

117TH CONGRESS  
1ST SESSION

# H. R. 1805

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2021

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

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## 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 Rankine 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 and the 20-year global  
4 warming potential for such greenhouse gas that is pro-  
5 vided in the Fifth Assessment Report of the Intergovern-  
6 mental Panel on Climate Change exceeds the 100-year  
7 global warming potential for such greenhouse gas that is  
8 provided in the Fifth Assessment Report of the Intergov-  
9 ernmental Panel on Climate Change, the Administrator  
10 may publish a determination in the Federal Register that  
11 such greenhouse gas has a carbon dioxide equivalent value  
12 equal to the 20-year global warming potential for such  
13 greenhouse gas that is provided in the Fifth Assessment  
14 Report of the Intergovernmental Panel on Climate  
15 Change.

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

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

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

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

4           “(B) the quantity of useful thermal energy  
5           output produced by such thermal reporting en-  
6           tity as calculated pursuant to subsection (e);  
7           and

8           “(C) the quantity of greenhouse gas emis-  
9           sions associated with such useful thermal en-  
10          ergy output production;

11          “(2) require thermal reporting entities to sub-  
12          mit to the Administrator data sufficient to ensure  
13          compliance with or implementation of the require-  
14          ments of this title;

15          “(3) ensure the completeness, consistency,  
16          transparency, accuracy, precision, and reliability of  
17          data gathered under the Federal thermal energy re-  
18          porting program;

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

21          “(5) require that thermal reporting entities pro-  
22          vide the data required in this section in reports sub-  
23          mitted electronically to the Administrator, in such  
24          form and containing such information as may be re-  
25          quired by the Administrator;

1           “(6) include requirements for keeping records  
2 supporting or related to, and protocols for auditing,  
3 data submitted under the Federal thermal energy re-  
4 porting program;

5           “(7) establish consistent policies for calculating  
6 carbon content and greenhouse gas emissions for  
7 any type of fuel for which data is submitted under  
8 the Federal thermal energy reporting program;

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

16                   “(A) nondissemination of the data is vital  
17 to the national security of the United States, as  
18 determined by the President; or

19                   “(B) the data is confidential business in-  
20 formation that cannot be derived from informa-  
21 tion that is otherwise publicly available and that  
22 would cause significant calculable competitive  
23 harm if published, except that data that is con-  
24 fidential business information shall be provided  
25 to a State or Indian Tribe within whose juris-

1           diction the thermal reporting entity is located if  
2           the Administrator determines that such State  
3           or Indian Tribe has in effect protections for  
4           confidential business information that are at  
5           least as protective as protections applicable to  
6           the Federal Government;

7           “(9) provide that the Administrator publish an  
8           aggregate summary of all data reported under the  
9           Federal thermal energy reporting program publicly  
10          on the internet as soon as practicable after elec-  
11          tronic audit by the Administrator and any resulting  
12          correction of data, including publication of—

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

15                 “(B) at the discretion of the President,  
16                 data the nondissemination of which was deter-  
17                 mined to be vital to the national security of the  
18                 United States under paragraph (8)(A);

19           “(10) prescribe methods by which the Adminis-  
20          trator shall, in cases in which satisfactory data are  
21          not submitted by a thermal reporting entity under  
22          the Federal thermal energy reporting program to the  
23          Administrator for any period of time, estimate the  
24          data for such thermal reporting entity required  
25          under paragraph (1) with—

1           “(A) in the case of a thermal reporting en-  
2           tity that is a qualified thermal facility or a  
3           qualified cogeneration facility, an estimate of  
4           the highest greenhouse gas emission levels that  
5           may have occurred during the period for which  
6           data are missing; or

7           “(B) in the case of any other thermal re-  
8           porting entity, a reasonable estimate of the  
9           greenhouse gas emission levels that may have  
10          occurred during the period for which data are  
11          missing;

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

14          “(12) require an appropriate certification, by  
15          the designated representative for the thermal report-  
16          ing entity, of accurate and complete accounting of  
17          the data required under paragraph (1), as deter-  
18          mined by the Administrator; and

19          “(13) include requirements for the submission  
20          of other data necessary for accurate and complete  
21          accounting of the quantity of useful thermal energy  
22          output, and the quantity of greenhouse gas emis-  
23          sions associated with such useful thermal energy  
24          output production, as determined by the Adminis-

1 trator, including data for quality assurance of moni-  
2 toring systems and other measurement devices.

