



Detailed Summary of the American Power Act of 2010 Offset Provisions

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This document provides a detailed summary of the greenhouse gas (GHG) offset provisions in the American Power Act, which was introduced by Senators Kerry and Lieberman on May 11, 2010.²

DOMESTIC OFFSETS

Program administration: The Secretary³ and Administrator⁴, in consultation with appropriate federal agencies, shall promulgate regulations establishing a program for the issuance of offset credits (Sec. 733, pg. 378). The Department of Agriculture is designated lead agency to determine eligible offset project types (Sec. 734, pg. 383), requirements for offset projects (Sec. 735, pg. 391), approval (Sec. 736, pg. 404), and audits and review (Sec. 739, pg. 412) for domestic agriculture and forestry projects. Thereafter, the Secretary is designated “appropriate official” for domestic agriculture and forestry offset projects and the Administrator for all other offset projects.

- **Program Establishment:** Not more than 18 months after the date of enactment the Administrator and Secretary shall promulgate regulations establishing a program for the issuance of offsets; regulations must include provisions to address additionality and permanence and establish a process to accept and respond to comments from third parties. Directs the Administrator to establish an offset registry (Sec. 733, pg. 378).
- **Eligible project types:** Not later than 1 year after date of enactment the Secretary shall establish the initial list of eligible project types for which there are well developed methodologies for domestic agriculture and forestry projects; includes list of eligible projects (Sec. 734, pg. 383). The Administrator is responsible for all other domestic offset project types (Sec. 733, pg. 382). The Secretary or Administrator can add or remove projects from the lists by rule subject to certain provisions (Sec. 734, pg. 388). Any person may petition to modify the list after 180 days after the date of enactment (Sec. 734, pg. 390).
- **Methodology promulgation:** Requires Administrator and Secretary to promulgate standardized methodologies within 18 months of a project type being added to list. The methodology must include provisions for addressing: additionality, baseline establishment, and leakage, and must ensure that offset credits provide for a reduction in net concentrations of GHGs (Sec. 735, pg. 391).
- **Advisement:** Establishes an independent “Greenhouse Gas Emission Reduction and Sequestration Advisory Committee” to provide guidance to the Secretary and Administrator on project types, areas of scientific uncertainty and acceptable qualification and quantification methodologies. The Board will issue a report with priority recommendations for ensuring the emission reduction integrity of the offset program no later than 240 days after it is established and

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² This summary applies only to the discussion draft of the American Power Act of 2010 released on May 11, 2010 and not subsequent iterations

³ Secretary means Secretary of the U.S. Department of Agriculture

⁴ Administrator means Administrator of U.S. Environmental Protection Agency

periodically thereafter; it will also conduct a scientific review of offset program by 2017 and every 5 years thereafter (Sec. 732, pg. 367).

- **Program review:** The program will be reviewed at least once every 5 years and revised if necessary (Sec. 741, pg. 421).
- **Limits on offset use:**
 - **System-level offset limit:** No more than 2 billion tons of offsets annually may be used for compliance by covered entities (Sec. 722, pg. 331). The President may recommend to Congress whether the 2 billion ton limit should be increased or decreased (Sec. 722, pg. 336).
 - **Entity-level offset limits:** Covered entities may satisfy a percentage of their compliance obligation with offsets each year. This number is determined by the ratio of an entity's compliance emissions to system-wide compliance emissions in the year two years before the current compliance year multiplied by two billion (Sec. 722, pg.332).
 - **Domestic/International offset limits:** Of the total offsets allowed, not more than 75% can come from domestic offsets, and not more than 25% can come from international offsets. However, if the Administrator determines that less than 1.5 billion tons of domestic offsets at or below allowance prices are available, the Administrator shall increase the percentage of international offsets allowed up to a maximum of 1 billion tons. (Sec. 722, pg. 335).
 - **International offset discount:** After 2018, regulated entities must surrender 1.25 international offsets in lieu of 1 allowance (Sec. 722, pg. 332 and 336).
- **Additionality:** The standardized methodology for determining the additionality of each type of offset project listed as eligible must assure, at a minimum, that the project or activity:
 - was not required by law;
 - was not commenced prior to January 1, 2009 (except for projects that commenced after January 1, 2001, that were registered as of the date of enactment under an offset program that the Administrator and the Secretary have approved under the early offset provisions under Sec. 740);
 - emits at levels below or sequesters at levels above an activity or emissions business-as-usual performance or practice for the relevant types of activity, as defined by a standardized activity or emissions baseline established by rulemaking by the Secretary. Allows establishment of a "temporal" baseline that can reflect a continuation of practices in place before the adoption of the offset project (Sec. 735, pg. 392).
- **Quantification and leakage:** Directs the appropriate official to establish a standardized methodology for accounting for and mitigating any potential leakage and uncertainty of emissions (Sec. 735, pg. 394).
- **Accounting for Reversals⁵:**
 - **General Provisions:** The Secretary shall prescribe at least one of the following to address reversals: an offset reserve, insurance or another mechanism. Credits will be placed in the reserve, managed by the Administrator, based on the risk of reversal and shall be subtracted from the quantity of offset credits to be issued. In the event of a reversal, the Administrator shall remove and cancel credits or allowances to fully account for the reversal. Allows the Secretary to lower the quantity of reserve offsets required due to "undue hardship" in the event of a catastrophic occurrence (Sec. 735, pg. 396).
 - Intentional reversals: offset project developers shall replace 150 percent of cancelled credits.

