



June 23, 2009

SUBSTITUTE AMENDMENT TO H.R. 2454, THE AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009

On May 15, 2009, Rep. Henry A. Waxman and Rep. Edward J. Markey introduced H.R. 2454, the American Clean Energy and Security Act of 2009, which was referred to the House Energy and Commerce Committee and eight other committees in the House of Representatives. On May 21, 2009, the House Energy and Commerce Committee favorably reported H.R. 2454. The substitute amendment to H.R. 2454 reflects changes recommended by the other committees and other changes, as described below.

Section 101. Combined Efficiency and Renewable Electricity Standard. The substitute amendment makes technical changes to the definition for “CHP system savings,” ensures that market transformation efforts will be included in measurement of electricity savings, and makes other minor technical changes.

Section 111. National Strategy. The substitute amendment ensures that the Department of Interior is involved in developing the national strategy for carbon capture and sequestration, and that the role of Indian tribes is appropriately considered.

Section 113. Studies and Reports. The substitute amendment ensures that the Department of Interior and Indian tribes are involved in the carbon capture and sequestration task force.

Section 115. Commercial Deployment of Carbon Capture and Sequestration Technologies. The substitute amendment ensures that the role of Indian tribes is appropriately considered and makes a number of minor technical changes to section 115.

Section 123. Plug-In Electric Drive Vehicle Manufacturing. The substitute amendment removes the term “domestically produced” in 123(b)(2) to avoid potential trade violations.

Section 132. Support of State Renewable Energy and Energy Efficiency Programs. The substitute amendment modifies section 132 to provide states greater flexibility in using allowances provided under this section to support renewable energy and energy efficiency programs. The amendment reserves 0.5% of the allowances distributed under this section for tribal renewable energy programs under section 133. The amendment allows states to use up to 10% of their allowances for the nonfederal share of transportation programs that reduce greenhouse gas emissions, such as transit and bicycle facilities.

Section 133. Support of Tribal Renewable Energy and Energy Efficiency Programs. The substitute amendment establishes a new program in the Department of Energy to distribute allowances, on a competitive basis, to support renewable energy and energy efficiency programs administered by Indian tribes.

Sections 141 – 146. Smart Grid Advancement. The substitute amendment makes technical changes to the smart grid subtitle and requires objective economic analysis of peak demand reduction options relative to peak supply options.

Section 151. Transmission Planning. The substitute amendment includes Indian tribes and federal power marketing administrations in the transmission planning provisions.

Section 171. Energy Innovation Hubs. The substitute amendment makes technical changes to section 171 and specifies that in establishing three of the eight Energy Innovation Hubs under this section, the Secretary of Energy is to give special consideration to consortium applicants that include at least one Land Grant Institution, one Predominantly Black Institution, and one Hispanic Serving Institution. The annual allowance allocation for the Energy Innovation Hubs is reduced from 1.5% in H.R. 2454 as reported from committee to 0.45%.

Section 172. Advanced Energy Research. The substitute amendment adds a new section 172, which provides for distribution of 1.05% of the allowances each year under the bill by the Director of the Advanced Research Projects Agency-Energy (“ARPA-E”), to support research and development on innovative energy technologies.

Section 181. Revisions to Loan Guarantee Program Authority. The substitute amendment includes a change to the subrogation provision to protect the financial interests of the United States.

Sections 182-191. Clean Energy Deployment Administration. The substitute amendment provides for an independent corporation wholly owned by the U.S. government to provide a range of financial support to clean energy technologies. The amendment also provides for the initial capitalization of the Clean Energy Deployment Administration (CEDA) through the issuance of green bonds. The amendment includes a provision to prohibit CEDA financial support for individual projects receiving support from the Title XXII loan guarantee program and makes a number of additional changes to the provisions.

Section 195. Increased Hydroelectric Generation at Existing Federal Facilities. The substitute amendment deletes the section reported from committee entitled, “Study of ocean renewable energy and transmission planning and siting” and replaces it with a requirement to update a study required by section 1834 of the Energy Policy Act of 2005.

Section 198. Office of Consumer Advocacy. The substitute amendment modifies this section to provide that the office can employ 25 staff and participate in proceedings outside the Federal Energy Regulatory Commission as an amicus, and makes other technical amendments.