3 “(b) TIMING.—

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

5 “(A) IN GENERAL.—Not later than March  
6 21, 2023, each thermal reporting entity shall  
7 submit to the Administrator data required  
8 under the Federal thermal energy reporting  
9 program with respect to each of calendar years  
10 2019 through 2022.

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

22 “(2) SUBSEQUENT CALENDAR YEARS.—With  
23 respect to calendar year 2023 and each subsequent  
24 calendar year, each thermal reporting entity shall  
25 submit quarterly data required under the Federal

1 thermal energy reporting program to the Adminis-  
2 trator not later than 60 days after the end of the  
3 applicable quarter, except when the data is already  
4 being reported to the Administrator on an earlier  
5 timeframe for another program.

6 “(c) WAIVER OF REPORTING REQUIREMENTS FOR  
7 SPECIFIC ENTITIES.—The Administrator may waive re-  
8 porting requirements under this section for specific enti-  
9 ties to the extent that the Administrator determines that  
10 sufficient and equally or more reliable verified and timely  
11 data are available to the Administrator and the public  
12 under other statutory requirements.

13 “(d) INTERRELATIONSHIP WITH OTHER SYSTEMS.—

14 “(1) IN GENERAL.—In developing the regula-  
15 tions issued under subsection (a), the Administrator  
16 shall take into account the work done by the Energy  
17 Information Administration and other mandatory  
18 Federal, State, or multistate programs to collect in-  
19 formation that is similar to the information to be  
20 collected under this section.

21 “(2) EXPLANATION.—Regulations issued under  
22 subsection (a) shall include an explanation of any  
23 major differences in information collected between  
24 the Federal thermal energy reporting program and  
25 information available from the Energy Information



1 Administration and other mandatory Federal, State,  
2 or multistate programs to collect similar informa-  
3 tion.

4 “(e) **CALCULATION OF USEFUL THERMAL ENERGY**  
5 **OUTPUT.**—The Administrator and thermal reporting enti-  
6 ties shall—

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

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

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

22 “(a) **IN GENERAL.**—Beginning with calendar year  
23 2023, by the end of each month, the Administrator of the  
24 Energy Information Administration shall provide to the  
25 Administrator of the Environmental Protection Agency in-

1 formation on the total amount of electricity produced from  
2 qualified electric facilities during the previous month.

3 “(b) NEW QUALIFIED ELECTRIC FACILITIES.—The  
4 Administrator of the Environmental Protection Agency  
5 shall notify the Administrator of the Energy Information  
6 Administration whenever an electric facility with a rated  
7 capacity of less than 2 megawatts elects to be classified  
8 as a qualified electric facility or a qualified cogeneration  
9 facility under section 724.

10 **“PART C—PROGRAM RULES**

11 **“SEC. 721. REQUIREMENTS.**

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

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

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

21 “(2) By purchase, exchange, or transfer under  
22 section 723.

23 “(c) APPLICABILITY.—The requirement of this part  
24 applies with respect to calendar year 2024 and subsequent  
25 calendar years.

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

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

6               “(2) the following calendar year.

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

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

15       “(a) QUALIFIED ELECTRIC FACILITIES.—During a  
16 calendar year, the Administrator shall distribute, on a con-  
17 tinual basis, to a qualified electric facility for each mega-  
18 watt hour of electricity produced by the qualified electric  
19 facility a number of emission allowances (or fractions  
20 thereof) equal to the product of one multiplied by the  
21 greater of—

22               “(1) zero; and

23               “(2) the lesser of—

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

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

5                   “(i) the preceding calendar year’s av-  
6                   erage carbon intensity for qualified electric  
7                   facilities; minus

8                   “(ii) the product of 0.06 multiplied by  
9                   calendar year 2023’s average carbon inten-  
10                  sity for qualified electric facilities; or

11           “(C) a value set by the Administrator for  
12           purposes of this subsection to ensure that the  
13           aggregate quantity of greenhouse gas emissions  
14           from covered entities does not exceed the tar-  
15           gets specified in section 702(a).