⁵ A "reversal" occurs when carbon stored in biological systems (e.g. forests or soils) is re-released into the atmosphere, thereby reversing the GHG reducing benefit of the offset credit.

- Unintentional reversals: offset project developers shall replace 50 percent of the credits reserved for that project or 50 percent of the reserve credits that were cancelled, whichever is less (Sec. 735, pg. 398).
 - Carbon agreements and land use flexibility: Allows the use of “carbon agreements and land use flexibility” mechanisms to address reversals from sequestration projects including: establishing a specific duration for the activity, clear liability for carbon accounting, sequential activities, adequate monitoring and accounting systems, carbon easements and other options as determined by the Secretary (Sec. 735, pg. 398). The Secretary may assign liability for reversals to any part of the carbon agreement for the purposes of carbon accounting (Sec. 735, pg. 400).
 - Crediting periods: 5-10 years for projects other than forestry projects; no more than 30 years for forestry projects. The representative of an offset project may petition for a new crediting period to commence after the end of the previous crediting period but not earlier than 1 year before the termination of a crediting period (Sec. 735, pg. 400).
 - Emission reduction integrity: The appropriate official shall apply conservative assumptions to protect the environmental integrity of the cap. Requires the Secretary to make available for public comment how the methodology or standard meets the requirements of this section and include an updated analysis in the record of the final rule (Sec. 735, pg. 402).
 - Additional Benefits and Data Collection: nothing in this section precludes an offset project from receiving offset credit because of receipt of payment from another source for an ecological service other than GHG emission reductions. Requires the Secretary to develop procedures and guidelines for determining eligibility for generating offset credits for an activity that is receiving payment for other ecological services. The appropriate official shall collect such data as are necessary to assess a range of factors relative to the performance of any offset project (Sec. 735, pg. 403).
- **Offset approval, verification, issuance and auditing requirements**: Establishes approval process for offsets credits (Sec. 738, pg. 412) and verification guidelines requiring third party verification of projects by verifiers accredited by the Administrator and Secretary, potentially to include American National Standards Institute, with EPA and USDA given discretion to set accreditation standards (Sec. 737, pg. 407). The Secretary and Administrator are required to conduct random audits of offset projects and credits; however, they can delegate audit responsibility to States (Sec. 739, pg. 412).
- **Productivity Study**: requires the Secretary to conduct an annual assessment of the amount of agricultural land that has been removed from agricultural production due to participation of landowners in afforestation offset projects and evaluate the impact of the offset program on a range of other issues (Sec. 741, pg. 419).
- **Early offset supply**: Voluntary and regulatory offset program administrators may apply to the Administrator and Secretary for approval as an early offset provider. Programs shall be approved if they meet the following criteria:
 - Established before Jan. 1, 2009;
 - Have developed publicly available offset project type standards and methodologies that require emissions reductions be measurable, additional, verifiable, enforceable and permanent;
 - Requires that emissions reductions are verified by an accredited state or third party, and are registered in a publicly available registry, among other criteria.
 - Retired and expired credits are not eligible.
 - Credits will only be issued for emissions reductions that occur after Jan 1, 2004, from projects commenced after January 1, 2001, based on a crediting period that commences not later than the date on which the requirements for the early offset program take effect and does not exceed the shorter of ten years or the established crediting period of the early offset program.
 - The Administrator may revoke approval of a qualified program if it does not meet the above criteria or the approval of particular project type if the program fails to ensure that credits will be awarded for emission reductions that are not verifiable, additional, measurable, enforceable and permanent. Projects paid under the carbon conservation program that occurred prior to Jan. 1, 2009, cannot also receive early offset credit (Sec. 740, pg. 414).

