed provisions in the discussion draft regarding delegating authority to the Department of Agriculture have been deleted. 	Same	Same; however, the Secretary of Agriculture is designated the lead agency for agricultural and forestry offset projects	§2001 (§731)	<p>Functionally identical, however, in comparison to the Boxer bill:</p> <ul style="list-style-type: none"> Methane collection at mines, landfills and natural gas systems is an eligible offset category (compare Boxer, which said that a mine had to be “active” – reference to “natural gas systems” is also new) “Forest-based manufactured products” is a new offset category “Projects that capture and geologically sequester uncapped greenhouse gas

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		<p>jurisdiction is not explicitly limited to non-agriculture and non-forestry project types.</p> <ul style="list-style-type: none"> • The Act specifies the eligibility of certain agriculture and forestry project types, but does not list any other types of projects that may be eligible or that must be considered by the agencies. • The Act provides that an offset credit does not constitute a property right. 		<p>authority to choose the agency (or agencies) to actually implement the program. This approach leaves the door open for the USDA to implement the agriculture and forestry portions of the offset program.</p>						<p>emissions with or without enhanced oil or methane recovery in active or depleted oil, carbon dioxide, natural gas reservoirs, or other geological formations” is a new offset category</p> <ul style="list-style-type: none"> • “Recycling and waste minimization” is a new offset category • “Projects to abate the production of nitrous oxide at stationary sources” is a new offset category • “Projects for biochar production and use” is a new offset category • “Projects that destroy ozone-depleting substances” in

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										some circumstances is a new offset category <ul style="list-style-type: none"> • “Projects that reduce [GHG] emissions from manure and effluent” in some circumstances is a new offset category • “Projects that reduce the intensity of [GHG] emissions per unit of agricultural production is a new offset category
Requirements for Offset Projects	§734 Title V	<ul style="list-style-type: none"> • As part of their offset program regulations, EPA and USDA must establish rules for each eligible project type that address additionality, 	Same	These particular provisions contain the following additions: <ul style="list-style-type: none"> • A fourth additionality provision has been added: project 	Same	Same	Same	Same	§2001 (§735)	Functionally identical, however, in comparison to the Boxer bill: <ul style="list-style-type: none"> • Crediting period for forestry increased to 30 years

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		<p>baselines, measurement, leakage, and permanence.</p> <ul style="list-style-type: none"> • The Act mandates the following minimum additionality requirements: <ul style="list-style-type: none"> ➤ Project activities are not required by or undertaken to comply with any law or regulation; ➤ Project activities were <u>not</u> commenced <u>prior to January 1, 2009</u> except (i) as provided in the Act's early offset supply provisions, 		<p>activities must not be receiving support under Part E of the Clean Air Act or the carbon market assurance provisions.</p> <ul style="list-style-type: none"> • References to Administrat or have been replaced by President, presumably allowing further delegation to EPA/USDA or both. 						

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		<p>and (ii) for “readily reversible” activities for which EPA or USDA establishes an alternative date not earlier than January 1, 2001; and</p> <ul style="list-style-type: none"> ➤ Project activities exceed baselines established by EPA. • Importantly, the Act does not require EPA to accept any pre-existing project methodologies, including those approved under the CDM. 								

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		<p>Rather, the Act only provides that EPA and USDA must give “due consideration” to methodologies for offset projects existing as of the date of enactment.</p> <ul style="list-style-type: none"> • Crediting periods for non-agriculture and non-forestry projects: not less than 5 years not greater than 10 years. The Act provides a petition process for new crediting periods. • Crediting periods for agriculture and forestry 								

