

116TH CONGRESS
2D SESSION

H. R. 8582

To amend the Clean Air Act to establish a tradeable performance standard covering emissions from the electricity generation and industrial sectors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 2020

Mr. CASTEN of Illinois (for himself and Mr. MOULTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Clean Air Act to establish a tradeable performance standard covering emissions from the electricity generation and industrial sectors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tradeable Perform-
5 ance Standard Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Combating the climate crisis.

“TITLE VII—GREENHOUSE GAS POLLUTION REDUCTION PROGRAM

“PART A—GLOBAL WARMING POLLUTION REDUCTION TARGETS

“Sec. 701. Definitions.

“Sec. 702. Reduction targets for covered entities.

“PART B—DESIGNATION OF GREENHOUSE GASES AND THERMAL ENERGY REPORTING PROGRAM

“Sec. 711. Greenhouse gases.

“Sec. 712. Carbon dioxide equivalent value of greenhouse gases.

“Sec. 713. Thermal energy reporting program.

“Sec. 714. EIA and EPA reporting.

“PART C—PROGRAM RULES

“Sec. 721. Requirements.

“Sec. 722. Distribution of emission allowances.

“Sec. 723. Trading.

“Sec. 724. Voluntary program participation.

“Sec. 725. Penalty for noncompliance.

“Sec. 726. Emission allowance tracking system.

“Sec. 727. Other program rules.

“Sec. 728. Oversight.

“Sec. 729. Regulations.

“Sec. 730. Savings provisions.

1 **SEC. 3. COMBATING THE CLIMATE CRISIS.**

2 The Clean Air Act (42 U.S.C. et seq.) is amended
3 by adding after title VI the following new title:

4 **“TITLE VII—GREENHOUSE GAS**
5 **POLLUTION REDUCTION PRO-**
6 **GRAM**

7 **“PART A—GLOBAL WARMING POLLUTION**
8 **REDUCTION TARGETS**

9 **“SEC. 701. DEFINITIONS.**

10 “In this title:

11 “(1) **AVERAGE CARBON INTENSITY FOR QUALI-**
12 **FIED ELECTRIC FACILITIES.**—The term ‘average
13 carbon intensity for qualified electric facilities’

1 means the number that equals the total amount of
2 greenhouse gas emissions in metric tons of carbon
3 dioxide equivalent emitted from qualified electric fa-
4 cilities in a calendar year as reported under section
5 714 divided by the total quantity of megawatt hours
6 of electricity produced by qualified electric facilities
7 in such calendar year as reported under section 714.

8 “(2) AVERAGE CARBON INTENSITY FOR QUALI-
9 FIED THERMAL FACILITIES.—The term ‘average car-
10 bon intensity for qualified thermal facilities’ means
11 the number that equals the total amount of green-
12 house gas emissions in metric tons of carbon dioxide
13 equivalent emitted from qualified thermal facilities
14 in a calendar year as reported under section 713 di-
15 vided by the total quantity of useful thermal energy
16 output from qualified thermal facilities in such cal-
17 endar year as reported under section 713.

18 “(3) BOTTOMING CYCLE COGENERATION GEN-
19 ERATOR.—The term ‘bottoming cycle cogeneration
20 generator’ means any generator that produces elec-
21 tricity from otherwise-wasted heat, pressure, or both,
22 using any of the following technologies:

23 “(A) An organic ranking cycle.

24 “(B) A waste-heat recovery steam gener-
25 ator.

1 “(C) A back pressure steam turbine.

2 “(D) A Stirling engine.

3 “(4) CARBON DIOXIDE EQUIVALENT.—The
4 term ‘carbon dioxide equivalent’ means the unit of
5 measure, expressed in metric tons, of greenhouse
6 gases, as provided under section 712.

7 “(5) COVERED ENTITY.—The term ‘covered en-
8 tity’ means each of the following:

9 “(A) A qualified cogeneration facility.

10 “(B) A qualified electric facility.

11 “(C) A qualified thermal facility.

12 “(6) DESIGNATED REPRESENTATIVE.—The
13 term ‘designated representative’ means, with respect
14 to a covered entity, a thermal reporting entity, or
15 any other entity receiving or holding emission allow-
16 ances under this title, an individual authorized,
17 through a certificate of representation submitted to
18 the Administrator by the owners and operators, to
19 represent the owners and operators in all matters
20 pertaining to this title (including the holding, trans-
21 fer, or disposition of emission allowances), and to
22 make all submissions to the Administrator under
23 this title.

24 “(7) EMISSION ALLOWANCE.—The term ‘emis-
25 sion allowance’ means a limited authorization to

1 emit, in an amount of, 1 metric ton of carbon diox-
2 ide equivalent of a greenhouse gas in accordance
3 with this title.

4 “(8) FUEL-BASED CAPACITY.—The term ‘fuel-
5 based capacity’ means—

6 “(A) for generators that produce useful
7 thermal energy output with the combustion of
8 fuel, the peak fuel combustion rate; and

9 “(B) for generators that produce useful
10 thermal energy output without the combustion
11 of fuel, the peak useful thermal energy output
12 rate divided by 0.7.

13 “(9) GREENHOUSE GAS.—The term ‘greenhouse
14 gas’ means any gas listed in section 711.

15 “(10) GREENHOUSE GAS EMISSION.—The term
16 ‘greenhouse gas emission’ means the release of a
17 greenhouse gas into the ambient air.

18 “(11) HOLD.—The term ‘hold’ means, with re-
19 spect to an emission allowance, to have in the appro-
20 priate account created pursuant to the process under
21 section 726(2).

22 “(12) QUALIFIED COGENERATION FACILITY.—
23 The term ‘qualified cogeneration facility’ means any
24 generator that simultaneously produces useful ther-
25 mal energy output and electricity and—

1 “(A) has a rated capacity of 2 megawatts
2 or greater; or

3 “(B) is classified as a qualified cogenera-
4 tion facility pursuant to section 724(c).