16           “(b) QUALIFIED THERMAL FACILITIES.—During a  
17           calendar year, the Administrator shall distribute, on a con-  
18           tinual basis, to a qualified thermal facility for each million  
19           British thermal units of useful thermal energy output pro-  
20           duced by the qualified thermal facility a number of emis-  
21           sion allowances (or fractions thereof) equal to the product  
22           of one multiplied by the greater of—

23                   “(1) zero; and

24                   “(2) the lesser of—

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

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

5                   “(i) the preceding calendar year’s av-  
6                   erage carbon intensity for qualified ther-  
7                   mal facilities; minus

8                   “(ii) the product of 0.06 multiplied by  
9                   calendar year 2023’s average carbon inten-  
10                  sity for qualified thermal facilities; or

11           “(C) a value set by the Administrator for  
12           purposes of this subsection to ensure that the  
13           aggregate quantity of greenhouse gas emissions  
14           from covered entities does not exceed the tar-  
15           gets specified in section 702(a).

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

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

23                   “(2) for each million British thermal units of  
24                   useful thermal energy output produced by the quali-  
25                   fied cogeneration facility, a number of emission al-

1 allowances (or fractions thereof) calculated in accord-  
2 ance with subsection (b).

3 “(d) ADJUSTED DISTRIBUTION FOR ENTERING INTO  
4 CERTAIN AGREEMENTS.—

5 “(1) IN GENERAL.—If an existing facility or a  
6 newly constructed low-emission facility enters into  
7 an agreement described in paragraph (2), then over  
8 the period of the agreement the Administrator shall  
9 distribute emission allowances to such facility in ac-  
10 cordance with this subsection in lieu of subsection  
11 (a), (b), or (c).

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

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

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

1           “(B) The term ‘existing facility’ means an  
2 existing qualified electric facility, an existing  
3 qualified thermal facility, or an existing quali-  
4 fied cogeneration facility that is a party to an  
5 agreement described in paragraph (2).

6           “(C) The term ‘newly constructed’ means  
7 that the facility involved did not produce elec-  
8 tricity or useful thermal energy output prior to  
9 the date of entry into an agreement described  
10 in paragraph (2).

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

1           “(4) DISTRIBUTION OF ALLOWANCES TO AN  
2           EXISTING 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 existing 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 existing facility that are cov-  
14           ered by the agreement, a number of emis-  
15           sion allowances that is equal to—

16           “(I) such number of megawatt  
17           hours or million British thermal units,  
18           as applicable; multiplied by

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

24           “(ii) for megawatt hours of electricity  
25           or million British thermal units of useful



1 thermal energy output, as applicable, pro-  
2 duced by the existing facility exceeding  
3 those that are covered by the agreement,  
4 the number of emission allowances cal-  
5 culated under subsection (a), (b), or (c), as  
6 applicable.

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

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

21 “(I) the number of emission al-  
22 lowances surrendered by the existing  
23 facility to the Administrator for such  
24 first full calendar year; minus

1                   “(II) the number of emission al-  
2                   lowances distributed to the existing  
3                   facility by the Administrator for such  
4                   first full calendar year; multiplied by  
5                   “(ii) the total number of megawatt  
6                   hours of electricity or million British ther-  
7                   mal units of useful thermal energy output,  
8                   as applicable, produced by the existing fa-  
9                   cility in such first full calendar year.

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

12                   “(A) IN GENERAL.—For calendar years  
13                   that are covered by an agreement described in  
14                   paragraph (2), beginning with the first full cal-  
15                   endar year during which the newly constructed  
16                   low-emission facility operates, the Adminis-  
17                   trator shall distribute, on a continual basis, to  
18                   the newly constructed low-emission facility—

19                   “(i) for megawatt hours of electricity  
20                   or million British thermal units of useful  
21                   thermal energy output, as applicable, pro-  
22                   duced by the newly constructed low-emis-  
23                   sion facility that are covered by the agree-  
24                   ment, a number of emission allowances  
25                   that is equal to—

1                   “(I) such number of megawatt  
2                   hours or million British thermal units  
3                   of useful thermal energy output; mul-  
4                   tiplied by

5                   “(II) the average carbon inten-  
6                   sity for qualified electric facilities or  
7                   the average carbon intensity for quali-  
8                   fied thermal facilities, as applicable, in  
9                   such first full calendar year; and

10                  “(ii) 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 exceeding those that are cov-  
15                  ered by the agreement, the number of  
16                  emission allowances calculated under sub-  
17                  section (a), (b), or (c), as applicable.