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		projects: up to 5 years for agricultural sequestration, up to 20 years for forest sequestration, and up to 10 years for other project types.								
Early Offset Supply	§ 740	<ul style="list-style-type: none"> • The Act requires EPA to issue an “early” offset credit for each metric ton of CO₂e reduced, avoided, or sequestered as follows: <ul style="list-style-type: none"> ➤ The project that generated the offset started <u>after</u> January 1, 2001; and ➤ The offset was issued <u>after</u> January 1, 	Same	Same, except that references to Administrator have been replaced by President. (presumably allows further delegation to EPA/USDA or both)	Same	Same (some qualifying language added but appears to be non-substantive)	Same	Same	§2001 (§740)	Functionally the same

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		<p>2009 under any “regulatory or voluntary greenhouse gas emission offset program” established by “State or tribal law or regulation <u>prior</u> to January 1, 2009.”</p> <ul style="list-style-type: none"> Upon application, EPA may issue early offset credits under programs that were either (i) not established under State or tribal law, or (ii) not established prior to January 1, 2009 if EPA determines 								

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		<p>that such program's criteria and methodologies are at least as stringent as those of the programs established under State or tribal law. EPA must issue its determination within 180 days of receiving an application.</p> <ul style="list-style-type: none"> Importantly, EPA is only required to issue early offset credits until the <u>earlier</u> of 3 years after enactment or promulgation of the EPA offset program. 								
International Offset Credits	§ 743	<ul style="list-style-type: none"> The Act authorizes 	§ 744	Provisions are substantially	Same	Same	Same	Same	§2001 (§753)	Functionally identical but

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		EPA (in consultation with the Department of State and U.S. Agency for International Development) to establish by rule a program under which the agency may (i) issue international offset credits for certain GHG emission reduction/avoidance projects undertaken in a “developing country,” and (ii) issue international offset credits in exchange for credits issued by an international body established		similar, with the following changes: <ul style="list-style-type: none"> • Offset project director must be subject to service of process in the U.S. • The definition of “sectoral basis” has been somewhat relaxed. • Additional requirements have been placed on use of offsets from reduced forestation. 						provisions have been restructured and rewritten; further analysis required

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		<p>pursuant to the UNFCCC (e.g., the CDM Executive Board).</p> <ul style="list-style-type: none"> EPA must determine that the international program provides “equal or greater assurance of the integrity of [the offset] instruments” as that provided under the Act. A “developing country” is defined as a country that is eligible to receive official development assistance according to the income 								

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		<p>guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.</p> <ul style="list-style-type: none"> • The EPA may issue international offset credits or exchange domestic credits for international offset credits only if the U.S. is party to a bilateral or multi-lateral agreement. • Specific requirements apply to the issuance of international offset credits generated from 								

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		deforestation projects.								
Distribution of Allowances	§§ 781-787	<p>The Act contains detailed provisions for the allocation/auction of a certain percentage of allowances to covered entities and for other purposes, as follows:</p> <ul style="list-style-type: none"> • <u>Supplemental allowance pool</u>: from 2012 to 2050: 5% decreasing to 2% • <u>Electricity consumers</u>: (i) “for the benefit of electricity consumers” (from 2012 to 2029: 43.75% decreasing to 7%); (ii) for EE, renewable 	§ 771	The Act’s treatment of emission allocation is incomplete because it does not specify the number of allowance to be allocated to any industry or for any purpose.	§ 771	<p>Note: Because CEJAPA-DD lacked provisions dealing with allowance distribution, the following draft analysis compares CEJAPA-Mark with ACESA.</p> <p><u>Supplemental allowance pool</u>: unclear</p> <ul style="list-style-type: none"> • <u>Electricity consumers</u>: functionally the same 	Same	Same	§2001 (§781)	<p>Different from Boxer, as follows:</p> <ul style="list-style-type: none"> • Electricity consumers: receive higher percentage in years 2013-2015 but lower thereafter • Natural gas consumers: receive different levels of allowances throughout • New provisions added for consumer relief and the funding of a “Universal Trust Fund” for the benefit of all Americans • New provisions added for trade-exposed industries, protection of refiners, etc.