5 “(13) QUALIFIED ELECTRIC FACILITY.—The
6 term ‘qualified electric facility’ means any generator
7 that produces electricity, including a bottoming cycle
8 cogeneration generator—

9 “(A) with a rated capacity of 2 megawatts
10 or greater; or

11 “(B) with a rated capacity of less than 2
12 megawatts that is classified as a qualified elec-
13 tric facility pursuant to section 724(a).

14 “(14) QUALIFIED THERMAL FACILITY.—The
15 term ‘qualified thermal facility’ means any generator
16 that produces thermal energy—

17 “(A) with a rated fuel-based capacity of at
18 least 50,000,000 British thermal units on a
19 higher heating value basis per hour or greater,
20 excluding any generator producing useful ther-
21 mal energy output that the Administrator de-
22 termines is used to wholly or partially provide
23 carbon as a chemical ingredient for a process to
24 manufacture goods; or

1 “(B) with a rated fuel-based capacity of
2 less than 50,000,000 British thermal units on
3 a higher heating value basis per hour that is
4 classified as a qualified thermal facility pursu-
5 ant to section 724(b).

6 “(15) THERMAL REPORTING ENTITY.—The
7 term ‘thermal reporting entity’ means—

8 “(A) a qualified thermal facility;

9 “(B) a qualified cogeneration facility;

10 “(C) any generator that produces useful
11 thermal energy output with a rated fuel-based
12 capacity of at least 30,000,000 British thermal
13 units on a higher heating value basis per hour,
14 but less than 50,000,000 British thermal units
15 on a higher heating value basis per hour; or

16 “(D) any other entity that produces or de-
17 livers useful thermal energy output the produc-
18 tion or delivery of which results or may result
19 in greenhouse gas emissions if the Adminis-
20 trator determines that reporting under section
21 713 by such entity will help achieve the targets
22 specified in section 702.

23 “(16) USEFUL THERMAL ENERGY OUTPUT.—
24 The term ‘useful thermal energy output’ means ther-
25 mal energy as measured in million British thermal

1 units on a higher heating value basis produced by a
2 generator that produces thermal energy net of the
3 energy in inlet combustion air, feedwater, or any
4 other fluids not used as fuels of combustion.

5 **“SEC. 702. REDUCTION TARGETS FOR COVERED ENTITIES.**

6 “(a) IN GENERAL.—The regulations issued under
7 section 729 shall establish enforceable targets for the
8 greenhouse gas emissions of covered entities, such that—

9 “(1) in 2030, the aggregate quantity of green-
10 house gas emissions from covered entities does not
11 exceed 60 percent of the aggregate quantity of
12 greenhouse gas emissions from covered entities in
13 2019; and

14 “(2) in 2040, the aggregate quantity of green-
15 house gas emissions from covered entities does not
16 exceed zero.

17 “(b) DEFINITION.—For purposes of this section, the
18 term ‘greenhouse gas emissions from covered entities in
19 2019’ means greenhouse gas emissions to which section
20 721 would have applied if the requirements of this title
21 for the specified year had been in effect for 2019.

1 **“PART B—DESIGNATION OF GREENHOUSE GASES**
2 **AND THERMAL ENERGY REPORTING PROGRAM**
3 **“SEC. 711. GREENHOUSE GASES.**

4 “For purposes of this title, the following are green-
5 house gases:

6 “(1) Carbon dioxide.

7 “(2) Methane.

8 “(3) Nitrous oxide.

9 “(4) Sulfur hexafluoride.

10 “(5) Any perfluorocarbon.

11 “(6) Nitrogen trifluoride.

12 **“SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
13 **GREENHOUSE GASES.**

14 “(a) IN GENERAL.—Any provision of this title that
15 refers to a quantity or percentage of a quantity of a green-
16 house gas shall be treated as a reference to the quantity
17 or percentage of the greenhouse gas expressed in carbon
18 dioxide equivalents.

19 “(b) VALUES.—Except as provided by the Adminis-
20 trator under subsection (c), for the purposes of this title,
21 the carbon dioxide equivalent value of a greenhouse gas
22 shall be equal to the 100-year global warming potential
23 for such greenhouse gas that is provided in the Fifth As-
24 sessment Report of the Intergovernmental Panel on Cli-
25 mate Change.

1 “(c) USE OF 20-YEAR GLOBAL WARMING POTEN-
2 TIAL.—If the Administrator determines that it is more ap-
3 propriate for a greenhouse gas, the Administrator may
4 publish a determination in the Federal Register that such
5 greenhouse gas has a carbon dioxide equivalent value
6 equal to the 20-year global warming potential for such
7 greenhouse gas that is provided in the Fifth Assessment
8 Report of the Intergovernmental Panel on Climate
9 Change.

10 **“SEC. 713. THERMAL ENERGY REPORTING PROGRAM.**

11 “(a) REGULATIONS.—Not later than 18 months after
12 the date of enactment of this title, the Administrator shall
13 issue regulations establishing a program, to be known as
14 the Federal thermal energy reporting program. Such regu-
15 lations shall—

16 “(1) require each thermal reporting entity to
17 submit to the Administrator data on—

18 “(A) the type, quality, and quantity of fuel
19 used for onsite useful thermal energy output
20 production by such thermal reporting entity;

21 “(B) the quantity of useful thermal energy
22 output produced by such thermal reporting en-
23 tity as calculated pursuant to subsection (e);
24 and

1 “(C) the quantity of greenhouse gas emis-
2 sions associated with such useful thermal en-
3 ergy output production;

4 “(2) require thermal reporting entities to sub-
5 mit to the Administrator data sufficient to ensure
6 compliance with or implementation of the require-
7 ments of this title;

