

Torlys on Climate Change

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Recent Developments

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United States

Senators Kerry and Lieberman release energy and climate bill

On May 12, 2010, Senators John Kerry (D-MA) and Joe Lieberman (I-CT) released a draft of their long-awaited energy and climate change bill, the *American Power Act*. Senator Lindsey Graham (R-SC), who had helped develop a substantial portion of the bill, recently withdrew his support.

Although the bill faces a challenging road ahead through the Senate, its key provisions are currently as follows:

Targets

The bill requires a 17% reduction in total U.S. greenhouse gas (GHG) emissions by 2020 and an 80% reduction by 2050, relative to 2005 levels. The 2020 target is the same as that in the climate change legislation sponsored by Senators Waxman and Markey, which the House of Representatives passed in June. It also matches the 2020 target that the governments of Canada and the United States submitted under the Copenhagen Protocol.

Cap-and-trade provisions

The Kerry-Lieberman bill does not institute an economy-wide cap-and-trade system for GHGs. Rather, the bill caps emissions from certain electric power utilities, beginning in 2013, and certain industrial facilities, beginning in 2016, allowing these firms to trade emission allowances to achieve their compliance obligations. Emissions from transport fuel providers, including oil producers and refiners, would not be capped; however, beginning in 2013, these firms would be required to purchase emission allowances at a predetermined, but as yet unspecified, price linked to the price of allowances – essentially acting as a tax on their emissions. Sources in these sectors emitting over 25,000 megatonnes of carbon dioxide equivalent (CO₂e) per year would be covered.

Notably, the bill would preempt all state cap-and-trade systems, including the Regional Greenhouse Gas Initiative of the northeastern U.S. states and the proposed state involvement in the Western Climate Initiative.

Allowance allocation and prices

For those firms covered by the cap-and-trade system, allowances would initially be allocated to them for free, with auctions for those allowances phased in over time, at least for the power sector. Covered firms would be allowed to bank emission

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allowances for use in future compliance periods. The bill also allows them to borrow an unlimited number of allowances from one year for use in the future.

A “collar” would be established for the price of allowances, which would initially keep the price between \$12 and \$25 per tonne of CO₂e, with these values rising over time. Even with this price collar, the bill permits allowance prices to exceed the price cap of \$15/tonne that the Canadian federal government would have effectively set through its previous proposals to allow contributions to a technology fund at that rate in lieu of emissions abatement or allowance purchases.

International emissions allowances

To facilitate potential linkages with other cap-and-trade systems, the bill allows entities covered by the cap-and-trade system to use foreign allowances for compliance purposes, with some limitations, provided that they represent emission reductions of comparable stringency as the U.S. allowances.

Emissions offsets

The bill provides for the use of a potentially large pool of domestic and international emission offset credits. Potential domestic offset project types would include coal mine methane; land fill gas; oil and gas distribution; agricultural, grassland and rangeland sequestration; and other land use and forestry sequestration. These projects would have to follow preapproved methodologies, developed specifically for the U.S. program, for the development, monitoring and verification of their emission reductions. Offsets would also be required to meet certain environmental criteria.

The international offset program would allow covered entities to use offset credits generated by certain emission reductions in developing countries, including (i) sectoral emission reductions in foreign countries; (ii) offset credits issued by an international body (potentially including the United Nations’ Clean Development Mechanism, which awards credits to abatement activities in developing countries); and (iii) offset credits resulting from reduced deforestation projects (potentially including REDD, or Reducing Emissions from Deforestation and Forest Degradation projects). Again, all allowable international offset credits would have to meet certain environmental criteria.

Border tax adjustments

If an international climate change agreement has not entered into force by January 1, 2020, the bill would require the President to establish a system of border tariff adjustments if it were in the United States’ best interest to do so. This system would require imports into the United States from countries without comparable emission-reduction regulations in place to purchase an amount of emission allowances at the border, provided that the imported products competed with similar products from certain trade-exposed sectors in the United States.

Regulation of Emissions Trading Markets

The Kerry-Lieberman bill delegates authority to the Commodity Futures Trading Commission to regulate the U.S. emission trading market and prohibits off-exchange trading of GHG futures. The Commission would be required to establish position limits to deter excess speculation.

Low Emissions and Energy Technology

The bill also contains a number of provisions designed to force technological change, including various incentives for carbon capture-and-storage, nuclear generation and renewable energy. New coal-fired power plants permitted in 2009 or later would be required to meet higher performance standards.