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		electricity, and low income ratepayer assistance programs administered by small LDCs (from 2012 to 2029: 0.5% decreasing to 0.1%); and (iii) “to avoid disincentives for the continued use of EE cogeneration facilities at industrial parks” (for 2012: 0.35%) <ul style="list-style-type: none"> • <u>Natural gas consumers:</u> from 2016 to 2029: 9% decreasing to 1.8% • <u>Home heating oil and propane consumers:</u> 				<ul style="list-style-type: none"> • <u>Natural gas consumers:</u> functionally the same • <u>Home heating oil and propane consumers:</u> functionally the same • <u>Low income consumers:</u> various auction provisions • <u>CCS:</u> similar to ACESA but with advance reservation mechanism 				<ul style="list-style-type: none"> • For commercial deployment of CCS, allowances deferred until 2017 but generally increased thereafter • New provisions added for clean vehicle technology • New provisions are added to compensate states that already have cap and trade programs

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		from 2012 to 2029: 1.875% decreasing to 0.3%) <ul style="list-style-type: none"> • <u>Low income consumers</u>: from 2012 to 2015: 15% • <u>Trade vulnerable industries</u>: variable and subject to equations • <u>CCS</u>: see prior analysis • <u>Investment in EE and renewable energy</u>: (i) support of State EE and RE programs (2012 to 2050: 9.5% decreasing to 4.5%, with additional rules applicable for 2022 to 				<ul style="list-style-type: none"> • <u>Investment in EE and renewable energy</u>: different • <u>Energy research and development</u>: different • <u>Investment in clean vehicle technology</u>: from 2012 to 2025: 2.4% decreasing to 		<ul style="list-style-type: none"> • <u>Domestic fuel production</u>: allowance allocations increased and provisions dealing with mid-sized refiners deleted 		

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		2025); (ii) support of greater EE in building codes (2012 to 2050: 0.5%); and (iii) support of building retrofit programs (2012 to 2050: 0.05% to 0.03%) <ul style="list-style-type: none"> • <u>Energy research and development:</u> (i) for energy innovation hubs (2012 to 2050: 0.45%); and (ii) for advanced energy research (2012 to 2050: 1.05%) • <u>Investment in clean vehicle technology:</u> from 2012 to 2025: 3% 				0.8%; additional amounts by auction <ul style="list-style-type: none"> • <u>Domestic fuel production:</u> different; specified allocations for mid-sized refiners, for example • <u>Investment in workers:</u> different (via auction) • <u>Domestic adaptation:</u> different; add'l amounts via 				

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		decreasing to 1% <ul style="list-style-type: none"> • <u>Domestic fuel production</u>: (i) for petroleum refiners, including small business refiners (from 2014 to 2026: 2%); and (ii) for small business refiners (from 2014 to 2026: an additional 0.25%) • <u>Investment in workers</u>: (i) for the Climate Change Worker Adjustment Assistance Fund (from 2012 to 2050: 0.5% increasing to 1%; subject to special rules); and 				auction <ul style="list-style-type: none"> • <u>Wildlife & natural resource adaptation</u>: functionally similar with additional amounts via auction • <u>International adaptation</u>: different • <u>International clean technology</u> 				

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		<p>(ii) for the EE & RE Worker Training Fund (for 2012 and 2013: 0.75%)</p> <ul style="list-style-type: none"> • <u>Domestic adaptation:</u> (i) for State programs to build resilience to climate change impacts (from 2012 to 2050: 0.9% increasing to 3.9%); and (ii) for the Climate Change Health Protection and Promotion Fund (from 2012 to 2050: 0.1%) • <u>Wildlife & natural resource adaptation:</u> (i) 				<p><u>deployment:</u> different</p> <ul style="list-style-type: none"> • <u>Compensation for early actors:</u> for 2012: 2% • <u>Ensuring real reduction and industrial emissions:</u> : various mechanisms 				

