AMPO Policy Update

Summary of Transportation/Climate Provisions in Proposed Federal Legislation

Kerry-Lieberman "American Power Act" (APA) Discussion Draft (released May 12, 2010)

On May 12, 2010, Senators Kerry (D-MA) and Lieberman (I-CT) floated a discussion draft of their comprehensive energy and climate bill, which was developed with Sen. Graham (R-SC) prior to his recent backing away over disagreements with the Obama Administration and Senate Majority Leader Reid regarding legislative priorities.

Below is a summary of key provisions, focused on those of interest to MPOs and the transportation sector.

- The bill is dubbed the "American Power Act" and styled as a discussion draft, rather than a bill for introduction
- Bill is 987 pages
- Incorporates by reference Senate Energy Bill (Bingaman S. 1462) including national renewable energy standard (RES), CCS incentives, appliance standards, green building, and other programs
- Outline sent to EPA for economic analysis in early May, results expected in late June
- Timing of floor debate is uncertain, unlikely before July 4, even assuming momentum toward 60 votes can be mustered
- Majority Leader Reid will confer with key committee chairs after Memorial Day recess to evaluate support and timing
- If passed, despite great odds, must be reconciled with Waxman-Markey American Clean Energy and Security Act (H.R. 2454) bill passed by the US House of Representatives on June 26, 2009; however, President Obama likely to sign any bill passed by Congress
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- Overall Structure (Title II Carbon Provisions):
- Creates new titles VII and VIII to the federal Clean Air Act [Sec. 2001, p. 262]
- Creates a "tonnage limit" rather than a cap (query whether there is any difference?) [Sec. 721, p. 310]
- Targets similar to Waxman-Markey and Kerry-Boxer (starting with 4.75% by 2013, 17% by 2020, 42% by 2030, 83% by 2050 on 2005 baseline) [Sec. 701-705]
- Allowance pool starts in 2013 at 4.722 billion tons declining to 2.043b in 2050 [Sec. 721, p. 311]

- Price collar between $12 (3% + CPI) [Sec. 790, p. 521] and $25 (5% + CPI) [Sec. 726, p. 349]
- Foreign allowances can be used, if approved [Sec. 728]
- Unrestricted allowance trading, unlimited banking, 2-year rolling compliance period, limited borrowing within 5 year period with 8% interest and 15% compliance limit [Sec. 724-725, p. 343]
- Auction and primary cash market limited to compliance entities and some market makers; secondary market on cash-cleared exchange
- Cap-and-trade for the electric power sector with free allowances at 75-25 split favoring historic emissions versus retail sales
- Phase-in of industrial sectors as covered entities in 2016 [Sec. 722, p. 331]
- Free allowances for industrial energy users prior to coverage (2%) [Sec. 781, p. 497]
- Rebates for trade-exposed and energy/GHG-intensive industrial sectors (i.e., Inslee-Doyle rebates) after coverage begins; sectors may petition for recognition; border tariffs [Sec. 771-778, p. 819] Rebate details: 15 percent of allowance pool annually between 2016 – 2025, reduced annually beginning in 2026 to complete phase out in 2030. The allocation to trade exposed industries is similar to earlier climate change bills, but the phase-out schedule is quicker in this bill. The bill also establishes a grant pool of up to $1.55 billion for industrial energy efficiency projects. [Sec. 781, p. 497]
- President to establish international reserve by 2023 if no multilateral climate treaty is in force [Sec. 776-777]
- Free allowances to refinery sector [Sec. 796, p. 823]
- Free allowances to energy efficiency and renewable energy at 2.5% phasing out by 2021 [Sec. 781, p. 503]
- Allowances or auction revenue is rebated to individual electricity, gas, and heating oil consumers for energy bill reduction thru LDCs [Sec. 782-783]; additional programs for consumer relief through Social Security Act [Sec. 3203-3204] and IRS [Sec. 3206-3207]
- Fuels (called "refined products") are under cap and must purchase allowances at fixed auction price, but cannot trade (similar to Cantwell-Collins) [Sec. 729]
- Various tax and grant programs, including advanced energy projects [Sec. 4003], low-carbon technology R&D [Sec. 4161]
- Allowance reserve for cost containment (creates price collar), refill offsets with international REDD or domestic offsets [Sec. 726, p. 347]
- RGGI, AB32 and WCI allowances can be exchanged for federal allowances based on cost of obtaining and holding based on state/regional auction price [Sec. 786, p. 510]
- Offsets are fully recognized up to 2 billion per year [Sec. 722, p. 332] (restrictions are similar to W-M and K-B)
- Each covered entity may use its proportional share of the offset pool [Sec. 722, p. 334]
- Each covered entity may use up to 25% of its offset quota thru international offsets, which EPA can adjust upward if domestic offsets not available [Sec. 722, p. 335]