8 “(3) ensure the completeness, consistency,
9 transparency, accuracy, precision, and reliability of
10 data gathered under the Federal thermal energy re-
11 porting program;

12 “(4) include methods for avoiding double re-
13 porting to the maximum extent possible;

14 “(5) require that thermal reporting entities pro-
15 vide the data required in this section in reports sub-
16 mitted electronically to the Administrator, in such
17 form and containing such information as may be re-
18 quired by the Administrator;

19 “(6) include requirements for keeping records
20 supporting or related to, and protocols for auditing,
21 data submitted under the Federal thermal energy re-
22 porting program;

23 “(7) establish consistent policies for calculating
24 carbon content and greenhouse gas emissions for

1 any type of fuel for which data is submitted under
2 the Federal thermal energy reporting program;

3 “(8) provide for immediate dissemination, to
4 States and Indian Tribes, of all data reported under
5 the Federal thermal energy reporting program as
6 soon as practicable after electronic audit by the Ad-
7 ministrator and any resulting correction of data, ex-
8 cept that data shall not be disseminated under this
9 paragraph if—

10 “(A) nondissemination of the data is vital
11 to the national security of the United States, as
12 determined by the President; or

13 “(B) the data is confidential business in-
14 formation that cannot be derived from informa-
15 tion that is otherwise publicly available and that
16 would cause significant calculable competitive
17 harm if published, except that data that is con-
18 fidential business information shall be provided
19 to a State or Indian Tribe within whose juris-
20 diction the thermal reporting entity is located if
21 the Administrator determines that such State
22 or Indian Tribe has in effect protections for
23 confidential business information that are at
24 least as protective as protections applicable to
25 the Federal Government;

1 “(9) provide that the Administrator publish an
2 aggregate summary of all data reported under the
3 Federal thermal energy reporting program publicly
4 on the internet as soon as practicable after elec-
5 tronic audit by the Administrator and any resulting
6 correction of data, including publication of—

7 “(A) any confidential business data under
8 paragraph (8)(B); and

9 “(B) at the discretion of the President,
10 data the nondissemination of which was deter-
11 mined to be vital to the national security of the
12 United States under paragraph (8)(A);

13 “(10) prescribe methods by which the Adminis-
14 trator shall, in cases in which satisfactory data are
15 not submitted by a thermal reporting entity under
16 the Federal thermal energy reporting program to the
17 Administrator for any period of time, estimate the
18 data for such thermal reporting entity required
19 under paragraph (1) with—

20 “(A) in the case of a thermal reporting en-
21 tity that is a qualified thermal facility or a
22 qualified cogeneration facility, an estimate of
23 the highest greenhouse gas emission levels that
24 may have occurred during the period for which
25 data are missing; or

1 “(B) in the case of any other thermal re-
2 porting entity, a reasonable estimate of the
3 greenhouse gas emission levels that may have
4 occurred during the period for which data are
5 missing;

6 “(11) require the designation of a designated
7 representative for each thermal reporting entity;

8 “(12) require an appropriate certification, by
9 the designated representative for the thermal report-
10 ing entity, of accurate and complete accounting of
11 the data required under paragraph (1), as deter-
12 mined by the Administrator; and

13 “(13) include requirements for the submission
14 of other data necessary for accurate and complete
15 accounting of the quantity of useful thermal energy
16 output, and the quantity of greenhouse gas emis-
17 sions associated with such useful thermal energy
18 output production, as determined by the Adminis-
19 trator, including data for quality assurance of moni-
20 toring systems and other measurement devices.

21 “(b) TIMING.—

22 “(1) CALENDAR YEARS 2019 THROUGH 2022.—

23 “(A) IN GENERAL.—Not later than March
24 21, 2023, each thermal reporting entity shall
25 submit to the Administrator data required

1 under the Federal thermal energy reporting
2 program with respect to each of calendar years
3 2019 through 2022.

4 “(B) WAIVER OR MODIFICATION.—The
5 Administrator may waive or modify reporting
6 requirements for calendar years 2019 through
7 2022 for thermal reporting entities to the ex-
8 tent that the Administrator determines that the
9 thermal reporting entities did not keep data or
10 records necessary to meet such reporting re-
11 quirements. The Administrator may, in addition
12 to or in lieu of such reporting requirements, col-
13 lect additional information on energy consump-
14 tion and production.

15 “(2) SUBSEQUENT CALENDAR YEARS.—With
16 respect to calendar year 2023 and each subsequent
17 calendar year, each thermal reporting entity shall
18 submit quarterly data required under the Federal
19 thermal energy reporting program to the Adminis-
20 trator not later than 60 days after the end of the
21 applicable quarter, except when the data is already
22 being reported to the Administrator on an earlier
23 timeframe for another program.

24 “(c) WAIVER OF REPORTING REQUIREMENTS FOR
25 SPECIFIC ENTITIES.—The Administrator may waive re-

1 porting requirements under this section for specific enti-
2 ties to the extent that the Administrator determines that
3 sufficient and equally or more reliable verified and timely
4 data are available to the Administrator and the public
5 under other statutory requirements.

6 “(d) INTERRELATIONSHIP WITH OTHER SYSTEMS.—

7 “(1) IN GENERAL.—In developing the regula-
8 tions issued under subsection (a), the Administrator
9 shall take into account the work done by the Energy
10 Information Administration and other mandatory
11 Federal, State, or multistate programs to collect in-
12 formation that is similar to the information to be
13 collected under this section.

14 “(2) EXPLANATION.—Regulations issued under
15 subsection (a) shall include an explanation of any
16 major differences in information collected between
17 the Federal thermal energy reporting program and
18 information available from the Energy Information
19 Administration and other mandatory Federal, State,
20 or multistate programs to collect similar informa-
21 tion.