18                  “(B) CALCULATION OF MEGAWATT HOURS  
19                  OR MILLION BRITISH THERMAL UNITS COVERED  
20                  BY AGREEMENT.—For purposes of subpara-  
21                  graph (A), the number of megawatt hours of  
22                  electricity or million British thermal units of  
23                  useful thermal energy output, as applicable,  
24                  produced by a newly constructed low-emission

1 facility that are covered by the agreement de-  
2 scribed in paragraph (2) shall be equal to—

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

8 “(I) the number of emission al-  
9 lowances surrendered by the newly  
10 constructed low-emission facility to  
11 the Administrator for such first full  
12 calendar year; minus

13 “(II) the number of emission al-  
14 lowances distributed to the newly con-  
15 structed low-emission facility by the  
16 Administrator for such first full cal-  
17 endar year; multiplied by

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

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

1           “(A) such facility provides the Adminis-  
2           trator a copy of—

3                   “(i) the applicable bilateral agree-  
4                   ment; and

5                   “(ii) any amendment to such bilateral  
6                   agreement within 30 days of the amend-  
7                   ment being made; and

8           “(B) the Administrator certifies that allow-  
9           ing the facility to maintain the bilateral agree-  
10          ment is not impacting the ability to achieve the  
11          targets specified in section 702(a)—

12                   “(i) upon receiving the applicable bi-  
13                   lateral agreement, and at least once every  
14                   5 years thereafter; and

15                   “(ii) upon receiving any amendment  
16                   thereto.

17 **“SEC. 723. TRADING.**

18           “(a) PERMITTED TRANSACTIONS.—Except as other-  
19          wise provided in this title, the lawful holder of an emission  
20          allowance may, without restriction, sell, exchange, trans-  
21          fer, hold, or surrender to the Administrator, the emission  
22          allowance.

23           “(b) IDENTIFICATION NUMBERS.—The Adminis-  
24          trator shall assign to each emission allowance a unique  
25          identification number.

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

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

5 “(2) TERMINATION OR LIMITATION.—Nothing  
6 in this Act or any other provision of law shall be  
7 construed to limit or alter the authority of the  
8 United States to terminate or limit emission allow-  
9 ances.

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

16 “(d) EFFECTIVENESS OF EMISSION ALLOWANCE  
17 TRANSFERS.—No transfer of an emission allowance shall  
18 be effective for purposes of this title until a certification  
19 of the transfer, signed by the designated representative of  
20 the transferor, is received and recorded by the Adminis-  
21 trator in accordance with regulations promulgated under  
22 section 729.

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

24 “(a) VOLUNTARY PROGRAM PARTICIPATION AS  
25 QUALIFIED ELECTRIC FACILITY.—

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

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

10                   “(A) submit a notification to the Adminis-  
11                   trator of the intention of the generator to elect  
12                   to be classified as a qualified electric facility;

13                   “(B) receive approval of such classification  
14                   from the Administrator; and

15                   “(C) designate a representative as required  
16                   under section 727(b).

17           “(3) APPROVAL.—Not later than 90 after re-  
18           ceipt of a notification under paragraph (2)(A), the  
19           Administrator shall notify the applicable generator  
20           whether the Administrator approves or disapproves  
21           the classification of such generator as a qualified  
22           electric facility.

23           “(4) CLASSIFICATION.—If a generator elects to  
24           be classified as a qualified electric facility pursuant  
25           to this subsection, such classification shall remain in

1 effect unless the facility produces no electricity over  
2 the previous calendar year.

3 “(b) VOLUNTARY PROGRAM PARTICIPATION AS A  
4 QUALIFIED THERMAL FACILITY.—

5 “(1) IN GENERAL.—A generator that produces  
6 thermal energy with a rated fuel-based capacity of  
7 less than 50,000,000 British thermal units on a  
8 higher heating value basis per hour may, in accord-  
9 ance with this subsection, elect to be classified as a  
10 qualified thermal facility for purposes of this title.

11 “(2) QUALIFICATION.—In order for a generator  
12 that produces thermal energy with a rated fuel-based  
13 capacity of less than 50,000,000 British thermal  
14 units on a higher heating value basis per hour to be  
15 classified as a qualified thermal facility, the facility  
16 shall—

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

20 “(B) submit a notification to the Adminis-  
21 trator of the intention of the generator to elect  
22 to be classified as a qualified thermal facility;

23 “(C) receive approval of such classification  
24 from the Administrator;



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

8           “(E) designate a representative as required  
9           under section 727(b).