Section 201. Greater Energy Efficiency in Building Codes. The substitute amendment modifies the “cool roofs” language to ensure it is not interpreted to reduce insulation requirements. The amendment clarifies that states have the primary responsibility for enforcing building codes and defining violations. The substitute amendment clarifies the division of allowance value between state and local governments as a function of their relative roles in implementing and enforcing building codes. The amendment adjusts the first deadline for the Secretary to issue rules by three months to align with the schedule for updated voluntary consensus codes.

Section 202. Building Retrofit Program. The substitute amendment explicitly includes public and assisted housing as eligible for building retrofits. The amendment modifies the “cool roofs” language to ensure it is not interpreted to reduce insulation requirements.

Section 214. Best-in-Class Appliance Program. The substitute amendment adds a sub-part to the program rewarding appliance manufacturers for adding Smart Grid capability to high-efficiency appliances and changes the authorization levels commensurately.

Section 219. Energy Star Standards. The substitute amendment removes a requirement that prototype products be tested two years before being marketed.

Section 221. Emissions Standards. The substitute amendment modifies the subsection addressing nonroad sources in order to ensure that manufacturers have adequate lead time for the development of their products. Additionally, the amendment deletes the aircraft provisions.

Section 222. Greenhouse Gas Emissions Reductions Through Transportation Efficiency. The substitute amendment revises this section to integrate new greenhouse gas reduction planning measures into the existing transportation planning process.

Section 223. SmartWay Transportation Efficiency Program. The substitute amendment makes a technical change to this provision.

Section 251. Energy Savings Performance Contracts. The substitute amendment adjusts the time periods in the section to ensure adequate time for contractors to participate.

Section 311. Reducing Global Warming Pollution: The following changes were made by the substitute, in addition to a number of technical changes.

Section 722. Prohibition of Excess Emissions. The substitute amendment makes technical clarifying corrections regarding the treatment of algae-based fuels and other technical corrections.

Section 731 – 743. Offsets. The substitute amendment makes minor technical changes to sections 731-743.

Section 732. Establishment of Offset Program. The substitute amendment allows for offsets for destruction of CFCs if permitted by the Administrator under Title VI of the Clean Air Act.

Section 735. Approval of Offset Projects. The substitute amendment clarifies that offset approval petitions and decisions shall be made publicly available.

Section 743. International Offset Credits. The substitute amendment includes language to ensure sectoral credits are issued on the basis of reductions beyond an absolute emissions baseline under section 743(c), and adds clarifying language regarding the interaction of subsections 743(c) and (d) for the issuance of offset credits. The amendment establishes deadlines for the Administrator to identify eligible states, provinces, and countries under section 743(e). The amendment modifies one consideration in setting a project-level or program-level boundary under section 743(e). The substitute amendment ensures that the Secretary of Agriculture is consulted on relevant matters under section 743(e).

Section 754. Requirements for International Deforestation Reduction Program. The substitute amendment broadens the scope of activities under Part E to include activities to reduce emissions from forest degradation and states that emissions reductions from activities funded under this part are not eligible for offset credits.

Section 781. Allocation of Allowances for Supplemental Reductions. The substitute amendment makes technical corrections regarding the carryover of undistributed allowances from one year to the next.

Section 782. Allocation of Emission Allowances. The substitute amendment adds a new provision in section 782(a) to allocate 0.5% of allowances to small electricity local distribution companies for energy efficiency, renewable electricity and low income assistance programs. This allocation lasts from 2012 through 2025 and then phases out over the next five years. The substitute amendment makes a number of technical changes to carry-over undistributed allowances from one year to the next allowances that have been allocated for energy-intensive, trade-exposed industries; deployment of carbon capture and sequestration technology; and supplemental reductions from reduced deforestation. The substitute amendment modifies the recipients of allocation for Energy Research and Development. Each year, 0.45% of allowances will go to Energy Innovation Hubs and 1.05% to the Advanced Research Project Agency-Energy. The substitute amendment provides funding for the Secretary of Labor to implement part 2 of subtitle B of title IV of ACES Act. The substitute provides an additional 0.25% of allowances for small business refiners from 2014 through 2026.