- Domestic offsets are credited 1:1, whereas international offsets still have the 1.25:1 discounting from Waxman-Markey and Kerry Boxer [Sec. 722, p. 332]
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- Miscellaneous:
- OCS Drilling. Offshore oil and gas drilling revenue sharing with states (37.5%) and LWCF (12.5%) (probably excluding Gulf Coast states covered by previous rules). Allows states to opt out of offshore drilling and to veto projects within 75 miles of shores. Enhanced environmental studies under NEPA. [Sec. 1202-1205]
- CCS. Carbon capture and storage (CCS) framed as "future of coal" incentives at $2b per year (from utility fee) and incentives for deployment of 72 gigawatts CCS, with funding front-loaded to promote early deployment. Creates CCS Partnership Council to advise on funding. Establishes task force to study implementation barriers. [Sec. 1411-1432]
- Clean Coal. Coal-fired power plants subject to NSPS performance standards on phased schedule. Plants permitted between 2009 - 2020 must meet standard (through CCS fuel-switching, biomass, etc.) within 4 years after CCS technology becomes commercially available. [Sec. 1441]
- Nuclear. Incentives for new nuclear investments, including risk insurance for 12 new plants, investment tax credits, manufacturing tax credits, $54b in loan guarantees, and streamlined licensing [Sec. 1101 - 1126]
- Renewable Energy. National RES/CES (including nuclear and hydro) (by incorporation of Bingaman bill). Establishes rural energy efficiency program [Sec. 1602]; distributes allowances to states for RE/EE programs.
- Preemption. Pre-empts state climate programs [Sec. 861] [Sec. 806], but provides compensation for lost allowance revenue [Sec. 786] (stronger than W-M's weak preemption only until 2017)
- Preemption. CAA preemption (GHGs not criteria pollutants, no NSPS for covered entities, not HAPs, no 115 listing, no NSR, not considered in Title V) [Sec. 2301-2307, p. 619] (does not address preemption of Clean Water Act, Endangered Species Act, or NEPA).
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- Transportation Provisions:
- Fuels (called "refined products") are under cap and must purchase allowances at fixed auction price, but cannot trade (similar to Cantwell-Collins) [Sec. 729]
- Funding of about $6 billion per year, declining over time, through auction proceeds or distribution of allowances provides revenue for transportation programs [Sec. 781(f), p. 505]
- $2.5 billion to HTF
- $1.875 billion to USDOT for ARRA TIGER grants
- $1.875 billion to USDOT for competitive greenhouse gas grant program created by APA
  Total: $6.25 billion
- Free allowances to refinery sector [Sec. 796]
- Clean Vehicle Technology Fund within Treasury for grants to vehicle and component manufacturers [Sec.

