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**THIS SEARCH**

[Next Hit](#)  
[Prev Hit](#)  
[Hit List](#)

**THIS DOCUMENT**

[Forward](#)  
[Back](#)  
[Best Sections](#)  
[Contents Display](#)

**GO TO**

[New Bills Search](#)  
[HomePage](#)  
[Help](#)

## H.R.2454

### American Clean Energy and Security Act of 2009 (Placed on Calendar in Senate)

#### SEC. 442. DEFINITIONS.

In this subtitle:

(1) ALLOWANCE- The term `allowance' means an emission allowance established under section 721 of the Clean Air Act.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES- The term `appropriate congressional committees' means--

(A) the Committees on Energy and Commerce, Foreign Affairs, and Financial Services of the House of Representatives; and

(B) the Committees on Environment and Public Works, Energy and Natural Resources, and Foreign Relations of the Senate.

(3) CONVENTION- The term `Convention' means the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992, and entered into force on March 21, 1994.

(4) DEVELOPING COUNTRY- 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.

(5) ELIGIBLE COUNTRY- The term `eligible country' means a developing country that is determined by the interagency group under section 444 to be eligible to receive assistance under this subtitle.

(6) INTERAGENCY GROUP- The term `interagency group' means the group established by the President under section 443 to administer the program established under this subtitle.

(7) LEAST DEVELOPED COUNTRY- The term `least developed country' means a foreign country the United Nations has identified as among the least developed of developing countries.

(8) QUALIFYING ACTIVITY- The term `qualifying activity' means an activity that meets the criteria in section 445.

(9) QUALIFYING ENTITY- The term `qualifying entity' means a national, regional, or local government in, or a nongovernmental organization or private entity located or operating in, an eligible country.

#### **SEC. 443. GOVERNANCE.**

(a) Oversight- The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the interagency group established under subsection (b), shall oversee distributions of allowances allocated under section 782(o) of the Clean Air Act (as added by section 321 of this Act) for distribution pursuant to this subtitle.

(b) Interagency Group- The President shall establish an interagency group to administer the program established under this subtitle. The Members of the interagency group shall include--

- (1) the Secretary of State;
- (2) the Administrator of the Environmental Protection Agency;
- (3) the Secretary of Energy;
- (4) the Secretary of the Treasury;
- (5) the Secretary of Commerce;
- (6) the Administrator of the United States Agency for International Development; and
- (7) any other head of a Federal agency or executive branch appointee that the President may designate.

(c) Chairperson- The Secretary of State shall serve as the chairperson of the interagency group.

(d) Supplement Not Supplant- Allowances distributed pursuant to this subtitle shall be used to supplement, and not to supplant, any other Federal, State, or local resources available to carry out activities that are qualifying activities under this subtitle.

#### **SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.**

(a) In General- The interagency group shall determine a country to be an eligible country for the purposes of this subtitle if a country meets the following criteria:

- (1) The country is a developing country that--
  - (A) has entered into an international agreement to which the United States is a party, under which such country agrees to take actions to produce measurable, reportable, and verifiable greenhouse gas emissions mitigation; or

(B) is determined by the interagency group to have in force national policies and measures that are capable of producing measurable, reportable, and verifiable greenhouse gas emissions mitigation.

(2) The country has developed a nationally appropriate mitigation strategy that seeks to achieve substantial reductions, sequestration, or avoidance of greenhouse gas emissions, relative to business-as-usual levels.

(3) Subject to subsection (b)(1), such other criteria as the President determines will serve the purposes of this subtitle or other United States national security, foreign policy, environmental, or economic objectives including robust compliance with and enforcement of existing international legal requirements for the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and in applicable intellectual property provisions of bilateral trade agreements.

(b) Exceptions-

(1) Subsection (a)(3) applies only to bilateral assistance under section 446(c)(4).

(2) The eligibility criteria in this section do not apply in the case of least developed countries receiving assistance under section 445(7) for the purpose of building capacity to meet such eligibility criteria.