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

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

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

20          “(c) VOLUNTARY PROGRAM PARTICIPATION AS  
21          QUALIFIED COGENERATION FACILITY.—

22                 “(1) IN GENERAL.—A generator that simulta-  
23                 neously produces useful thermal energy output and  
24                 electricity with a rated capacity of less than 2  
25                 megawatts may, in accordance with this subsection,

1 elect to be classified as a qualified cogeneration fa-  
2 cility for purposes of this title.

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

8 “(A) submit a notification to the Adminis-  
9 trator of the intention of the generator to elect  
10 to be classified as a qualified cogeneration facil-  
11 ity;

12 “(B) receive approval of the classification  
13 from the Administrator;

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

21 “(D) designate a representative as required  
22 under section 727(b).

23 “(3) CLASSIFICATION.—If a generator elects to  
24 be classified as a qualified cogeneration facility pur-  
25 suant to this subsection, such classification shall re-

1 main in effect unless the facility produces no elec-  
2 tricity over the previous calendar year.

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

4 “(a) CIVIL PENALTY.—

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

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

12 “(A) twice the highest monetary value (as  
13 indicated by the emission allowance tracking  
14 system established pursuant to section 726 over  
15 the previous calendar year) for the sale or  
16 transfer of an emission allowance; multiplied by

17 “(B) the number of emission allowances  
18 which the owner or operator of the covered enti-  
19 ty failed to surrender as described in paragraph  
20 (1).

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

1           “(4) NO EFFECT ON LIABILITY.—A penalty due  
2           and payable by the owners or operators of a covered  
3           entity under this subsection shall not diminish the li-  
4           ability of the owners or operators for any fine, pen-  
5           alty, or assessment against the owners or operators  
6           for the same violation under any other provision of  
7           this Act or any other law.

8           “(b) REPLACEMENT EMISSION ALLOWANCES.—The  
9           owner or operator of a covered entity that fails to sur-  
10          render one or more emission allowances as required by sec-  
11          tion 721(a) for a calendar year shall surrender a quantity  
12          of emission allowances that is equal to the quantity the  
13          covered entity failed to surrender (in addition to the emis-  
14          sion allowances otherwise required to be surrendered) by  
15          the April 1st deadline of the second succeeding calendar  
16          year.

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

18          “The regulations promulgated under section 729  
19          shall provide for—

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

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

1           “(3) the establishment of an emission allowance  
2 tracking system to track—

3           “(A) the number of emission allowances  
4 transferred;

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

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

8           “(D) the parties involved in the transfer;  
9 and

10          “(E) any additional information the Ad-  
11 ministrator determines necessary for each such  
12 transfer; and

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

15          “(A) a weekly summary of average prices  
16 of emission allowances weighted by transaction  
17 size, the total number of emission allowances  
18 traded, and any other additional information  
19 determined by the Administrator as necessary  
20 for the orderly and competitive functioning of  
21 any emission allowance market;

22          “(B) the number of emission allowances  
23 distributed by the Administrator under section  
24 722 each month to qualified electric facilities;

1           “(C) the number of emission allowances  
2 distributed by the Administrator under section  
3 722 each month to qualified thermal facilities;

4           “(D) the number of emission allowances  
5 distributed by the Administrator under section  
6 722 each month to qualified cogeneration facili-  
7 ties;

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

13           “(F) the number of emission allowances  
14 distributed by the Administrator under section  
15 722 during a calendar year that are held by  
16 qualified thermal facilities at the end of each  
17 month;

18           “(G) the number of emission allowances  
19 distributed by the Administrator under section  
20 722 during a calendar year that are held by  
21 qualified cogeneration facilities at the end of  
22 each month;

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

1           tities other than covered entities at the end of  
2           each month;

3           “(I) the number of emission allowances  
4           surrendered to the Administrator each year by  
5           qualified electric facilities;

6           “(J) the number of emission allowances  
7           surrendered to the Administrator each year by  
8           qualified thermal facilities; and

9           “(K) the number of emission allowances  
10          surrendered to the Administrator each year by  
11          qualified cogeneration facilities.

