

American Clean Energy and Security Act of 2009

USDA's Role

Position -

USDA should determine parameters of an agricultural and forestry offset as described in statute. USDA should also be directed to promulgate regulations determining eligibility of agricultural and forestry offset projects and administer related elements of such a program.

Rationale -

USDA is best positioned to create technical standards and protocols for GHG emissions reduction and sequestration projects from the agricultural and forestry sectors. Nearly all of the scientific data and documentation behind existing agricultural and forestry standards used by carbon registries is grounded in work conducted by USDA scientists or land grant university partners. USDA's Natural Resource Conservation Service, Cooperative State Research, Education, Farm Service Agency and Extension Service, Economic Research Service and Agricultural Research Service have done work for agricultural practices that reduce GHG emissions and sequester carbon, such as methane capture and conservation tillage. USDA's work is already part of the only comprehensive set of GHG inventory methods in the Department of Energy 1605(b) Program.

USDA also has the institutional resources, administrative structure and established relationships already in place to engage farmers and ranchers across the country. USDA has tens of thousands of employees working with agricultural producers on various production agricultural issues. The relationships/trust with farmers and ranchers, field assets and technical expertise allow USDA to have the necessary tools to create, administer as well as drive higher levels of participation in the offset program. For these reasons § 2709 of the 2008 Farm Bill gave USDA the authority to create technical standards to facilitate participation in emerging carbon, water or other ecosystem service markets.

EPA is best positioned to ensure the integrity of the whole system, including the offset program. Since EPA will be charged with administering the overarching cap-and-trade system, EPA should review the integrity of the offset program. In that regard, EPA can periodically review the standards, protocols and verifications systems established by USDA to ensure that they are being successfully implemented into the larger cap and trade system.

Amendments to the Waxman/Markey draft- USDA, via the Secretary, should replace EPA as the lead agency, where agricultural and forestry-related offsets are concerned, in the following sections of the draft text:

- Section 732. Establishment of Offsets Program
- Section 733. Eligible Project Types
- Section 734. Requirements for Offset Projects
- Section 735. Approval of Offset Projects
- Section 736. Verification of Offset Projects

With USDA's more prominent role, section 731 should be amended to ensure that USDA appoints half the Board. Given the potential importance of the Board, Senate confirmation of the Chairman and Vice-Chairman should also be required.

Finally, while EPA should be involved in auditing the USDA system, Section 738 should be amended to encourage as much remote/indirect auditing methods as possible.

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Treatment of Early Actors

Position -

Congress must recognize and reward the early efforts undertaken by agricultural leaders to reduce GHG emissions and/or sequester carbon. Significant numbers of agricultural and forestry landowners have already undertaken actions to reduce GHG emissions or sequester carbon. Changes in management taken by these early actors include, but are not limited to, switching to or maintaining zero tillage (“no-till”), using new technology to capture methane for improved animal waste management, and afforesting or reforesting buffers or larger ecosystem landscapes. These early actors should be eligible to participate and receive compensation for future GHG emissions reductions or carbon sequestration achieved under the newly established offset protocols.

Rationale-

The treatment of early actors is vital to agriculture’s participation in a climate change system. The central purpose of any offset program is to encourage the widespread adoption of practices that reduce GHG emissions or sequester carbon; these efforts would reduce and potentially reverse global warming impacts, as well as provide cost containment for the entire system. Agricultural producers who have already begun to engage in GHG emissions reductions and carbon sequestration practices, techniques and projects are critical emissaries to promote and ensure widespread adoption of these practices. In fact, these early actors often are the leaders of agricultural organizations and their leadership is needed to constructively engage their organizations and membership on climate change policy. Thus, by rewarding early actors we support constructive political engagement by agriculture and we create a core group of emissaries who will encourage offset projects.

Allowing early actors’ projects to be eligible does NOT automatically result in offset credits being issued for previous sequestration/emission reduction activities or provide retroactive payments - Early actor projects, like all others would have to comply with all offset protocols for the practice, technique or project type that they are engaged in. Thus, even if a producer adopted a practice in 2002, if that producer does not meet other offset protocols he will not be eligible to provide offset credits. Further, early actors will not be paid for GHG emissions reductions or carbon sequestered retroactively. Instead, they will be paid for future GHG emissions reductions or carbon sequestration.

Amendments to the Waxman-Markey draft - The date determining project eligibility provided in Section 734(a)(1)(A)(ii) should be changed to January 1, 2001. This date matches the date used for providing offset credits from existing registries in Section 740.

Additionally, Section 740(a)(2) should be amended to allow offset projects developed under existing voluntary carbon trading programs to also be recognized and be issued offset credits so long as credits generated under such an exchange have not expired, been retired or been canceled.

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Unlimited Offsets

Position -

The use of domestic agricultural offsets must not be artificially limited—Given that carbon sequestration and greenhouse gas destruction from agricultural lands are the easiest and most readily available means of reducing greenhouse gas emissions on a meaningful scale in the near term, we believe that legislation should not artificially limit the amount of domestic agricultural projects that can be commenced in a cap and trade program.

