

111TH CONGRESS
1ST SESSION

H. R. 1666

To amend the Internal Revenue Code of 1986 to establish an auction and revenue collection mechanism for a carbon market that ensures price stability with environmental integrity.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2009

Mr. DOGGETT (for himself, Mr. COOPER, Mr. SHULER, Mr. THOMPSON of California, Mr. BLUMENAUER, Mr. STARK, Mr. LEWIS of Georgia, Ms. BERKLEY, Ms. LINDA T. SÁNCHEZ of California, Mr. YARMUTH, Mr. BRADY of Pennsylvania, Mr. COHEN, Mr. FATTAH, Mr. JOHNSON of Georgia, Mr. ROTHMAN of New Jersey, Mr. SIRES, Mr. NADLER of New York, Mr. FARR, Mr. CUMMINGS, Ms. CLARKE, Mr. ACKERMAN, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to establish an auction and revenue collection mechanism for a carbon market that ensures price stability with environmental integrity.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safe Markets Develop-
3 ment Act of 2009”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds—

6 (1) a market-based, national emissions cap and
7 trade program for greenhouse gases shall help meet
8 national mitigation goals with a high degree of cer-
9 tainty while creating a new market for emissions al-
10 lowances;

11 (2) ensuring a smooth startup of the program
12 is critical for meeting short- and long-term emissions
13 goals and maintaining public and political support
14 for the program;

15 (3) the economy-wide scale of the new allowance
16 market and participation in the market of many reg-
17 ulated entities with little or no experience with cap
18 and trade programs call for a careful startup phase
19 for the program;

20 (4) stable and predictable prices for allowances
21 shall support development of cost-effective mitigation
22 technologies and ease the transition for businesses
23 and consumers making long-term investment deci-
24 sions;

25 (5) recent experiences in the oil, housing, elec-
26 tricity and financial markets suggest that many

1 markets are subject to boom and bust cycles and can
2 be vulnerable to market manipulation or speculative
3 excesses and that lessons from these experiences
4 should guide the design of the new cap and trade
5 program; and

6 (6) the risks of speculative excess and market
7 manipulation are highest in the initial period of a
8 cap and trade program while the regulatory systems
9 to monitor allowance markets are under development
10 and regulated sources are less experienced in market
11 participation.

12 **SEC. 3. PURPOSES.**

13 The purposes of this Act are to—

14 (1) establish an auction mechanism for the col-
15 lection of revenue that ensures a smooth price path
16 while achieving the emissions reductions necessary to
17 stop climate change; and

18 (2) direct the revenue raised from the auction
19 to a trust fund to be used for important public pur-
20 poses.

1 **SEC. 4. ISSUING, AUCTIONING, AND ADMINISTERING EMIS-**
 2 **SIONS ALLOWANCES AND COLLECTION OF**
 3 **REVENUE.**

4 (a) IN GENERAL.—The Internal Revenue Code of
 5 1986 is amended by adding at the end the following new
 6 subtitle:

7 **“Subtitle L—Auction Based Carbon**
 8 **Market**

9 **“CHAPTER 101—EMISSION ALLOWANCES**

““Subchapter A. Allowance auctions and compliance obligations.
 ““Subchapter B. Climate Oversight and Coordination Board.
 ““Subchapter C. Auction Revenue Trust Fund.
 ““Subchapter D. Assurance of cumulation emissions.
 ““Subchapter E. Definitions.

10 **“Subchapter A—Allowance Auctions and**
 11 **Compliance Obligations**

“Sec. 9901. Allowance auctions.
 “Sec. 9902. Allowance transfer system.
 “Sec. 9903. Compliance obligation.
 “Sec. 9904. Excess Emissions Penalty.
 “Sec. 9905. Allowance banking.

12 **“SEC. 9901. ALLOWANCE AUCTIONS.**

13 “(a) AUCTIONS.—The Secretary shall conduct auc-
 14 tions of allowances in accordance with procedures estab-
 15 lished by the Board established under subchapter B to
 16 meet the target allowance price for the year determined
 17 by the Board. The auction schedule is as follows:

18 “(1) Four auctions shall be undertaken during
 19 each trading year.