- Creates pilot program for electric vehicle charging/fueling infrastructure [Sec. 1701]
- Extends and doubles CNG heavy vehicle tax credit [Sec. 4121]
- Authorizes Section 54G state and local tax credit bonds for CNG vehicles, funded at $3b [Sec. 4122]
- Authorizes Section 179F expensing for CNG vehicle manufacturing [Sec. 4123]
- EPA to lower emissions standards for mobile sources [Sec. 4141]
- "Clean-Tea" title similar (if not identical) to Kerry-Boxer “Clean Energy Jobs and American Power Act” (S. 1733) reported by EPW committee Oct. 5, 2009, and also similar to the Waxman-Markey American Clean Energy and Security Act (H.R. 2454) bill passed by the U.S. House of Representatives on June 26, 2009
- Adds Section 803 to the Clean Air Act (under new Title VIII) [Sec. 1711, p. 311]
- USEPA (in consultation with USDOT) to establish greenhouse gas reduction “goals” for surface transportation emissions [Sec. 803, p. 211]
- Transportation goals must be commensurate with overall cap-and-trade goals [Sec. 803, p. 211]
- USEPA to develop models and methodologies for emissions calculations, data collection, scenario analysis, etc. [Sec. 803, p. 213]
- USDOT to promulgate regulations re transportation planning within 18 mos. of enactment [Sec. 803, p. 213]
- Revises MPO and state transportation planning processes in title 23 section 134 and title 49 section 5303 to address greenhouse gases (nearly identical provisions in Kerry-Boxer, Waxman-Markey and Oberstar-Mica) [Sec. 803, p. 215, p. 226]
- Adds sustainability, livability, greenhouse gas emissions, and reliance on oil as planning factors [Sec. 803, p. 216]
- Adds title 23 section 134(k) to address greenhouse gases in transportation planning process [Sec. 803, p. 219]
- MPOs in TMAs must develop greenhouse gas reduction "strategies" and "targets"; non-TMA participation is optional [Sec. 803, p. 221]
- MPO targets and strategies must be selected through scenario analysis and incorporated into plans and TIPs [Sec. 803, p. 222]
- States must also develop greenhouse gas targets under title 23 section 135 and title 49 section 5304 [Sec. 803, p. 236]
- MPOs must show progress in "stabilizing and reducing" greenhouse gases [Sec. 803, p. 221]
- Suggested strategies include: public transportation, walk/bike, land use and zoning, travel demand management, ITS, electric vehicle infrastructure [Sec. 803, p. 223]
- USDOT and EPA must approve the MPO plan if "likely to achieve targets" and contains required elements (including demonstration of progress in stabilizing and reducing greenhouse gas) (Note: echoes current EPA conformity process for criteria pollutants) [Sec. 803, p. 226]
- Stipulates that failure to comply with targets will not impact certification (Note: but unclear whether approval of plans, TIPs and projects will be impacted) [Sec. 803, p. 226]

- USDOT to control greenhouse gas fund (funded by cap-and-trade allowances) for GHG reduction programs [Sec. 1712, p. 252]
- Funding available to MPOs for development of greenhouse gas plans and implementation of reduction strategies [Sec. 1712, p. 252]
- 10% of funding is reserved for MPO planning, allocated by population [Sec. 1712, p. 253]
- 90% of funding goes to states and MPOs on an 80/20 cost-share basis for competitive grants for sustainable greenhouse gas reductions. Criteria for grants include: total greenhouse gas reductions achieved, per capita reduction, cost-effectiveness, progress toward targets, prior reductions, enhancements in operations and mobility, innovation, cost minimization, revenue, fuel costs, and other economic, environmental and health benefits [Sec. 1712, p. 254]
- Note: The Kerry-Lieberman Clean-Tea provisions differ somewhat from initial proposals in the Waxman-Markey bill which were originally based on the Matsui bill
    - Under former approach, states set transportation ghg targets; under new approach, MPOs set targets for metro areas
    - In both versions, MPOs to develop plans to "stabilize and decrease" ghg emissions; former version specified year 2010, no timeline specified in current version, but requires progress toward goal
    - Under former approach, if plan falls short of targets, MPOs must submit revised plan to EPA; under current version, consequence is that USDOT can withhold funds from grant program
    - New approach better integrates ghg goals with existing Section 134 and 135 planning process, but still gives EPA a prominent role and puts transportation planning under Clean Air Act