Section 783. Electricity consumers. The substitute amendment establishes a new subsection under this section to distribute 0.5% of the allowances from 2012 to 2028 to small electricity local distribution companies to support renewable electricity deployment, energy efficiency programs, and consumer assistance for low-income ratepayers. The substitute amendment also prohibits each electricity local distribution company from receiving allowances that are worth more than their direct and indirect costs of complying with this title. In addition, the amendment adjusts the formula for distribution of allowances to local distribution companies and merchant coal generators to account for carbon emissions from plants currently under construction, caps the allocation for generators with long-term contracts at 1.5% of allowance value, allows cogeneration facilities with long-term contracts to receive allowances for thermal energy contracts as well as power contracts, strengthens ratepayer protections for industrial ratepayers, and makes a number of technical changes.

Section 784. Natural gas consumers. The substitute amendment makes technical changes to ensure equitable distribution of allowances among natural gas local distribution companies and ratepayers and strengthens ratepayer protections for industrial ratepayers.

Section 785. Home Heating Oil, Propane, and Kerosene Consumers. The substitute amendment modifies this section to include benefits for residential and commercial kerosene consumers and makes technical changes.

Section 787. Allocations to Refineries. The substitute amendment revises the approach to allocation of allowances to refineries and provides additional assistance to small business refiners.

Section 791. Auction Procedures. The substitute amendment adds a new mechanism for selling allowances that are to be auctioned. It reserves a specified percentage of allowances and makes them available for small business refiners to purchase for compliance for that year at the average auction price.

Section 332. HFC Regulation. The substitute amendment allows special consideration for the National Aeronautics and Space Administration regarding space flight safety. The amendment also makes a number of technical changes, including a modification to clarify the interaction between destruction offset credits in Titles VI and VII of the Clean Air Act. Corresponding modifications were made to the Title VII offsets provisions.

Section 333. Black Carbon. The substitute amendment provides that regulations to reduce emissions of black carbon do not apply to specific types of emissions sources that the Administrator finds are subject to adequate regulation.

Section 336. Enforcement. The substitute amendment reinserts an erroneously dropped paragraph setting a deadline for the Administrator of EPA to respond to a court remand.

Section 338. Davis-Bacon Compliance. The substitute amendment makes a technical change to the provision.

Section 339. National Strategy for Domestic Biological Carbon Sequestration. The substitute amendment adds a study to examine the barriers to maximizing biological sequestration of carbon in the United States.

Sections 341-358. Carbon Market Assurance. The substitute makes a number of technical changes to the criminal prohibition on fraud and false statements in connection to regulated allowances and to other provisions. The amendment also provides the CFTC Inspector General with increased personnel flexibility.

Section 359. Cease-and-Desist Authority. The substitute amendment adjusts the provision to make the judicial review provisions consistent in the Federal Power Act, Natural Gas Act, and Natural Gas Policy Act.

Section 421. Clean Energy Curriculum Development Grants. The substitute amendment adds the field of climate change adaptation to the fields of study eligible. The amendment also makes technical changes.

Sections 431 and 432. Consumer Assistance. The substitute amendment modifies the provisions for providing assistance to low-income consumers as we transition to a clean energy economy.

Sections 441-446. Exporting Clean Technology. The substitute amendment strengthens intellectual property protections in the technology transfer program, prohibits issuance of offset credits for activities funded under these provisions, and makes technical changes.

Section 451. Global Change Research and Data Management. The substitute amendment replaces this section with language from H.R. 906 which was reported from the House Science Committee during the 110th Congress.

Section 452. National Climate Service. The substitute amendment replaces this section with language from H.R. 2407 which was recently reported from the House Science Committee.

Section 453. State Programs to Build Resilience to Climate Change Impacts. The substitute amendment makes technical changes and sets aside one percent of the allowances distributed under this section to support climate change adaptation programs administered by Indian tribes.

Section 480. Natural Resources Climate Change Adaptation Fund. The substitute amendment made a technical change to this provision.

Section 481. National Wildlife Habitat and Corridors Information Program. The substitute amendment makes technical changes to this section.

Section 482. Additional Provisions Regarding Indian Tribes. The substitute amendment makes technical corrections to this section.