22 “(e) CALCULATION OF USEFUL THERMAL ENERGY
23 OUTPUT.—The Administrator and thermal reporting enti-
24 ties shall—

1 “(1) in the case of thermal reporting entities
2 that have revenue-grade send out meters, calculate
3 useful thermal energy output by using the data pro-
4 vided by those meters; and

5 “(2) in the case of thermal reporting entities
6 that do not have such meters, or that have such me-
7 ters but for which the Administrator determines that
8 the values obtained by calculating useful thermal en-
9 ergy output under paragraph (1) are unreasonable,
10 calculate useful thermal energy output based on the
11 metered fuel use for a given quarter multiplied by
12 the average conversion efficiency of fuel to useful
13 thermal energy output in all other similarly situated
14 facilities using the same fuel.

15 **“SEC. 714. EIA AND EPA REPORTING.**

16 “(a) IN GENERAL.—Beginning with calendar year
17 2022, by the end of each month, the Administrator of the
18 Energy Information Administration shall provide to the
19 Administrator of the Environmental Protection Agency in-
20 formation on the total amount of electricity produced from
21 qualified electric facilities during the previous month.

22 “(b) NEW QUALIFIED ELECTRIC FACILITIES.—The
23 Administrator of the Environmental Protection Agency
24 shall notify the Administrator of the Energy Information
25 Administration whenever an electric facility with a rated

1 capacity of less than 2 megawatts elects to be classified
2 as a qualified electric facility or a qualified cogeneration
3 facility under section 724.

4 **“PART C—PROGRAM RULES**

5 **“SEC. 721. REQUIREMENTS.**

6 “(a) IN GENERAL.—By 12:01 a.m. on April 1 of a
7 calendar year, a covered entity shall surrender to the Ad-
8 ministrator one emission allowance for each metric ton of
9 carbon dioxide equivalent of a greenhouse gas emitted by
10 the covered entity during the preceding calendar year.

11 “(b) ACQUISITION OF EMISSION ALLOWANCES.—A
12 covered entity shall acquire emission allowances as follows:

13 “(1) By receiving emission allowances as pro-
14 vided in section 722.

15 “(2) By purchase, exchange, or transfer under
16 section 723.

17 “(c) APPLICABILITY.—The requirement of this part
18 applies with respect to calendar year 2023 and subsequent
19 calendar years.

20 “(d) PERIOD OF USE.—An emission allowance may
21 be used by a covered entity to comply with subsection (a)
22 only for—

23 “(1) the calendar year in connection with which
24 it is distributed under section 722; or

25 “(2) the following calendar year.

1 “(e) ADJUSTMENT OF DEADLINE.—The Adminis-
2 trator may, by rule, establish a deadline for compliance
3 with subsection (a) with respect to a calendar year that
4 is later than 12:01 a.m. on April 1 of the following cal-
5 endar year, as necessary to ensure the availability of
6 greenhouse gas emissions data, but in no event shall the
7 adjusted deadline be later than June 1.

8 **“SEC. 722. DISTRIBUTION OF EMISSION ALLOWANCES.**

9 “(a) QUALIFIED ELECTRIC FACILITIES.—During a
10 calendar year, the Administrator shall distribute, on a con-
11 tinual basis, to a qualified electric facility for each mega-
12 watt hour of electricity produced by the qualified electric
13 facility a number of emission allowances (or fractions
14 thereof) equal to the product of one multiplied by the
15 greater of—

16 “(1) zero; and

17 “(2) the lesser of—

18 “(A) the value equal to the product of 0.93
19 and the preceding calendar year’s average car-
20 bon intensity for qualified electric facilities;

21 “(B) the value equal to the difference of—

22 “(i) the preceding calendar year’s av-
23 erage carbon intensity for qualified electric
24 facilities; minus

1 “(ii) the product of 0.06 multiplied by
2 calendar year 2022’s average carbon inten-
3 sity for qualified electric facilities; or

4 “(C) a value set by the Administrator for
5 purposes of this subsection to ensure that the
6 aggregate quantity of greenhouse gas emissions
7 from covered entities does not exceed the tar-
8 gets specified in section 702(a).

9 “(b) QUALIFIED THERMAL FACILITIES.—During a
10 calendar year, the Administrator shall distribute, on a con-
11 tinual basis, to a qualified thermal facility for each million
12 British thermal units of useful thermal energy output pro-
13 duced by the qualified thermal facility a number of emis-
14 sion allowances (or fractions thereof) equal to the product
15 of one multiplied by the greater of—

16 “(1) zero; and

17 “(2) the lesser of—

18 “(A) the value equal to the product of 0.93
19 and the preceding calendar year’s average car-
20 bon intensity for qualified thermal facilities;

21 “(B) the value equal to the difference of—

22 “(i) the preceding calendar year’s av-
23 erage carbon intensity for qualified ther-
24 mal facilities; minus

1 “(ii) the product of 0.06 multiplied by
2 calendar year 2022’s average carbon inten-
3 sity for qualified thermal facilities; or

4 “(C) a value set by the Administrator for
5 purposes of this subsection to ensure that the
6 aggregate quantity of greenhouse gas emissions
7 from covered entities does not exceed the tar-
8 gets specified in section 702(a).

9 “(c) QUALIFIED COGENERATION FACILITIES.—Dur-
10 ing a calendar year, the Administrator shall distribute, on
11 a continual basis, to a qualified cogeneration facility—

12 “(1) for each megawatt hour of electricity pro-
13 duced by the qualified cogeneration facility, a num-
14 ber of emission allowances (or fractions thereof) cal-
15 culated in accordance with subsection (a); and

16 “(2) for each million British thermal units of
17 useful thermal energy output produced by the quali-
18 fied cogeneration facility, a number of emission al-
19 lowances (or fractions thereof) calculated in accord-
20 ance with subsection (b).