A useful comparative summary of K-L, W-M, and Obama's campaign pledges prepared by Wonkroom is below:

Provision	Obama Proposal	Waxman-Markey	Kerry-Lieberman
Overall Structure	Economy-wide cap and trade, plus renewable electricity and energy efficiency standards and clean energy investment	Utility, industry, and petroleum sector cap and trade starting in 2012, plus renewable electricity and energy efficiency standards and clean energy investment	Utility (2012) and industry (2016) cap and trade with linked refinery cap, plus consumer rebates, support for state-level renewable electricity and energy efficiency standards, and energy investment
Emissions Targets	15% below 2005 (at 1990 levels) by 2020, 80% below	Capped Sectors: 17% below 2005 (3% below 1990) by	Capped Sectors: 17% below 2005 by 2020, 80% below

	2005 (77% below 1990) by 2050	2020, 80% below 2005 by 2050 Overall economy goal: 20% below 2005 (7% below 1990) by 2020, 80% below 2005 by 2050	2005 by 2050, plus accelerated mitigation of super-GHGs, black carbon
Scientific Review	*Not discussed*	Presidential plan in 2015 and every four years thereafter	*TBA*
Traditional Coal Plants	"Standards that ban new traditional coal facilities" if necessary, and "cap on carbon will make it uneconomic to site traditional coal facilities and discourage the use of existing inefficient coal facilities"	Price on carbon mitigated by free allocations based 50% on historical emissions; Clean Air Act performance standards in 2016 determined by EPA	Price on carbon mitigated by free allocations TBA; Clean Air Act performance standards in 2016 determined by statute
Green Economy Investment	$150 billion over ten years, including workforce training, plug-in hybrids, renewable electricity, advanced biofuels, advanced coal technology, nuclear power, and smart grid	Approximately $100 billion over ten years, including workforce training, plug-in hybrids, renewable electricity, advanced biofuels, advanced coal technology, nuclear power, and smart grid	$70 billion for clean/natural gas transportation over ten years, extensive support for nuclear, same support for advanced coal as W-M, and support for renewables
Permit Allocation	Full auction	Allocations based on historical emissions and energy production with 20% auction at start, phasing to 70% auction by 2030	Allocations TBA phasing to TBA auction by 2030
Renewable & Efficiency Standards	25% renewable electricity by 2025, 100% new building efficiency by 2030,	15% renewable electricity + 5% efficiency by 2020, 75% new building	Support for state-level standards; if national standard based on Bingaman

	phase out traditional incandescents by 2014	efficiency by 2030, appliance and lighting efficiency standards	energy bill, weaker than projected business-as-usual
Consumer Protection	LIHEAP, low-income weatherization grants, a "dedicated fund to assist low-income Americans," plus Making Work Pay tax cut	Over first ten years, 45% (approx. $30 billion) of allocated permits and auction revenues dedicated to consumer protection through rebates and efficiency measures, emphasizing low-income consumers	Working families rebate checks from start; Allocated permits dedicated to consumer protection through rebates and efficiency measures; Universal rebate checks from 75% of auction revenues starting in 2026
Market Regulation	Increased regulation of energy markets	FERC and CFTC regulation, no over-the-counter derivatives trading, increased regulation of energy markets	Cantwell-Collins language prohibits derivatives, limits permit auction to covered emitters
Agriculture and Deforestation	Domestic and international incentives to sequester carbon and reduce deforestation, support for biofuels	Pool of offsets plus supplemental fund of 5% of permits for domestic and international incentives to sequester carbon and reduce deforestation, support for biofuels	Pool of offsets plus supplemental fund for domestic and international incentives to sequester carbon and reduce deforestation, support for rural energy program
Deficit Reduction	*Not discussed*	10% of permits auctioned (approx. $8 billion) over first ten years for deficit reduction	Obeys PAYGO; Starting in 2026, 25% of auction revenues for deficit reduction
Fuels and Transportation	Increase biofuels to 60 million gallons by 2030, low-carbon fuel standard of 10% by 2010, 1 million plug-in hybrid cars	Smart growth funding, plug-in hybrids, raise fuel economy standards	$7 billion a year for smart growth funding, plug-in hybrids, natural gas vehicles, raise fuel economy standards; offshore drilling with revenue sharing and oil spill veto, natural gas fracking