Rationale -

In order to address the impacts of climate change, we must see rapid decreases in greenhouse gas emissions into the atmosphere. In 2007, the International Panel on Climate Change (IPCC) concluded the growth in greenhouse gas emissions must stop no later than 2015 and begin to drop quickly thereafter in order to avoid triggering significant impacts from climate change. More recent analysis has shown the 2015 timeframe may not be quick enough. The theory is that human-caused greenhouse gas emissions will raise temperatures sufficiently to accelerate the release of carbon dioxide from forest and tundra ecosystems which could add billions of tons of carbon dioxide into the atmosphere that would spur climate change impacts in an uncontrollable manner. Given this theory by proponents of expedient action climate change, policy should be crafted that maximizes agriculture's ability to help.

Analysis by the EPA and USDA estimates agricultural soils and forestry lands have the potential to sequester enough carbon to offset 20% of the United State's annual emissions.¹ Agriculture and forestry projects, by themselves, have the potential to satisfy the current limits in the Waxman/Markey draft. While it is unclear what other types of non-agricultural activities will qualify under the offset program, it is possible that acceptance of other project types would result in more possible GHG offset projects than anticipated by the proposed cap. Because agricultural offsets provide the easiest and most readily available means to reduce GHG emissions on a meaningful scale, legislation should not artificially limit these projects ability to provide a positive impact.

Amendments to the Waxman/Markey draft – The draft limits the total quantity of offsets to 2 billion tons, split evenly between domestic and international offsets. The bill should not include any limit on domestic offsets as a means to ensure quick action on climate change while also providing economic benefits to agricultural producers.

¹ USEPA, Greenhouse Gas Mitigation Potential in Forestry and Agriculture, November 2005, EPA Report 430-R-05-006, Washington, DC 20460.

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Business As Usual and Baselines

Position-

Eligibility and offset compensation should not be based upon whether a project, technique or practice is part of a common operating procedure/ business as usual, but rather whether the project, technique or practice sequesters carbon or otherwise reduces GHG emissions.

Rationale-

The central purpose of climate legislation is to reduce or eliminate as much carbon as possible. Utilizing a “business as usual” methodology will limit the amount of GHG emissions reductions or carbon sequestered by agriculture and forestry. Section 734(a)(1) requires offset projects conform to a standardized methodology that will determine if the project is part of “business as usual” for an industry. The draft text also allows the government to update the offset program on a recurrent basis, which will result in changing “business as usual” baselines. This creates a high level of uncertainty for agricultural producers about whether an offset project that they are undertaking or about to undertake will qualify for offset credits; it creates the same uncertainty for potential investors in offset projects. Uncertainty will dampen the level and scale of participation in any offset program, as well as the success of such a program and the whole system.

By applying the “business as usual” test for additionality, the draft also ensures that the “hardest” acres or those producers unlikely to participate at modest prices and early stages of a program will never participate. Rather than abandon attempts to encourage the “hardest” acres, the offset program should strive to reach this population.

Example: Today, approximately 125 methane digester systems across the country account for less than 1% of all dairy, hog, and beef cattle operations. Congress should not enact a statute that eliminates the incentive to build additional methane digesters once the number of digesters reaches enough of a majority so as to become considered “business as usual”. Instead, Congress should encourage as much GHG emissions reduction and sequestration as possible, and the digester built when market penetration was at 45% is just as valuable to GHG impacts as the digester built at 95% market penetration; each of these digesters should receive just compensation for its GHG emission reductions, not dependent on when they were built in relation to each other.

Farmers and ranchers are familiar with established baselines. Rather than moving the goalposts on a recurrent basis as the draft suggests, producers are comfortable in being judged against a static baseline. USDA should be charged with determining the normal activity baseline for each offset project type using a historical or temporal baseline. Once USDA sets that baseline of activity, offset projects can be judged against the baseline to determine whether a proposed action is additional vis-à-vis the historical or temporal baseline. Such a baseline system will ensure that producers (offset providers) and buyers are provided certainty.

Amendments to the Waxman/Markey draft - Section 734(a)(1)(B) should be changed to: “A *standardized methodology for establishing activity baselines for offset projects of that type. The Secretary shall set an activity baseline for each offset project type as in effect on January 1, 2001.*”

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Allowances

Position-

The agricultural sector should be provided with an allocation of allowances, or portion of allowance auction revenue.

Rationale -

The agricultural sector faces unique challenges in dealing with the impacts of climate change as it begins to impact our nation and world. Agricultural producers are at the front line of weather changes; for most farmers and ranchers, changes in moisture, temperature and alterations in the growing season directly impact their ability to produce the food and fiber. As such, allocating allowances or allowance revenues for research into adaptation is vital. New seeds, technologies and techniques must be identified in order for tomorrow's farmers and ranchers to produce the same vast quantities of food enjoyed today.