## **SEC. 445. QUALIFYING ACTIVITIES.**

Assistance under this subtitle may be provided only to qualifying entities for clean technology activities (including building relevant technical and institutional capacity) that contribute to substantial, measurable, reportable, and verifiable reductions, sequestration, or avoidance of greenhouse gas emissions including--

(1) deployment of technologies to capture and sequester carbon dioxide emissions from electric generating units or large industrial sources (except that assistance under this subtitle for such deployment shall be limited to the cost of retrofitting existing facilities with such technologies or the incremental cost of purchasing and installing such technologies at new facilities);

(2) deployment of renewable electricity generation from wind, solar, sustainably produced biomass, geothermal, marine, or hydrokinetic sources;

(3) substantial increases in the efficiency of electricity transmission, distribution, and consumption;

(4) deployment of low- or zero emissions technologies that are facing financial or other barriers to their widespread deployment which could be addressed through support under this subtitle in order to reduce, sequester, or avoid emission;

(5) reduction in transportation sector emissions through increased transportation system and vehicle efficiency or use of transportation fuels that

have lifecycle greenhouse gas emissions that are substantially lower than those attributable to fossil fuel-based alternatives;

(6) reduction in black carbon emissions; or

(7) capacity building activities, including--

(A) developing and implementing methodologies and programs for measuring and quantifying greenhouse gas emissions and verifying emissions mitigation;

(B) assessing, developing, and implementing technology and policy options for greenhouse gas emissions mitigation and avoidance of future emissions, including sector and cross-sector mitigation strategies; and

(C) providing other forms of technical assistance to facilitate the qualification for, and receipt of, assistance under this Act.

## **SEC. 446. ASSISTANCE.**

(a) In General- The Secretary of State, or such other Federal agency head as the President may designate, is authorized to provide assistance, through the distribution of allowances allocated for such purpose under section 782(o) of the Clean Air Act (as added by section 321 of this Act) for qualifying activities that take place in eligible countries, in accordance with the requirements of this subtitle.

(b) Definition- For the purposes of this section the term `clean technology' means any technology or service related to the qualifying activities identified in section 445.

(c) Distribution of Allowances-

(1) IN GENERAL- The Secretary of State, or such other Federal agency head as the President may designate, after consultation with the interagency group, shall distribute allowances under this subtitle--

(A) in the form of bilateral assistance in accordance with paragraph (4);

(B) to multilateral funds or institutions pursuant to the Convention or an agreement negotiated under the Convention; or

(C) through some combination of the mechanisms identified in subparagraphs (A) and (B).

(2) GLOBAL ENVIRONMENT FACILITY- For any allowances provided to the Global Environment Facility pursuant to paragraph (1)(B), the President shall designate the Secretary of the Treasury to distribute those allowances to the Global Environment Facility.

(3) DISTRIBUTION THROUGH INTERNATIONAL FUND OR INSTITUTION- If allowances are distributed to a multilateral fund or institution, as authorized in paragraph (1), the Secretary of State, or such other Federal agency head as the President may designate, shall seek to ensure the establishment and implementation of adequate mechanisms to--

(A) apply and enforce the criteria for determination of eligible countries and qualifying activities under sections 444 and 445, respectively;

(B) require public reporting describing the process and methodology for selecting the ultimate recipients of assistance and a description of each activity that received assistance, including the amount of obligations and expenditures for assistance; and

(C) require that no funds be expended for the benefit of any qualifying activity where that activity or any activity relating to a qualifying activity under section 445 undermines the robust compliance with and enforcement of existing legal requirements for the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(4) BILATERAL ASSISTANCE-

(A) IN GENERAL- Bilateral assistance under paragraph (1) shall be carried out by the Administrator of the United States Agency for International Development, in consultation with the interagency group.

(B) LIMITATIONS- Not more than 15 percent of allowances made available to carry out bilateral assistance under this subtitle in any year shall be distributed to support activities in any single country.

(C) SELECTION CRITERIA- Not later than 2 years after the date of enactment of this subtitle, the Administrator of the United States Agency for International Development, after consultation with the interagency group, shall develop and publish a set of criteria to be used in evaluating activities within eligible countries for bilateral assistance under this subtitle.

(D) CRITERIA REQUIREMENTS- The criteria under subparagraph (C) shall require that--

(i) the activity is a qualifying activity;

(ii) the activity will be conducted as part of an eligible country's nationally appropriate mitigation strategy or as part of an eligible country's actions towards providing a nationally appropriate mitigation strategy to reduce, sequester, or avoid emissions being implemented by the eligible country;

(iii) the activity will not have adverse effects on human health, safety, or welfare, the environment, or natural resources;

(iv) any technologies deployed through bilateral assistance under this subtitle will be properly implemented and maintained;

(v) the activity will not cause any net loss of United States jobs or displacement of United States production;

(vi) costs of the activity will be shared by the host country government, private sector parties, or a multinational development bank, except that this clause does not apply to least developed countries;

(vii) the activity would not undermine the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and applicable intellectual property provisions of bilateral trade agreements; and

(viii) the activity meets such other requirements as the interagency group determines appropriate to further the purposes of this subtitle.