	by 2025, raise fuel economy standards, smart growth funding, end oil subsidies, promote natural gas drilling, enhanced oil recovery		disclosure
Cost Containment	International offsets	Offset pool, banking and borrowing flexibility, soft price collar using permit reserve auction at $28 per ton going to 60% above three-year-average market price	"Hard" price collar between $12 and $25 per ton, floor increases at 3%+CPI, ceiling at 5%+CPI, plus permit reserve auction, offsets like W-M
Clean Air Act And States	*Not discussed*	Only polluters above 25,000 tons of carbon dioxide equivalent a year, regional cap and trade suspended until 2017, EPA to set stationary source performance standards in 2016, some Clean Air Act provisions excluded	Only polluters above 25,000 tons of carbon dioxide equivalent a year, regional cap and trade pre-empted, establishes coal-fired plant performance standards, some Clean Air Act provisions excluded
International Competitiveness	Tax incentives for domestic auto industry	Free allowances for trade-exposed industries, 2020 carbon tariff on imports	Carbon tariff on imports
References: Barack Obama, 2007; Barack Obama, 8/3/08; Pew Center, 6/26/09; leaked drafts of American Power Act, 5/11/10.			

Kerry-Boxer "Clean Energy Jobs and American Power Act" (CEJAPA) S.1722 (reported by EPW Committee Nov. 5, 2009)

Section 112 (p. 24)

- Similar to Waxman-Markey provisions.
- Adds Section 831 to the Clean Air Act (under new Title VIII) which requires:
- USEPA (in consultation with USDOT) issue regulations within 1.5 years of enactment
- USEPA to establish greenhouse gas reduction "goals" for surface transportation emissions
- Transportation goals must be commensurate with overall ACES cap-and-trade goals
- Goals will be starting point for "targets" to be developed by MPOs under Title 23
- USEPA to develop models and methodologies for emissions calculations, data collection, scenario analysis, etc.
- Revises MPO and state transportation planning processes to address greenhouse gases (nearly identical provisions in Waxman-Markey and Oberstar-Mica, see below)
- Allowance allocations are not decided in the Senate, but Sens. Tom Carper (D-DE) and Arlen Specter (D-PA) are pushing approach in "CLEAN-TEA" (S. 575) that would require 10 percent of any cap-and-trade revenues to go toward low-carbon transportation. The House Waxman-Markey bill allocated only 1% of allowances to transportation.
- Allows states and cities the option of forcing taxi fleets to meet fuel economy and emissions requirements that are higher than the national standard.
- Requires EPA to set greenhouse gas emissions standards for new heavy-duty trucks, and other non-road vehicles and engines.
- $25 billion Energy Department loan program for carmakers and parts suppliers to retool to meet new national fuel economy and emissions standards,
- "Clean vehicle technology fund" to develop a "national transportation low-emissions energy plan," supporting the use of plug-in cars and electric medium- and heavy-duty trucks, and reduce diesel engine emissions
- **Note:** These provisions replace former Section 221 of the Waxman-Markey bill, which was based on the Matsui bill
    - Under former approach, states set transportation ghg targets; under new MPOs set targets for metro areas
    - In both versions, MPOs to develop plans to "stabilize and decrease" ghg emissions; former version specified year 2010, no date in current version but requires progress toward goal
    - Under former approach, if plan falls short of targets, must submit revised plan to EPA; under current version, USDOT can withhold funds
    - New approach better integrates ghg goals with existing Section 134 and 135 planning process
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Waxman-Markey "American Clean Energy and Security Act of 2009" (ACES) H.R. 2454 (passed House of Representatives June 26, 2009)