21 “(d) ADJUSTED DISTRIBUTION FOR ENTERING INTO
22 CERTAIN AGREEMENTS.—

23 “(1) IN GENERAL.—If an existing facility or a
24 newly constructed low-emission facility enters into
25 an agreement described in paragraph (2), then over

1 the period of the agreement the Administrator shall
2 distribute emission allowances to such facility in ac-
3 cordance with this subsection in lieu of subsection
4 (a), (b), or (c).

5 “(2) AGREEMENT.—An agreement described in
6 this paragraph is a 10-year or longer bilateral agree-
7 ment signed after the date of enactment of this title
8 between an existing qualified electric facility, an ex-
9 isting qualified thermal facility, or an existing quali-
10 fied cogeneration facility, and a newly constructed
11 low-emission facility for the annual purchase of a
12 specified amount of emission allowances.

13 “(3) DEFINITIONS.—In this subsection:

14 “(A) The term ‘existing’ means, with re-
15 spect to a facility, in operation as of the date
16 of entry into an agreement described in para-
17 graph (2).

18 “(B) The term ‘existing facility’ means an
19 existing qualified electric facility, an existing
20 qualified thermal facility, or an existing quali-
21 fied cogeneration facility that is a party to an
22 agreement described in paragraph (2).

23 “(C) The term ‘newly constructed’ means
24 that the facility involved did not produce elec-
25 tricity or useful thermal energy output prior to

1 the date of entry into an agreement described
2 in paragraph (2).

3 “(D) The term ‘newly constructed low-
4 emission facility’ means a newly constructed
5 qualified electric facility, a newly constructed
6 qualified thermal facility, or a newly con-
7 structed qualified cogeneration facility that
8 would emit a lesser quantity of greenhouse
9 gases per megawatt hour of electricity or per
10 million British thermal units of useful thermal
11 energy output, as applicable, than the Adminis-
12 trator distributes to covered entities under sub-
13 section (a), (b), or (c), as applicable, in the first
14 full calendar year during which the newly con-
15 structed facility operates and is a party to an
16 agreement described in paragraph (2).

17 “(4) DISTRIBUTION OF ALLOWANCES TO AN
18 EXISTING FACILITY.—

19 “(A) IN GENERAL.—For calendar years
20 that are covered by an agreement described in
21 paragraph (2), beginning with the first full cal-
22 endar year during which the newly constructed
23 low-emission facility operates, the Adminis-
24 trator shall distribute, on a continual basis, to
25 the existing facility—

1 “(i) for megawatt hours of electricity
2 or million British thermal units of useful
3 thermal energy output, as applicable, pro-
4 duced by the existing facility that are cov-
5 ered by the agreement, a number of emis-
6 sion allowances that is equal to—

7 “(I) such number of megawatt
8 hours or million British thermal units,
9 as applicable; multiplied by

10 “(II) the average carbon inten-
11 sity for qualified electric facilities or
12 the average carbon intensity for quali-
13 fied thermal facilities, as applicable,
14 for such first full calendar year; and

15 “(ii) for megawatt hours of electricity
16 or million British thermal units of useful
17 thermal energy output, as applicable, pro-
18 duced by the existing facility exceeding
19 those that are covered by the agreement,
20 the number of emission allowances cal-
21 culated under subsection (a), (b), or (c), as
22 applicable.

23 “(B) CALCULATION OF MEGAWATT HOURS
24 OR MILLION BRITISH THERMAL UNITS COVERED
25 BY AGREEMENT.—For purposes of subpara-

1 graph (A), the number of megawatt hours of
2 electricity or million British thermal units of
3 useful thermal energy output, as applicable,
4 produced by an existing facility that are covered
5 by the agreement described in paragraph (2)
6 shall be equal to—

7 “(i) the number of emission allow-
8 ances sold to the existing facility pursuant
9 to the agreement for the first full calendar
10 year described in subparagraph (A), di-
11 vided by the difference of—

12 “(I) the number of emission al-
13 lowances surrendered by the existing
14 facility to the Administrator for such
15 first full calendar year; minus

16 “(II) the number of emission al-
17 lowances distributed to the existing
18 facility by the Administrator for such
19 first full calendar year; multiplied by

20 “(ii) the total number of megawatt
21 hours of electricity or million British ther-
22 mal units of useful thermal energy output,
23 as applicable, produced by the existing fa-
24 cility in such first full calendar year.

1 “(5) DISTRIBUTION OF ALLOWANCES TO A
2 NEWLY CONSTRUCTED LOW-EMISSION FACILITY.—

3 “(A) IN GENERAL.—For calendar years
4 that are covered by an agreement described in
5 paragraph (2), beginning with the first full cal-
6 endar year during which the newly constructed
7 low-emission facility operates, the Adminis-
8 trator shall distribute, on a continual basis, to
9 the newly constructed low-emission facility—

10 “(i) for megawatt hours of electricity
11 or million British thermal units of useful
12 thermal energy output, as applicable, pro-
13 duced by the newly constructed low-emis-
14 sion facility that are covered by the agree-
15 ment, a number of emission allowances
16 that is equal to—

17 “(I) such number of megawatt
18 hours or million British thermal units
19 of useful thermal energy output; mul-
20 tiplied by

21 “(II) the average carbon inten-
22 sity for qualified electric facilities or
23 the average carbon intensity for quali-
24 fied thermal facilities, as applicable, in
25 such first full calendar year; and

1 “(ii) for megawatt hours of electricity
2 or million British thermal units of useful
3 thermal energy output, as applicable, pro-
4 duced by the newly constructed low-emis-
5 sion facility exceeding those that are cov-
6 ered by the agreement, the number of
7 emission allowances calculated under sub-
8 section (a), (b), or (c), as applicable.