For further information on the Kerry-Lieberman bill, please see [the bill's summary](#).

EPA revises greenhouse gas reporting rule

The U.S. Environmental Protection Agency (EPA) recently proposed amendments to its Mandatory Reporting of Greenhouse Gases Rule. This rule currently requires large U.S. suppliers of fossil fuels or industrial GHGs, manufacturers of vehicles and engines, and facilities that emit 25,000 tonnes or more of GHGs per year to submit annual reports to EPA. The proposed amendments, among other things, would expand the applicability of the existing requirements to cover petroleum and natural gas systems, as well as facilities that inject and store carbon dioxide underground for geologic sequestration or enhanced oil and gas recovery. The EPA would require the newly covered sources to begin collecting emissions data on January 1, 2011, with their first annual report due by March 31, 2012.

The EPA is accepting comments on the proposed rules until June 11, 2010. For further information, please see the [EPA's website](#).

Canada

Voluntary offset program to develop protocols for projects in Canada

The Climate Action Reserve (CAR) is a U.S.-based organization that establishes standards (called Offset Protocols) for developing, quantifying and verifying voluntary emission-reduction projects and issues offset credits (called Climate Reserve Tonnes, or CRTs) to these projects. It has indicated that it will be developing Offset Protocols for projects that voluntarily reduce greenhouse gases (GHGs) from livestock, forestry and landfills in Canada. CAR also plans to adapt for the Canadian market existing U.S. protocols for coal mine methane, organic waste digestion, N₂O destruction and urban forestry projects. By adhering to the CAR Protocols, these projects could earn CRTs, which they could then sell into the voluntary carbon markets or, potentially, into a future compliance system. In fact, the Western Climate Initiative (WCI), a group of several Canadian provinces and U.S. states aiming to establish a regional cap-and-trade system by 2012, would allow covered entities to use offset credits to meet up to 5% of their compliance obligation. The WCI recently indicated that most existing carbon offset programs do not meet its criteria for environmental quality, a deficiency that CAR seeks to rectify.

For further information, please see [CAR's website](#).

B.C. moves forward on climate change agenda

On April 6, 2010, Canada's Environment Minister, Jim Prentice, and B.C.'s Minister of State for Climate Action, John Yap, signed an Agreement in Principle on efforts to deal with climate change. According to Environment Canada, the agreement is the first step toward signing a formal equivalency agreement with B.C., which would allow certain B.C. standards on GHG mitigation to stand in place of federal ones, provided the B.C. standards were at least as stringent as the federal ones.

Subsequent to this agreement, the B.C. government introduced Bill 17, the *Clean Energy Act*. This bill would, among other things,

- empower the provincial generation and transmission utility, BC Hydro, to secure long-term export contracts with renewable power producers;
- integrate BC Hydro and BC Transmission Corporation (BCTC) into a single organization;
- exempt certain "strategic projects" from the requirement to obtain B.C. Utilities Commission (BCUC) approval;

- introduce a feed-in tariff program to provide a premium fixed contract price for new renewable power generation;
- direct BC Hydro to meet 66% of the province's incremental electricity needs through conservation by 2020; and
- strengthen the provincial environmental assessment process to require an assessment of potential cumulative environmental effects.

For further information, please see [Environment Canada's website](#) and [B.C.'s news release](#).

Canada's greenhouse gas emissions decrease in 2008

According to Environment Canada data, Canada's total GHG emissions decreased from approximately 750 megatonnes (Mt) of carbon dioxide equivalent (CO₂e) in 2007 to 734 Mt of CO₂e in 2008. The reductions are largely the result of decreased emissions in the manufacturing, electricity and heat-generation industries – reductions driven largely by the recent economic downturn. The country's 2008 emissions represent a 24% increase from 1990 levels.

For further information, please see [Environment Canada's website](#).

North America

Proposal to reduce use of HFCs

In April 2010, representatives of Canada, Mexico and the United States retabled their proposal under the Montreal Protocol for a gradual reduction of global production and consumption of hydrofluorocarbons (HFCs), chemicals commonly used in refrigeration equipment. In general, the proposal calls for a new protocol that would establish an average 2004–2006 baseline of annual hydrochlorofluorocarbon (HCFC) and HFC production and consumption; permit countries seeking to phase out HCFCs to use HFCs in some sectors; establish phase-down schedules; and restrict certain imports and exports.

For further information, please see [Environment Canada's website](#). 