Waxman-Markey Sec. 222 (Page 510)

- Adds Section 841 to the Clean Air Act (under new Title VIII) which requires:
- USEPA (in consultation with USDOT) issue regulations within 1.5 years of enactment.
- USEPA to establish greenhouse gas reduction "goals" for surface transportation emissions.
- Transportation goals must be commensurate with overall ACES cap-and-trade goals.
- Goals will be starting point for "targets" to be developed by MPOs under Title 23
- USEPA to develop models and methodologies for emissions calculations, data collection, scenario analysis, etc.
- Revises MPO and state transportation planning processes to address greenhouse gases (nearly identical provisions in Waxman-Markey and Oberstar-Mica, see below).
- Funding was provided through 1% set aside of greenhouse gas emissions allowances, but funding dropped in final bill.
- **Note:** These provisions replace former Section 221 of the Waxman-Markey bill, which was based on the Matsui bill
    - Under former approach, states set transportation ghg targets; under new MPOs set targets for metro areas;
    - In both versions, MPOs to develop plans to "stabilize and decrease" ghg emissions; former version specified year 2010, no date in current version but requires progress toward goal;
    - Under former approach, if plan falls short of targets, must submit revised plan to EPA; under current version, USDOT can withhold funds;
    - New approach better integrates ghg goals with existing Section 134 and 135 planning process.

Oberstar-Mica Transportation Authorization "Surface Transportation Authorization Act of 2009" Discussion draft (released June 22, 2009)

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- Cross-references USEPA greenhouse gas reduction goals in Clean Air Act s. 841
- Amends policy statement of 23 USC 134 to reflect reduction of greenhouse gases
- Also adds policy of "livability, sustainability, land use coordination, connectivity, intermodality"
- Creates RPOs (rural planning organizations) less than 50,000 pop.
- Increases MPO threshold to 100,000 and applies TMA governance (and proportional voting) (opt-in for small MPOs 50k-100k)
- Expands Section 134(h) planning factors to include greenhouse gas reductions (also adds oil independence, public health, land use and housing as factors).

- Adds a new greenhouse gas process to Section 134(k) for TMAs
    - MPOs must develop ghg reduction targets
    - Targets must be consistent with USEPA established goals
    - MPOs must also develop strategies to meet targets
    - MPOs must "demonstrate progress" toward "stabilizing and reducing" greenhouse gases from transportation sector
    - MPOs must "contribute" to national ghg reduction goals
    - MPOs must include "efforts" to increase transit ridership and ped/bike
    - No express linkage to litigation bar in Section 134(h)
    - Enforcement by USDOT thru certification process
- USDOT must establish qualitative and quantitative performance measures for all MPOs
    - Performance measures based on best practices
    - Must measure congestion, mobility, safety, repair, emissions, energy consumption, consistency with land use plans, and connectivity
- Large MPOs (over 1 million pop.) must measure and achieve performance targets
    - Performance measures and targets for . . .
        - Land use that improves mobility and reduces SOV trips
        - Adequate housing supply
        - Limiting impacts on natural resources including air quality
        - Greenhouse gas reductions
        - Water conservation
        - Energy efficiency
        - Livability
    - MPO must show progress toward performance targets
- Moves the certification process for TMAs to Section 134(q) applicable to all MPOs
    - Certification includes evaluation of performance measures
    - Failure penalized by 20% funding withheld (highway and transit)
- Bill contains similar planning process revisions to 23 USC s. 135 statewide planning
    - State must develop strategic long-range plan for intermodal interconnectivity
    - Greenhouse gas reduction targets
    - Performance measures
- Bill contains similar planning process revisions to 49 USC s. 5303 metropolitan and statewide transit planning