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		for State use (2012 to 2050: 0.385% to 1.54%); and (ii) for the National Resources Climate Change Adaptation Fund (for 2012 to 2050: 0.615% increasing to 2.46%) <ul style="list-style-type: none"> • <u>International adaptation</u>: from 2012 to 2050: 1% increasing to 4% • <u>International clean technology deployment</u>: from 2012 to 2050: 1% increasing to 4% • <u>Deficit reduction</u>: any amounts 				and rules <ul style="list-style-type: none"> • <u>Nuclear working training</u>: new provisions 				

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		<p>not allocated for distribution or auction, subject to various rules</p> <ul style="list-style-type: none"> • <u>Climate change consumer refund</u>: various mechanisms and rules • <u>Treatment of carryover allowances</u>: various mechanisms and rules • <u>Compensation for early actors</u>: for 2012: 1% • <u>Supplemental agriculture and renewable energy</u>: for 2012 to 2016: 0.28% • <u>Ensuring real reduction and</u> 								

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		<u>industrial emissions</u> : : various mechanisms and rules								
Carbon Market Oversight	§341	<ul style="list-style-type: none"> The Act delegates responsibility for regulating the carbon markets to the Federal Energy Regulatory Commission, not EPA. The Act authorizes the President to delegate the responsibility for the regulation of allowance derivatives. 	§131	These provisions have been deleted and replaced with placeholder provisions indicating that there “shall be” a “single, integrated carbon market oversight program.”	§131	Same	Same	Same	Various provisions	Broadly different than prior proposals; requires CFTC regulation and limits use of sophisticated carbon financial products
New Source Performance Standards	§811	<ul style="list-style-type: none"> EPA must promulgate New Source Performance Standards (NSPS) under the Clean Air Act for 	Same	Prohibits EPA from requiring an uncapped GHG emission source to comply with an NSPS before 2020 if reductions in	Same	Same	Same	Same	See below (CAA modifications)	See below (CAA modifications)

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		certain source categories of uncapped GHG emissions. <ul style="list-style-type: none"> • “Uncapped” sources include: <ul style="list-style-type: none"> ➤ Sources that individually had uncapped annual GHG emissions greater than 10,000 MtCO₂e and that are in a category responsible in aggregate for emitting 20% of uncapped GHG emissions; and ➤ Each source category that is responsible 		GHG emission from the uncapped source otherwise qualify for offset credits.						

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		for at least 10% of uncapped methane emissions except enteric fermentation.								
Clean Air Act Modifications (including NSR, Title V, and NSPS)	§§831-834	<p>The Act makes clear that EPA cannot regulate GHGs under the following, existing Clean Air Act authorities:</p> <ul style="list-style-type: none"> • National Ambient Air Quality Standards. • New Source Review • The Title V permit program • New Source Performance 		Would preempt only state cap-and-trade programs regulating emissions that are capped under the legislation.	§125 §708	<p>Functionally identical regarding preemption of cap-and-trade programs, although the phrase “comprehensive greenhouse gas emission limitation program” is used instead of “cap and trade program”</p> <p>Separately would require EPA to coordinate with RGGI, WCI, and States in the Mid-West Governors Accord</p> <p>Otherwise, there is no CAA preemption</p>	§125	<p>Includes limited CAA preemption, as follows:</p> <ul style="list-style-type: none"> • EPA is prohibited from listing for NAAQS purposes “any [GHG] on the basis of any effect that [GHG] may have on climate change” • EPA is prohibited from listing any GHG as a HAP on the grounds of climate effects • EPA is prohibited from 	§2201	<p>Includes limits on CAA authorities, as follows:</p> <ul style="list-style-type: none"> • Boxer’s language on NAAQS is broadened to prohibit listing of any GHG as a criteria pollutant based on “ocean acidification”, too • Boxer’s language on HAP’s listings is similarly modified to include “ocean acidification” language • Boxer’s