INTERNATIONAL OFFSETS

- **Administration:** The Administrator, in consultation with the Secretary of State and Administrator of USAID, may issue international offset credits based on projects that avoid, reduce or sequester emissions in developing countries⁶. Regulations must be promulgated within 2 years from date of enactment (Sec. 753, pg. 427).
 - **Advisement:** Establishes an independent “International Offsets Integrity Advisory Committee” to provide guidance to the Administrator on project types and program environmental integrity. The Board will issue a report no later than 180 days after it is established and periodically thereafter with “priority” recommendations for ensuring the emission reduction integrity of the offset program (Sec. 752, pg. 423).
 - **Regulation:** International offset credits may be issued only if: 1) the U.S. is a party to a bilateral or multilateral agreement that includes the country in which the project has occurred, 2) such a country is a developing country, 3) the agreement ensures all requirements included in APA apply, 4) offsets are appropriately distributed, and 5) the offset project representative is eligible to receive service of process in the U.S. (Sec. 753, pg. 427).
- **Project sources:** Offset credits may be issued for projects identified by the Administrator under Sec. 733 through an approved international body, sectoral crediting mechanisms or international reduced deforestation as outlined in the APA. The Administrator may issue its own offset project methodologies in the event that certain conditions are met (Sec. 753, pg. 430).
 - **Sector-based credits:** Approves the issuance of offset credits based on sectoral crediting mechanisms targeted at sectors in any country that: 1) has comparatively high emissions or greater levels of economic development or 2) would be subject to a compliance obligation under Section 722 if it were located in the U.S. Provides detailed criteria for the establishment of sectoral baselines (Sec. 756, pg. 442).
 - **Recognition of other programs:** The Administrator can issue credits in exchange for credits issued by an international body established by the UNFCCC, a protocol to such convention or a treaty that succeeds such a convention as long as those credits were generated through a program that creates equal or greater assurance of the environmental integrity of the U.S. program. Sets limitations on credits issued after Jan. 1, 2016, to assure the international body issuing credits adheres to sectoral crediting rules consistent with those set out in the APA (Sec. 756, pg. 447).
 - **Offsets from reduced deforestation:** International offset credits are allowed only if the activity occurs in a country identified by the Administrator pursuant to the country’s capacity to participate in such a program according to specific criteria. Offset credits can be issued relative to a national or sub-national baseline. Sub-national credits can only be issued for first 5 years of program. Includes extensive requirements for rights of forest dependent and local people and communities. Requires the Administrator to develop a list of eligible countries that have the technical and institutional capacity to participate in deforestation reduction activities at a national level and has a land use or forest sector strategic plan. National and State or province-level deforestation baselines must establish a trajectory that would result in zero-net deforestation not later than 20 years after the baseline was established. Allows credits to be issued to project developers relative to national baseline (Sec. 756, pg. 449).
 - **Administrator issued international offsets:** EPA may issue offsets not in the above categories if: 1) the cost of allowances reach the cost-containment reserve auction price for two consecutive years, and 2) the Administrator determines that less than the maximum limit of international offsets is not met. To qualify: 1) a project or activity must be located in a country that has entered into a bilateral or multilateral arrangement with the U.S., 2) that country must have developed and be implementing a low carbon development plan that includes provisions for

⁶ The term ‘developing country’ means a country eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

the activity, 3) not be activities covered in the other offset categories, and 4) satisfy country appropriate criteria to ensure adequate treatment of leakage, additionality, and permanence (Sec. 753, pg. 431).