(E) CRITERIA PREFERENCES- The criteria under subparagraph (C) shall give preference to activities that--

(i) promise to achieve large-scale greenhouse gas reductions, sequestration, or avoidance at a national, sectoral or cross-sectoral level;

(ii) have the potential to catalyze a shift within the host country towards widespread deployment of low- or zero-carbon energy technologies;

(iii) build technical and institutional capacity and other activities that are unlikely to be attractive to private sector funding; or

(iv) maximize opportunities to leverage other sources of assistance and catalyze private-sector investment.

(d) Monitoring, Evaluation, and Enforcement- The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the interagency group, shall establish and implement a system to monitor and evaluate the performance of activities receiving assistance under this subtitle. The Secretary of State, or such other Federal agency head as the President may designate, shall have the authority to suspend or terminate assistance in whole or in part for an activity if it is determined that the activity is not operating in compliance with the approved proposal.

(e) Coordination With U.S. Foreign Assistance- Subject to the direction of the President, the Secretary of State shall, to the extent practicable, seek to align activities under this section with broader development, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

(f) Annual Reports- Not later than March 1, 2012, and annually thereafter, the President shall submit to the appropriate congressional committees a report on the assistance provided under this subtitle during the prior fiscal year. Such report shall include--

(1) a description of the amount and value of allowances distributed during the prior fiscal year;

(2) a description of each activity that received assistance during the prior fiscal year, and a description of the anticipated and actual outcomes;

(3) an assessment of any adverse effects to human health, safety, or welfare, the environment, or natural resources as a result of activities supported under this subtitle;

(4) an assessment of the success of the assistance provided under this subtitle to improving the technical and institutional capacity to implement substantial emissions reductions;

(5) an estimate of the greenhouse gas emissions reductions, sequestration, or avoidance achieved by assistance provided under this subtitle during the prior fiscal year; and

(6) an assessment whether any funds expended for the benefit of any qualifying activity undermined the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and applicable intellectual property provisions of bilateral trade agreements.

(g) Not Eligible for Offset Credit- Activities that receive support under this subtitle shall not be issued offset credits for the greenhouse gas emissions reductions or avoidance, or greenhouse gas sequestration, produced by such activities.

#### **Subtitle E--Adapting to Climate Change**

### ***PART 1--DOMESTIC ADAPTATION***

#### ***Subpart A--National Climate Change Adaptation Program***

#### **SEC. 451. GLOBAL CHANGE RESEARCH AND DATA MANAGEMENT.**

(a) Short Title- This section may be cited as the 'Global Change Research and Data Management Act of 2009'.

(b) Global Change Research-

(1) PURPOSE- The purpose of this subsection is to provide for the continuation and coordination of a comprehensive and integrated United States observation, research, and outreach program which will assist the Nation and the world to understand, assess, predict, and respond to the effects of human-induced and natural processes of global change.

(2) DEFINITIONS- For purposes of this subsection--

(A) the term 'global change' means human-induced or natural changes in the global environment (including alterations in climate, land productivity, oceans or other water resources, atmospheric chemistry,

biodiversity, and ecological systems) that may alter the capacity of the Earth to sustain life;

(B) the term `global change research' means study, monitoring, assessment, prediction, and information management activities to describe and understand--

(i) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(ii) the unique environment that the Earth provides for life;

(iii) changes that are occurring in the Earth system; and

(iv) the manner in which such system, environment, and changes are influenced by human actions;

(C) the term `interagency committee' means the interagency committee established under paragraph (3);

(D) the term `Plan' means the National Global Change Research and Assessment Plan developed under paragraph (5);

(E) the term `Program' means the United States Global Change Research Program established under paragraph (4); and

(F) the term `regional climate change' means the natural or human-induced changes manifested in the local or regional environment (including alterations in weather patterns, land productivity, water resources, sea level rise, atmospheric chemistry, biodiversity, and ecological systems) that may alter the capacity of a specific region to support current or future social and economic activity or natural ecosystems.

### (3) INTERAGENCY COOPERATION AND COORDINATION-

(A) ESTABLISHMENT- The President shall establish or designate an interagency committee to ensure cooperation and coordination of all Federal research activities pertaining to processes of global change for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts.

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#### ***THIS SEARCH***

[Next Hit](#)

[Prev Hit](#)

[Hit List](#)

#### ***THIS DOCUMENT***

[Forward](#)

[Back](#)

[Best Sections](#)

[Contents Display](#)

#### ***GO TO***

[New Bills Search](#)

[HomePage](#)

[Help](#)

---