9 “(B) CALCULATION OF MEGAWATT HOURS
10 OR MILLION BRITISH THERMAL UNITS COVERED
11 BY AGREEMENT.—For purposes of subpara-
12 graph (A), the number of megawatt hours of
13 electricity or million British thermal units of
14 useful thermal energy output, as applicable,
15 produced by a newly constructed low-emission
16 facility that are covered by the agreement de-
17 scribed in paragraph (2) shall be equal to—

18 “(i) the number of emission allow-
19 ances sold to the existing facility pursuant
20 to the agreement for the first full calendar
21 year described in subparagraph (A), di-
22 vided by the difference of—

23 “(I) the number of emission al-
24 lowances surrendered by the newly
25 constructed low-emission facility to

1 the Administrator for such first full
2 calendar year; minus

3 “(II) the number of emission al-
4 lowances distributed to the newly con-
5 structed low-emission facility by the
6 Administrator for such first full cal-
7 endar year; multiplied by

8 “(ii) the total number of megawatt
9 hours of electricity or million British ther-
10 mal units of useful thermal energy output,
11 as applicable, produced by the existing fa-
12 cility in such first full calendar year.

13 “(6) CONDITIONS.—An existing facility or
14 newly constructed low-emission facility may receive
15 emission allowances under this subsection only if—

16 “(A) such facility provides the Adminis-
17 trator a copy of—

18 “(i) the applicable bilateral agree-
19 ment; and

20 “(ii) any amendment to such bilateral
21 agreement within 30 days of the amend-
22 ment being made; and

23 “(B) the Administrator certifies that allow-
24 ing the facility to maintain the bilateral agree-

1 ment is not impacting the ability to achieve the
2 targets specified in section 702(a)—

3 “(i) upon receiving the applicable bi-
4 lateral agreement, and at least once every
5 5 years thereafter; and

6 “(ii) upon receiving any amendment
7 thereto.

8 **“SEC. 723. TRADING.**

9 “(a) PERMITTED TRANSACTIONS.—Except as other-
10 wise provided in this title, the lawful holder of an emission
11 allowance may, without restriction, sell, exchange, trans-
12 fer, hold, or surrender to the Administrator, the emission
13 allowance.

14 “(b) IDENTIFICATION NUMBERS.—The Adminis-
15 trator shall assign to each emission allowance a unique
16 identification number.

17 “(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

18 “(1) IN GENERAL.—An emission allowance dis-
19 tributed by the Administrator under this title does
20 not constitute a property right.

21 “(2) TERMINATION OR LIMITATION.—Nothing
22 in this Act or any other provision of law shall be
23 construed to limit or alter the authority of the
24 United States to terminate or limit emission allow-
25 ances.

1 “(3) OTHER PROVISIONS.—Except as otherwise
2 specified in this Act, nothing in this Act relating to
3 emission allowances distributed under this title shall
4 affect the application of any other provision of law
5 to a covered entity, or the responsibility for a cov-
6 ered entity to comply with any such provision of law.

7 “(d) EFFECTIVENESS OF EMISSION ALLOWANCE
8 TRANSFERS.—No transfer of an emission allowance shall
9 be effective for purposes of this title until a certification
10 of the transfer, signed by the designated representative of
11 the transferor, is received and recorded by the Adminis-
12 trator in accordance with regulations promulgated under
13 section 729.

14 **“SEC. 724. VOLUNTARY PROGRAM PARTICIPATION.**

15 “(a) VOLUNTARY PROGRAM PARTICIPATION AS
16 QUALIFIED ELECTRIC FACILITY.—

17 “(1) IN GENERAL.—A generator that produces
18 electricity with a rated capacity of less than 2
19 megawatts may, in accordance with this subsection,
20 elect to be classified as a qualified electric facility for
21 purposes of this title.

22 “(2) QUALIFICATION.—In order for a generator
23 with a rated capacity of less than 2 megawatts to be
24 classified as a qualified electric facility, the gener-
25 ator shall—

1 “(A) submit a notification to the Adminis-
2 trator of the intention of the generator to elect
3 to be classified as a qualified electric facility;

4 “(B) receive approval of such classification
5 from the Administrator; and

6 “(C) designate a representative as required
7 under section 727(b).

8 “(3) APPROVAL.—Not later than 90 after re-
9 ceipt of a notification under paragraph (2)(A), the
10 Administrator shall notify the applicable generator
11 whether the Administrator approves or disapproves
12 the classification of such generator as a qualified
13 electric facility.

14 “(4) CLASSIFICATION.—If a generator elects to
15 be classified as a qualified electric facility pursuant
16 to this subsection, such classification shall remain in
17 effect unless the facility produces no electricity over
18 the previous calendar year.

19 “(b) VOLUNTARY PROGRAM PARTICIPATION AS A
20 QUALIFIED THERMAL FACILITY.—

21 “(1) IN GENERAL.—A generator that produces
22 thermal energy with a rated fuel-based capacity of
23 less than 50,000,000 British thermal units on a
24 higher heating value basis per hour may, in accord-

1 ance with this subsection, elect to be classified as a
2 qualified thermal facility for purposes of this title.

3 “(2) QUALIFICATION.—In order for a generator
4 that produces thermal energy with a rated fuel-based
5 capacity of less than 50,000,000 British thermal
6 units on a higher heating value basis per hour to be
7 classified as a qualified thermal facility, the facility
8 shall—

9 “(A) have a rated fuel-based capacity of no
10 less than 2,000,000 British thermal units on a
11 higher heating value basis per hour;

12 “(B) submit a notification to the Adminis-
13 trator of the intention of the generator to elect
14 to be classified as a qualified thermal facility;

15 “(C) receive approval of such classification
16 from the Administrator;

17 “(D) report annually to the Administrator
18 relevant information collected on type, quality,
19 and quantity of fuel used for onsite useful ther-
20 mal energy output production, the quantity of
21 useful thermal energy output, and the quantity
22 of associated greenhouse gas emissions under
23 section 713; and

24 “(E) designate a representative as required
25 under section 727(b).