While climate change legislation is likely to lead to higher input costs (such as fuel and fertilizer) for agriculture as a sector, producers have no ability to pass higher costs forward. Agricultural producers are typically "price takers" in economic terms; a percentage of allowances could serve to smooth the transition for producers, especially those who are not in a position to participate in offset projects. For example, smaller agriculture operations are less likely to be in a position to generate offset credits due simply to the amount of credits they could generate not exceeding the cost of changing a practice or cost of compliance.

Objectives in the Waxman/Markey draft- As the draft text is changed and finalized, the agricultural sector believes a significant allowance allocation, or portion of the proceeds of an allowance auction, should flow to agriculture. The 5% allocation provided in the 2008 Lieberman-Warner climate bill should serve as the minimum. Funds could be used to both assist with adaptation efforts and help smooth the transition to a new economy.

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Miscellaneous Items of Concern

Offset Program - Issuance of Regulations

As currently drafted, regulations establishing an offset program may not be in place when the cap and trade system takes effect, thus offsets would not be available. Earlier issuance of regulations ensures producers will have certainty regarding the types of projects to pursue, as well as certainty to offsets buyers regarding the types of projects available for investment. Additionally, earlier issuance of regulations also allows the necessary infrastructure to develop to establish a carbon market. Agricultural and forestry offset projects are currently being created across the country and in other countries under voluntary private and state or regional carbon markets. The Clean Development Mechanism (CDM) in the Kyoto Protocol, the Chicago Climate Exchange (CCX), the Regional Greenhouse Gas Initiative (RGGI), and California's Climate Action Review Board (CARB) all are examples of systems with existing carbon protocols and markets, moving in an expeditious manner with the creation of a federal system should not be problematic.

Section 732(a) should be amended so that regulations are completed *no later than* one year before the cap and trade system begins.

Fees -

While charging fees as a way to fund administration seems reasonable, the Waxman/Markey language allows the federal government to charge fees "*in any amount necessary*" to cover certain administrative costs. Such broad language is subject to abuse.

Section 732(e) should be amended to limit the amount of administrative fees.

Accounting for Reversals

Section 734(b) of the Waxman/Markey draft discusses the creation of a protocol to account for reversals of carbon sequestration projects. Several important principles should be incorporated into the statute. First, since the purpose of a cap and trade system is the reduction of man-made carbon emissions any participants in an offset program should not be required to account for carbon reversals caused by acts of nature such as hurricanes, forest fires, floods, etc. Second, while it is important to establish an offset reserve or some other mechanism to account for potential reversals, determining who pays for the establishment of such a system is critical. As currently drafted the text suggests that if an offset reserve is established both for intentional and unintentional reversals would be accounted for using the same mechanism, namely the offset project representative must account for the reversal.

This lack of differentiation about the cause of the reversal should be corrected. If the GHG emissions reductions or carbon sequestration credits generated under a carbon offset project are intentionally reversed by the individual providing those credits then it is clear that individual should be held liable for those reversals. Accounting for and removing the risk associated with intentional reversals could be handled through contracts, insurance, or forcing the individual to set aside a pool of additional credits ("buffer reserve pools").

While placing additional costs, in some form on an offset provider to insure against intentional reversal makes sense, it is not equitable to place the identical cost on a offset project for unintentional reversals outside their control. Resolving unintentional reversals should be the responsibility of society/government; presumably the

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government would backfill the credits lost; for instance, the draft text mandates a 5:4 offset crediting ratio, which would automatically create a 20% reserve, and likely takes care of the problem.

Example: Assume an Idaho wheat producer undertakes an afforestation project for offset credits in which he plants 100 acres of trees on what had previously been cropped wheat land. After completing half of his carbon sequestration contract (for afforestation) a fire destroys his 100 acres of trees.

<i>Cause of the Fire</i>	<i>Responsibility to Account for Reversal</i>
Lightening/Act of God	No Responsibility to Address/Government Reserve
Arson	Government Reserve
Producer burns down trees in order to replant wheat	Producer is Liable for Damages

Section 734(b) should be amended to differentiate between the types of causes of reversal that should be allowed in the reversal pool/buffer.

Leakage

Section 734(a)(1)(D) of the Waxman/Markey draft sets out a requirement that a standardized methodology should be established to account for and mitigate leakage from any offset project. Leakage analysis for domestic offsets must be done within the confines of the jurisdiction of the United States. As such determining what, if any, leakage might occur from a project on a producer's own farming operation, is vital. Determining the leakage that might occur between producers that are and are not participating in the offset program likewise is vital to determining the leakage that offset projects might cause within the United States. With that said, determining the leakage that an offset project can cause outside the borders of the United States is extremely speculative. Without international agreed upon leakage rules, a full accounting of information between countries, or an ability to research the cause and effect of actions taken in one part of the world on actions elsewhere no leakage analysis should include impacts of offset project outside the United States.

Section 734(a)(1)(D) should be amended to include a geographic limitation to limit leakage analysis for domestic offsets to within the boundaries of the United States.