

New Federal Initiatives Project

**Cap and Trade:
Implications for the Housing Industry**

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CAP AND TRADE: IMPLICATIONS FOR THE HOUSING INDUSTRY

Introduction:

On June 26, 2009 the U.S. House of Representatives passed the American Clean Energy and Security Act¹ by a narrow vote of 219-212. The House passed the over 1,200 page piece of legislation which contains provisions intended to lower Greenhouse Gas (GHG) emissions from large segments of the United States economy. It also sets benchmarks for increased efficiency in the buildings and consumer products, and mandates that certain percentages of power generation come from non-fossil fuels and renewable resources. Possibly the most famous part of the ACESA legislation is its cap and trade system for GHG emissions.

The use of cap and trade in an attempt to curb emissions is not new to the political landscape. Similar systems have been used to curb sulfur emissions in the U.S.² and carbon emissions in the European Union.³ The theory behind a cap and trade system is that market principles will efficiently allocate emissions credits among the participants if the government places a cap on the aggregate amount of emissions. The system also provides an incentive for emitters to go beyond the minimum reduction amounts by allowing them to sell their surplus emissions rights to others who are unable to make the same reductions.

ACESA does two things that could influence the economy. First, it turns GHG's into a commodity by capping the aggregate amount of emissions and establishing an allowance trading system. Second, ACESA mandates shifts in market demand by requiring certain energy efficiency and production benchmarks. The degree of this impact varies from one organization to the next. One study released by the EPA estimates that the annual cost increase per household will be somewhere between 80 and 111 dollars.⁴ Other analysis by the Energy Information Administration and Congressional Budget Office estimate the costs at between 83 and 175 dollars.⁵ Non-governmental analyses of the ACESA place the costs considerably higher, estimating an average annual increase in direct energy expenditures of over 1,200 dollars per household.⁶ This same study goes on to estimate that between 2012 and 2035 ACESA would result in an aggregate cost of 9.4 trillion dollars in real GDP and average annual job losses of 1,145,000.⁷

Overview of Current Legislation:

The ACESA legislation purports to increase alternative energy production, mandate lower energy consumption, and limit emissions from large scale sources. ACESA is intended to reduce GHG emissions by cutting energy use and decreasing the amount of GHG's emitted in the

production of energy. The bill is divided into five titles addressing different aspects of its approach. Title I concerns clean energy and addresses implementation of smart grid technology and energy production from renewable sources such as wind, solar, or biomass. Title II addresses energy efficiency, specifically dealing with transportation, consumer products, and building regulations which are targeted at reducing national energy demand. Title III involves reducing global warming pollution by limiting GHG emissions using a cap and trade system. Title IV deals with the transition to a clean energy economy and outlines retrofit programs for current industries and the creation of “green jobs”. Title V is dedicated to agricultural and forestry related offsets and deals with administration of and oversight of an offset program.

The most well-known part of ACESA is its cap and trade program. Emitters producing over 25,000 tons⁸ of CO₂ equivalent⁹ per year, such as electric utilities, oil companies and large industrial services, would be subject to the program’s “cap”. The cap on aggregate emissions from these covered entities decreases over time to pre-set benchmarks. Some goals from ACESA include lowering GHG emissions to 17% below 2005 levels by the year 2020, and by 83% from 2005 by 2050.¹⁰

Covered entities that fail to lower their emissions to acceptable levels have the option of obtaining tradable federal allowances for each ton of excess carbon they produce. Also, rather than buying more allowances, entities have the option of obtaining emissions offsets.¹¹

Initially 85% of the emissions allowances will be allocated at no cost to emitters with the remainder being auctioned off.¹² The proceeds from the auction are intended to be at least partially put toward consumer rebate programs intended to counteract the inevitable increases in utility bills that are expected from ACESA.¹³

Building Specific Provisions:

As part of Title II dealing with energy efficiency, ACESA establishes energy use reduction goals and a National Energy Efficiency Building Code intended to decrease the amount of energy consumed by both residential and commercial structures. Section 201 of ACESA amends Section 304 of 42U.S.C. 6833, setting energy use reduction benchmarks and target dates for meeting them.

ACESA established a goal that all new buildings be thirty percent more efficient than a comparable building constructed in compliance with the baseline code on the date of enactment.¹⁴ Local governments would then have one year to adopt building codes which comply with that goal.¹⁵ ACESA goes on to state that on January 1, 2014 (for residential buildings) and January 1, 2015 (for commercial buildings) that all new buildings must use fifty percent less energy than a

comparable building under the baseline code.¹⁶ Finally, the bill mandates that on the first of the year in 2017 for residential buildings and a year later for commercial buildings there must be an additional five percent decrease in energy use with further five percent reductions being required every three years until 2029 for residential and 2030 for commercial buildings.¹⁷

The bill does provide some modicum of latitude, however. If the Secretary of Energy determines that meeting these goals is not feasible, then lower reduction goals can be established as long as the reduction in energy use is greater than zero and is the maximum possible using a code that is life-cycle cost justified.¹⁸ Higher energy use reduction goals can be implemented either by local legislation, a successor national code, or by the Secretary of Energy.¹⁹ In addition to these energy use reductions, ACESA also mandates that beginning in 2030 and once every three subsequent years the Secretary of Energy shall establish updated energy efficiency goals.²⁰