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		Standards (capped emissions only)						triggering the CAA’s international air pollution requirements with respect to GHGs and their impact on climate change <ul style="list-style-type: none"> The definition of “major emitting facility” is revised to apply a 25,000 tpy CO₂e threshold for GHG emissions for the listed sources in the first sentence of CAA § 169(1). And for all other sources (pursuant to the second sentence of CAA § 169(1)) the potential to emit threshold for GHGs is likewise specified as 25,000 tpy 		language on international air pollution is similarly modified to include “ocean acidification” language <ul style="list-style-type: none"> Re NSR: (i) Boxer redefines “major emitting facility” to only include those GHG emitting facilities with emissions of 25,000 tpy CO₂e or more; while (ii) KL redefines “major emitting facility” to exclude any facility that is initially permitted or modified after January 1, 2009 on the basis of GHG emissions. Re Title V: (i) Boxer similarly exempted

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								<p>CO₂e</p> <ul style="list-style-type: none"> Title V of the CAA, pursuant to which the cap and trade program is implemented, is revised to specify that sources (including agricultural sources) smaller than 25,000 tpy of GHGs are exempt 		<p>facilities with GHG emissions less than 25,000 tpy CO₂e; while (ii) KL exempts stationary sources that are only regulated due to the impact of its GHG emissions on climate change</p> <ul style="list-style-type: none"> Re NSPS: (i) Boxer prohibited EPA from invoking NSPS for any uncapped source prior to 2020; (ii) KL, on the other hand, is more narrow in that it leaves covered EGUs subject to GHG-based NSPS in some circumstances
State Program Preemption	§861	The Act preempts state and regional authorities from	Same	The provisions are substantially identical, with	§125	See above	Same	Same	§2201	Boxer preempted GHG-related state programs for the

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		implementing or enforcing a cap on GHG emissions captured by the Act's cap-and-trade program, but only for the time period between 2012 and 2017.		the following changes: <ul style="list-style-type: none"> • There are additional provisions addressing effect of delays in auction date • Preemption regardless expires in 2017. 						period 2012-2017; KL does the same but without a time limit. Both Boxer and KL preserve state programs such as a LCFS and mobile source controls.
Ensuring real reductions in industrial emissions/EITI	§401	Provides a rebate mechanism for owners/operators of entities in domestic eligible industrial sectors for the GHG emission costs, but not for costs associated with other related or unrelated market dynamics	N/a	N/a	§141	Substantially rewritten in parts but the rebate section appears to be functionally similar; language regarding promoting international negotiations has been stricken	Same	Same	§4001	Comparable provisions (but more analysis required)
Voluntary renewable energy markets	N/a	N/a	N/a	N/a	N/a	N/a	§103	New provision dealing with voluntary renewable energy markets – provides statement of support and calls	N/a	N/a

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								for the preparation of a report		
Tree planting programs	N/a	N/a	N/a	N/a	N/a	N/a	§167	New provision dealing with tree planting program – establishes a grant program to assist retail power providers in establishing and operating tree planting programs in residential and small office settings	N/a	N/a
Reducing acid rain and mercury pollution	N/a	N/a	N/a	N/a	N/a	N/a	§§ 125/863	New provision dealing with preparation of a report regarding reducing acid rain and mercury pollution	N/a	N/a
Black carbon reduction grant program	N/a	N/a	N/a	N/a	N/a	N/a	§795A	New provision providing a voluntary carbon black reduction program for heavy duty vehicles	§2211	Similar but with mandatory components, too, and broader coverage
Encouraging domestic nuclear power	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	Title I, Subtitle A, Parts I, II, III	Support for nuclear power industry, to include: <ul style="list-style-type: none"> • Expedited regulatory

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										process for combined construction and operating licenses <ul style="list-style-type: none"> • Increase in loan guarantees to \$54B • Increase in regulatory risk insurance to cover up to 12 reactors, up from 6 currently; directs DOE to pay full amount of covered delay costs for each reactor up to \$500M • Designation of national lab as spent fuel R&D center • Removal of administrative hearing requirement in non-contested cases under the Atomic Energy Act • Extension of time