1 “(3) CLASSIFICATION.—If a generator that pro-
2 duces useful thermal energy output elects to be clas-
3 sified as a qualified thermal facility pursuant to this
4 subsection, such classification shall remain in effect
5 unless the facility—

6 “(A) falls below a rated fuel-based capacity
7 of 2,000,000 British thermal units on a higher
8 heating value basis per hour; or

9 “(B) produces no useful thermal energy
10 output over the previous calendar year.

11 “(c) VOLUNTARY PROGRAM PARTICIPATION AS
12 QUALIFIED COGENERATION FACILITY.—

13 “(1) IN GENERAL.—A generator that simulta-
14 neously produces useful thermal energy output and
15 electricity with a rated capacity of less than 2
16 megawatts may, in accordance with this subsection,
17 elect to be classified as a qualified cogeneration fa-
18 cility for purposes of this title.

19 “(2) QUALIFICATION.—In order for a generator
20 that simultaneously produces useful thermal energy
21 output and electricity with a rated capacity of less
22 than 2 megawatts to be classified as a qualified co-
23 generation facility, the facility shall—

24 “(A) submit a notification to the Adminis-
25 trator of the intention of the generator to elect

1 to be classified as a qualified cogeneration facil-
2 ity;

3 “(B) receive approval of the classification
4 from the Administrator;

5 “(C) report annually to the Administrator
6 relevant information collected on type, quality,
7 and quantity of fuel used for onsite useful ther-
8 mal energy output production, the quantity of
9 useful thermal energy output, and the quantity
10 of associated greenhouse gas emissions under
11 section 713; and

12 “(D) designate a representative as required
13 under section 727(b).

14 “(3) CLASSIFICATION.—If a generator elects to
15 be classified as a qualified cogeneration facility pur-
16 suant to this subsection, such classification shall re-
17 main in effect unless the facility produces no elec-
18 tricity over the previous calendar year.

19 **“SEC. 725. PENALTY FOR NONCOMPLIANCE.**

20 “(a) CIVIL PENALTY.—

21 “(1) IN GENERAL.—The owner or operator of a
22 covered entity that fails to surrender an emission al-
23 lowance as required by section 721(a) shall be liable
24 for payment to the Administrator of a penalty in the
25 amount described in paragraph (2).

1 “(2) AMOUNT.—The amount of a penalty under
2 paragraph (1) shall be equal to the product of—

3 “(A) twice the highest monetary value (as
4 indicated by the emission allowance tracking
5 system established pursuant to section 726 over
6 the previous calendar year) for the sale or
7 transfer of an emission allowance; multiplied by

8 “(B) the number of emission allowances
9 which the owner or operator of the covered enti-
10 ty failed to surrender as described in paragraph
11 (1).

12 “(3) TIMING.—A penalty required under this
13 subsection shall be immediately due and payable to
14 the Administrator, without demand, in accordance
15 with regulations promulgated under section 729.

16 “(4) NO EFFECT ON LIABILITY.—A penalty due
17 and payable by the owners or operators of a covered
18 entity under this subsection shall not diminish the li-
19 ability of the owners or operators for any fine, pen-
20 alty, or assessment against the owners or operators
21 for the same violation under any other provision of
22 this Act or any other law.

23 “(b) REPLACEMENT EMISSION ALLOWANCES.—The
24 owner or operator of a covered entity that fails to sur-
25 render one or more emission allowances as required by sec-

1 tion 721(a) for a calendar year shall surrender a quantity
2 of emission allowances that is equal to the quantity the
3 covered entity failed to surrender (in addition to the emis-
4 sion allowances otherwise required to be surrendered) by
5 the April 1st deadline of the second succeeding calendar
6 year.

7 **“SEC. 726. EMISSION ALLOWANCE TRACKING SYSTEM.**

8 “The regulations promulgated under section 729
9 shall provide for—

10 “(1) the establishment of a system to distribute
11 emission allowances to covered entities;

12 “(2) a process to create accounts in which cov-
13 ered entities and any other entities that buy or sell
14 emission allowances may hold emission allowances;

15 “(3) the establishment of an emission allowance
16 tracking system to track—

17 “(A) the number of emission allowances
18 transferred;

19 “(B) the price or monetary value for which
20 emission allowances are transferred;

21 “(C) the date of each such transfer;

22 “(D) the parties involved in the transfer;

23 and

1 “(E) any additional information the Ad-
2 ministrator determines necessary for each such
3 transfer; and

4 “(4) the publication by the Administrator on
5 the internet of—

6 “(A) a weekly summary of average prices
7 of emission allowances weighted by transaction
8 size, the total number of emission allowances
9 traded, and any other additional information
10 determined by the Administrator as necessary
11 for the orderly and competitive functioning of
12 any emission allowance market;

13 “(B) the number of emission allowances
14 distributed by the Administrator under section
15 722 each month to qualified electric facilities;

16 “(C) the number of emission allowances
17 distributed by the Administrator under section
18 722 each month to qualified thermal facilities;

19 “(D) the number of emission allowances
20 distributed by the Administrator under section
21 722 each month to qualified cogeneration facili-
22 ties;

23 “(E) the number of emission allowances
24 distributed by the Administrator under section
25 722 during a calendar year that are held by

1 qualified electric facilities at the end of each
2 month;

3 “(F) the number of emission allowances
4 distributed by the Administrator under section
5 722 during a calendar year that are held by
6 qualified thermal facilities at the end of each
7 month;

8 “(G) the number of emission allowances
9 distributed by the Administrator under section
10 722 during a calendar year that are held by
11 qualified cogeneration facilities at the end of
12 each month;

13 “(H) the number of emission allowances
14 distributed by the Administrator under section
15 722 during a calendar year that are held by en-
16 tities other than covered entities at the end of
17 each month;

18 “(I) the number of emission allowances
19 surrendered to the Administrator each year by
20 qualified electric facilities;

21 “(J) the number of emission allowances
22 surrendered to the Administrator each year by
23 qualified thermal facilities; and

1 “(K) the number of emission allowances
2 surrendered to the Administrator each year by
3 qualified cogeneration facilities.