12 **“SEC. 727. OTHER PROGRAM RULES.**

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

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

20           “(2) may by rule lower such threshold after  
21           consideration of—

22           “(A) greenhouse gas emissions from cov-  
23           ered entities in such category, and from other  
24           entities of the same type that produce less elec-  
25           tricity or useful thermal energy output (includ-

1           ing greenhouse gas emission sources that com-  
2           mence operation after the date of enactment of  
3           this title that are not covered entities); and

4                   “(B) whether greater greenhouse gas emis-  
5           sion reductions can be cost-effectively achieved  
6           by lowering the applicable threshold.

7           “(b) DESIGNATED REPRESENTATIVES.—The regula-  
8           tions promulgated under section 729 shall require that  
9           each covered entity, and each entity holding an emission  
10          allowance or receiving an emission allowance from the Ad-  
11          ministrators under this title, submit to the Administrator  
12          a certificate of representation designating a designated  
13          representative.

14          “(c) SAVINGS PROVISION.—Nothing in this title shall  
15          be construed—

16                   “(1) as requiring a change of any kind in any  
17          State law regulating electric utility rates and  
18          charges, or as affecting any State law regarding  
19          such State regulation, or as limiting State regulation  
20          (including any prudency review) under such a State  
21          law;

22                   “(2) as modifying the Federal Power Act or as  
23          affecting the authority of the Federal Energy Regu-  
24          latory Commission under that Act; or



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

4           “(d) POSITION LIMITS.—

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

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

12           “(A) on the number of emission allowances  
13           distributed in a calendar year that an entity  
14           may hold in such calendar year;

15           “(B) on the total number of emission al-  
16           lowances that an entity may hold in a calendar  
17           year;

18           “(C) so that no entity may at any time  
19           hold a number of emission allowances that may  
20           influence the price of emission allowances; and

21           “(D) in a manner that will ensure ade-  
22           quate liquidity for buyers and sellers of emis-  
23           sion allowances.

24          “(e) STATUS OF SURRENDERED EMISSION ALLOW-  
25          ANCES.—Once an emission allowance is surrendered to the

1 Administrator under this title, the emission allowance  
2 shall be disqualified from subsequent use under this title,  
3 including subsequent sale, exchange, or submission.

4 “(f) ORDERLY AND COMPETITIVE MARKET.—The  
5 regulations promulgated under section 729 shall specify  
6 all procedures and requirements necessary for the orderly  
7 and competitive functioning of any emission allowance  
8 market.

9 **“SEC. 728. OVERSIGHT.**

10 “(a) IN GENERAL.—Not later than January 1, 2023,  
11 and every 2 years thereafter, the Comptroller General of  
12 the United States shall submit to Congress a report on—

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

14 and

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

17 “(b) CONTENTS.—Each report under subsection (a)  
18 shall include—

19 “(1) a comprehensive evaluation of—

20 “(A) the efficiency, transparency, and  
21 soundness of the distribution of emission allow-  
22 ances under this title, and the Federal thermal  
23 energy reporting program;

1           “(B) the cost-effectiveness of this title in  
2           achieving the targets specified in section  
3           702(a); and

4           “(C) the effectiveness of this title in facili-  
5           tating the deployment of additional zero-carbon  
6           electricity capacity and useful thermal energy  
7           output capacity; and

8           “(2) recommendations, if any, for legislative,  
9           regulatory, or administrative changes with respect to  
10          this title to improve its effectiveness and to reduce  
11          or eliminate any identified waste, fraud, or abuse.

12          “(c) ADDITIONAL CONTENTS.—Each report under  
13          subsection (a) shall address the effectiveness of this title  
14          in—

15                 “(1) creating and preserving jobs;

16                 “(2) ensuring a manageable transition to a  
17          zero-emission economy for working families and  
18          workers;

19                 “(3) reducing, or enhancing sequestration of,  
20          greenhouse gases;

21                 “(4) developing clean technologies; and

22                 “(5) maintaining a liquid market for emission  
23          allowances.

1 **“SEC. 729. REGULATIONS.**

2       “Except as otherwise specified in this title, the Ad-  
3 ministrator shall promulgate final regulations to carry out  
4 this title not later than 24 months after the date of enact-  
5 ment of this title.

6 **“SEC. 730. SAVINGS PROVISIONS.**

7       “Nothing in this title shall be interpreted to relieve  
8 any person from complying with any requirement of an-  
9 other title of this Act.”.

○