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										that NRC commissioners may serve <ul style="list-style-type: none"> • Creation of nuclear energy research initiative • Suspension of duty for certain non-US reactor parts • Various tax policy changes to support development of nuclear reactors
Offshore oil & gas	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	Title I, Subtitle B	Revision of policies regarding offshore oil & gas, to include: <ul style="list-style-type: none"> • Authorization of revenue sharing in areas previously withdrawn from leasing; 37.5% of revenues directed to States, with 12.5% of revenues earmarked for programs under the Land & Water

Issue	ACESA Section	ACESA Provision	CEJAPA-DD Section	CEJAPA-DD Provision Compared with ACESA	CEJAPA-Oct 23 rd Mark Section	CEJAPA-Oct 23 rd Mark Provision Compared with CEJAPA-DD	CEJAPA Oct 30 th Mark Section	CEJAPA Oct 30 th Mark Provision Compared with CEJAPA Oct 23 rd Mark	APA Section	APA Compared with Prior Proposals
										Conservation Fund <ul style="list-style-type: none"> • State may prohibit leasing within 75 miles of its coastline • DOI to study environmental and economic impact of oil spills in newly available leasing areas; directly impacted States may ban leasing based upon outcome of that study
Coal-fueled fleet transition program	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	§1441	Recognizing that the (i) existing coal fleet needs a transition until CCS is commercially ready, and (ii) greater efficiencies can lead to lower GHG emissions, various tax incentives are contemplated. Much of the text is

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										bracketed and the phrase “to be discussed” appears.
Supplemental Pollution Reductions, Funding for Reducing Deforestation in Developing Countries	N/a	N/a	N/a	N/a	N/a	N/a	\$101	Funding for reducing deforestation in developing countries.	\$2001	Functionally identical but strikes the Kerry’s bill requirement that such activities achieve a 10% reduction by 2020.
Compliance for Transportation Fuels and Refined Petroleum Products	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	\$2001 (§729)	<p>Each refined product producer shall pay an amount to EPA to demonstrate compliance with respect to refined products.</p> <p>Not later than 30 days before the start of each quarter of 2013 and each quarter thereafter, EPA shall announce the price for that quarter.</p> <p>The price is equal to the auction clearing price of the most</p>

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										<p>recent auction for emission allowances for other sources.</p> <p>These allowances may not be traded, sold, banked or borrowed.</p> <p>Refiners more broadly are provided with additional dispensations</p>
Merchant Generator Efficiency Incentive	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	§2101 (§798)	<p>EPA authorized to establish a program to improve the efficiency and reduce CO2 intensity of the merchant coal fleet.</p> <p>To be eligible, the owner/operator must notify EPA by January 1, 2014 that it intends to permanently retire the unit or repower it “with a less emissive fuel” – the phrase “less emissive fuel” is bracketed.</p>

Issue	ACESA Section	ACESA Provision	CEJAPA-DD Section	CEJAPA-DD Provision Compared with ACESA	CEJAPA-Oct 23 rd Mark Section	CEJAPA-Oct 23 rd Mark Provision Compared with CEJAPA-DD	CEJAPA Oct 30 th Mark Section	CEJAPA Oct 30 th Mark Provision Compared with CEJAPA Oct 23 rd Mark	APA Section	APA Compared with Prior Proposals
										Recipients receive allowances; incentive limited to not more than 35 GW of capacity A percent of the allowances is to be targeted towards addressing coal consumption and employment
Biochar Incentive Program	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	§2214	Department of Agriculture directed to provide grants to up to 60 facilities to conduct research on biochar
Natural Gas vehicles	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	§4001	Effectively implements aspects of the Pickens Plan, as reflected in the Nat Gas Act, with respect to encouraging the use of natural gas in vehicles
Fracing	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	§4131	EPCRA amended to require disclosure of all chemical constituents of fracing fluids