- **Eligible project types:** Not later than 1 year after date of enactment the Administrator shall establish the initial list of eligible project types. The Administrator can add or remove projects from the lists by rule by rule at any time (Sec.754, pg.434). Any person may petition to modify the list (Sec. 754, pg.434). Offsets based on destruction of hydrofluorocarbons (HFC's) are prohibited (Sec. 755, pg. 442).
- **Additionality:** The Administrator shall establish a standardized methodology for determining the additionality of each type of offset project listed as eligible. Such methodology shall assure, at a minimum, that any GHG emission reduction is considered additional only to the extent that the project or activity:
 - was not required by law;
 - was not commenced prior to January 1, 2009 (except for projects that commenced after January 1, 2001, that were registered as of the date of enactment under an offset program that the Administrator and the Secretary have approved under the early offset provisions under Sec. 740);
 - emits at levels below or sequesters at levels above an activity business-as-usual performance or practice for the relevant types of activity to reflect a conservative estimate of business as usual practice (Sec. 755, pg. 436).
- **Quantification and leakage:** Directs the appropriate official to establish a standardized methodology for accounting for and mitigating any potential leakage and uncertainty of emissions (Sec. 755, pg. 437).
- **Accounting for Reversals⁷:**
 - General Provisions: The Administrator shall develop requirements that: 1) include provisions to report any reversal of any offset projects, 2) require allowances or offset credits to be held in quantities to fully compensate for any reversals and to assign responsibility for holding those credits, 3) discourage repeat intentional reversals, and 4) include any other mechanism the Administrator deems necessary (Sec. 755, pg. 437)
 - Mechanisms: The Administrator must prescribe at least one of the following: an offset reserve, insurance, or another mechanism to address reversals (Sec. 755, pg. 437).⁸
 - Crediting periods: 5-10 years for projects other than forestry projects; no more than 20 years for forestry projects (Sec. 755, pg. 439).⁹
- **Exceptions and avoiding double counting:** The Administrator may modify or omit a requirement of the eligible offset project type section (Sec. 754, pg. 432), the requirements for offset projects section (Sec. 754, pg. 435) or the approval of offset projects provisions (Sec. 757, pg. 463) if the application of that requirement is not feasible, or would create offset credits ineligible for recognition under the UNFCCC¹⁰ and such modifications would not affect the integrity of the offsets issued and the cap. The Administrator should seek, by what means appropriate, to ensure that offsets are not double counted under a foreign or international regulatory system (Sec. 755, pg. 440).

⁷ A "reversal" occurs when carbon stored in biological systems (e.g. forests or soils) is re-released into the atmosphere, thereby reversing the GHG reducing benefit of the offset credit.

⁸ There appears to be a drafting error in this section of the bill, the language under both the reversal provisions and under crediting periods references section 734 of the bill, when they should reference 735.

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¹⁰ United Nations Framework Convention on Climate Change

RELATED PROGRAMS

- **Early action recognition:** Establishes a program to recognize early offsets and early on-site reductions. Approximately 33 percent of the allowance set aside for this purpose is for offsets and early reductions, with the remaining 66 percent allocated to eligible state cap and trade programs. Credits issued by an Administrator-approved offset program under the early offset provisions (Sec. 740) may be exchanged for allowances. The exchange value will be determined by the average monetary value of the credits during the period of Jan 1, 2006 to Jan. 1, 2009. Only credits that have not been retired and were issued between Jan 1, 2001 and Jan 1, 2009 are eligible to receive allowances. Other types of non-offset documented early reductions are also eligible under this section. (Sec. 788, pg. 512).
- **Carbon Conservation Fund:** An unspecified amount of allowances are set aside to provide incentives for additional activities (other than those qualified under the offset program) in the agriculture sector to reduce GHG emissions or sequester carbon to be administered by the Secretaries of Agriculture and Interior. The Secretaries must ensure that projects: 1) reward continuation of practices by early adopters, 2) support the development of new methodologies for offset projects, 3) ensure that action that was taken prior to the implementation of the offset program is not disadvantaged, 4) improve management practices that leads to greater sequestration on private and federal land, and 5) prevent conversion of land in ways that would increase GHG emissions. Compensation will be based on the amount of emissions reductions obtained and the duration of the reductions. Requires reporting of results to EPA and reviews every 5 years (Sec. 4152, pg. 878).