Once a national Energy Efficiency Building Code has been established or updated all states have one year to bring their respective codes into compliance with national standards.²¹ If a local jurisdiction fails to become compliant within the span of 18 months then the National Energy Efficiency Building Code becomes the applicable code in that jurisdiction.²² A jurisdiction is deemed compliant if it has adopted a code that meets or exceeds the standards of the national code, and ninety percent of the “new and substantially renovated building space” inspected during the following year conforms to that code.²³ If a state is noncompliant it will become ineligible to receive federal funding in excess of that state’s allotment under the Energy Policy and Conservation Act, or emissions allowances under the ACESA.²⁴ Additionally, for each year that a state remains non-compliant it will be denied one quarter of any federal funding it would otherwise have received under ACESA.²⁵

In addition to the National Energy Efficiency Building Code provisions ACESA also provides for a building retrofit program intended to decrease energy consumption by existing buildings.²⁶ The Retrofit for Energy and Environmental Performance (REEP) program is meant to achieve cost-effective energy efficiency improvements while also improving other attributes of existing buildings, such as lowering water usage.²⁷ One section of REEP provides for the development of training and certification programs for auditors, inspectors, and contractors.²⁸ Another element of REEP requires federal, state, and local agencies to develop methods for testing and measuring the efficiency of a building.²⁹ ACESA calls for establishing a means of rating and certifying retrofitted buildings according to an Energy Star or similar green building rating system in order to facilitate tracking and identification of buildings under REEP.³⁰

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¹ Also referred to as the Waxman-Markey Bill

² 1990 Clean Air Act Amendments

³ European Union Greenhouse Gas Emission Trading System, implemented in 2005

⁴ EPA analysis of the American Clean Energy and Security Act of 2009 H.R. 2454 in the 111th Congress, June 23, 2009. This average is calculated from 2015-2050

⁵ EIA's Economic Analysis of "The American Clean Energy Security Act of 2009". August 4, 2009

⁶ WebMemo No.2450. "Son of Waxman-Markey: More Politics Makes for a More Costly Bill" June 16, 2009. Heritage Foundation. Exact Amount of estimate is \$1241. This average is calculated from 2012-2035

⁷ http://www.nationalbcc.org/index.php?option=com_content&view=article&id=750:&catid=1:&Itemid=7

⁸ ACESA § 312, amending § 700(13)B)

⁹ *Id.* amending § 712

¹⁰ *Id.* amending § 703

¹¹ *Id.* amending § 732

¹² Stone, Andy, "A Winner In the New Climate Legislation" Forbes.com 6-24-09

¹³ ACESA § 431

¹⁴ *Id.* amending § 304(a)(1)(A), "baseline code" defined in ACESA § 201, amending § 304(a)(6)

¹⁵ *Id.* amending § 304(b)(1)(A)

¹⁶ *Id.* amending § 304(a)(1)(B)

¹⁷ *Id.* amending § 304(a)(1)(C)

¹⁸ *Id.* amending § 304(a)(3)

¹⁹ *Id.* amending § 304(a)(2) & (3)

²⁰ *Id.* amending § 304(a)(4)

²¹ *Id.* amending § 304(c)(1)(A)(i)

²² *Id.* amending § 304(d)(1)

²³ *Id.* amending § 304(e)(3)

²⁴ *Id.* amending § 304(e)(6)(C)(i)-(ii) – EPCA divides 125 millions dollars among the state governments based on a formula contained therein. Emissions allowances issued pursuant to section 304(h)(1)

²⁵ *Id.* amending § 304 (e)(6)(C)(iii)(I)-(IV)

²⁶ *Id.* § 202(c)

²⁷ *Id.* § 202(b)-(c)

²⁸ *Id.* § 202(f)(1)-(2)

²⁹ *Id.* § 202(f)(4)-(6)

³⁰ *Id.* § 202(f)(12)(A)-(B) &(f)(14)

Related Materials:

"Chairmen Waxman and Markey Introduce "The American Clean Energy and Security Act""
Statement, May 15, 2009:

http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1622:chairmen-waxman-and-markey-introduce-the-american-clean-energy-and-security-act&catid=122:media-advisories&Itemid=80

“EPA Releases Analysis of American Clean Energy and Security Act” June 23, 2009:
http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1685:epa-releases-analysis-of-american-clean-energy-and-security-act&catid=122:media-advisories&Itemid=55

“EPA Sees Limited Renewable Energy Growth under Waxman-Markey” by Stephen Power, *The Wall Street Journal*: <http://blogs.wsj.com/environmentalcapital/2009/06/24/epa-sees-limited-renewable-energy-growth-under-waxman-markey/>

H.R.2454: American Clean Energy and Security Act of 2009: <http://thomas.loc.gov/cgi-bin/query/z?c111:h2454>:

“The Economic Impact of Waxman-Markey on the Home Building Industry,” by Timothy Harris and Benjamin Ingram: http://www.fed-soc.org/publications/pubid.1648/pub_detail.asp