4 **“SEC. 727. OTHER PROGRAM RULES.**

5 “(a) THRESHOLD REVIEW.—For each category of
6 covered entities listed in section 701(5), the Adminis-
7 trator—

8 “(1) in 2025, and once every 5 years thereafter,
9 shall review the threshold for electricity or useful
10 thermal energy output production that is used to de-
11 fine covered entities in such category; and

12 “(2) may by rule lower such threshold after
13 consideration of—

14 “(A) greenhouse gas emissions from cov-
15 ered entities in such category, and from other
16 entities of the same type that produce less elec-
17 tricity or useful thermal energy output (includ-
18 ing greenhouse gas emission sources that com-
19 mence operation after the date of enactment of
20 this title that are not covered entities); and

21 “(B) whether greater greenhouse gas emis-
22 sion reductions can be cost-effectively achieved
23 by lowering the applicable threshold.

24 “(b) DESIGNATED REPRESENTATIVES.—The regula-
25 tions promulgated under section 729 shall require that

1 each covered entity, and each entity holding an emission
2 allowance or receiving an emission allowance from the Ad-
3 ministrator under this title, submit to the Administrator
4 a certificate of representation designating a designated
5 representative.

6 “(c) SAVINGS PROVISION.—Nothing in this title shall
7 be construed—

8 “(1) as requiring a change of any kind in any
9 State law regulating electric utility rates and
10 charges, or as affecting any State law regarding
11 such State regulation, or as limiting State regulation
12 (including any prudency review) under such a State
13 law;

14 “(2) as modifying the Federal Power Act or as
15 affecting the authority of the Federal Energy Regu-
16 latory Commission under that Act; or

17 “(3) as interfering with or impairing any pro-
18 gram for competitive bidding for power supply in a
19 State in which such a program is established.

20 “(d) POSITION LIMITS.—

21 “(1) IN GENERAL.—The regulations promul-
22 gated under section 729 shall limit the number of
23 emission allowances that an entity may hold at any
24 time in a calendar year.

1 “(2) LIMITS.—The Administrator, in consulta-
2 tion with the Commodity Futures Trading Commis-
3 sion, shall set limits under paragraph (1)—

4 “(A) on the number of emission allowances
5 distributed in a calendar year that an entity
6 may hold in such calendar year;

7 “(B) on the total number of emission al-
8 lowances that an entity may hold in a calendar
9 year;

10 “(C) so that no entity may at any time
11 hold a number of emission allowances that may
12 influence the price of emission allowances; and

13 “(D) in a manner that will ensure ade-
14 quate liquidity for buyers and sellers of emis-
15 sion allowances.

16 “(e) STATUS OF SURRENDERED EMISSION ALLOW-
17 ANCES.—Once an emission allowance is surrendered to the
18 Administrator under this title, the emission allowance
19 shall be disqualified from subsequent use under this title,
20 including subsequent sale, exchange, or submission.

21 “(f) ORDERLY AND COMPETITIVE MARKET.—The
22 regulations promulgated under section 729 shall specify
23 all procedures and requirements necessary for the orderly
24 and competitive functioning of any emission allowance
25 market.

1 **“SEC. 728. OVERSIGHT.**

2 “(a) IN GENERAL.—Not later than January 1, 2022,
3 and every 2 years thereafter, the Comptroller General of
4 the United States shall submit to Congress a report on—

5 “(1) the results of implementation of this title;

6 and

7 “(2) the progress in meeting the targets speci-
8 fied in section 702(a).

9 “(b) CONTENTS.—Each report under subsection (a)
10 shall include—

11 “(1) a comprehensive evaluation of—

12 “(A) the efficiency, transparency, and
13 soundness of the distribution of emission allow-
14 ances under this title, and the Federal thermal
15 energy reporting program;

16 “(B) the cost-effectiveness of this title in
17 achieving the targets specified in section
18 702(a); and

19 “(C) the effectiveness of this title in facili-
20 tating the deployment of additional zero-carbon
21 electricity capacity and useful thermal energy
22 output capacity; and

23 “(2) recommendations, if any, for legislative,
24 regulatory, or administrative changes with respect to
25 this title to improve its effectiveness and to reduce
26 or eliminate any identified waste, fraud, or abuse.

1 “(c) ADDITIONAL CONTENTS.—Each report under
2 subsection (a) shall address the effectiveness of this title
3 in—

4 “(1) creating and preserving jobs;

5 “(2) ensuring a manageable transition to a
6 zero-emission economy for working families and
7 workers;

8 “(3) reducing, or enhancing sequestration of,
9 greenhouse gases;

10 “(4) developing clean technologies; and

11 “(5) maintaining a liquid market for emission
12 allowances.

13 **“SEC. 729. REGULATIONS.**

14 “Except as otherwise specified in this title, the Ad-
15 ministrator shall promulgate final regulations to carry out
16 this title not later than 24 months after the date of enact-
17 ment of this title.

18 **“SEC. 730. SAVINGS PROVISIONS.**

19 “Nothing in this title shall be interpreted to relieve
20 any person from complying with any requirement of an-
21 other title of this Act.”.

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