1 “(2) The first auction of each trading year shall
2 occur between April and June and at least three
3 weeks after the Board announces a target price for
4 the trading year.

5 “(3) The fourth auction for each trading year
6 shall be in the last month (March) of the trading
7 year.

8 “(b) AUCTION REVENUE.—All revenue from the auc-
9 tions under this section shall be deposited in the Auction
10 Revenue Trust Fund established under subchapter C.
11 Amounts deposited in such trust fund may be used, sub-
12 ject to annual appropriation, only for the purposes speci-
13 fied in other provisions of law.

14 **“SEC. 9902. ALLOWANCE TRANSFER SYSTEM.**

15 “(a) ESTABLISHMENT.—The Secretary shall estab-
16 lish a system for issuing, recording, and tracking emission
17 allowances, and shall maintain a registry of allowances for
18 each recorded holder of allowances.

19 “(b) RECORDING REQUIREMENT.—The Secretary
20 shall establish, by rule, a mechanism for the recording of
21 emission allowances.

22 “(c) HOLDERS NOT RESTRICTED.—The privilege of
23 purchasing, holding, and transferring emission allowances
24 shall not be restricted to the owners and operators of cov-
25 ered facilities.

1 **“SEC. 9903. COMPLIANCE OBLIGATION.**

2 “(a) SUBMISSION OF ALLOWANCES.—Not later than
3 90 days after the end of a calendar year, the owner or
4 operator of a covered facility shall submit to the Secretary
5 an emission allowance for each carbon dioxide equivalent
6 attributable to such facility as calculated by the Adminis-
7 trator under the Emissions Registry.

8 “(b) RETIREMENT OF ALLOWANCES.—Upon receipt
9 of an emission allowance under subsection (a), the Sec-
10 retary shall retire the allowance, and shall reduce that cov-
11 ered entity’s registry account by a corresponding amount.
12 The Secretary may also retire other allowances as speci-
13 fied in section 9905.

14 **“SEC. 9904. EXCESS EMISSIONS PENALTY.**

15 “(a) IMPOSITION OF PENALTY.—The owner or oper-
16 ator of any covered facility that fails for any year to sub-
17 mit to the Secretary, by the deadline described in section
18 9903(a), 1 or more of the emission allowances due pursu-
19 ant to that section shall be liable for the payment to the
20 Secretary of an excess emissions penalty on the date of
21 such failure.

22 “(b) AMOUNT.—The amount of an excess emissions
23 penalty required to be paid under paragraph (1) shall be
24 an amount equal to the product obtained by multiplying—

25 “(1) the number of excess emission allowances
26 that the owner or operator failed to submit; and

1 “(2) the greater of—

2 “(A) \$200; or

3 “(B) 3 times the mean market value (as
4 determined by the Secretary) of an emission al-
5 lowance during the calendar year for which the
6 emission allowance were due.

7 “(c) DEFICIENCY PROCEDURES NOT TO APPLY.—

8 Subchapter B of chapter 63 (relating to deficiency proce-
9 dure for income, estate, gift, and certain excise taxes) shall
10 not apply in respect of the assessment or collection of any
11 penalty imposed by subsection (a).

12 “(d) COORDINATION WITH OTHER PENALTIES.—

13 The penalty imposed by this section shall be in addition
14 to any other penalty imposed under any other provision
15 of law.

16 **“SEC. 9905. ALLOWANCE BANKING.**

17 “In Phase I of the program, the Secretary shall allow
18 a covered entity to retain, after the retirement of allow-
19 ances equal to its emissions in the previous calendar year,
20 a sum of allowances equal to 5 percent of its emissions
21 in the previous calendar year. The Secretary shall retire
22 from a covered entity’s account any remaining allowances
23 in excess of 5 percent of the entity’s emissions during the
24 previous calendar year. The Secretary shall also retire all

1 allowances in the registry accounts of non-covered entities
 2 at the end of each trading year in Phase I of the program.

3 **“Subchapter B—Climate Oversight and**
 4 **Coordination Board**

“Sec. 9911. Establishment of a Climate Program Oversight and Coordination Board.

“Sec. 9912. Initial expectations for annual emissions.

5 **“SEC. 9911. ESTABLISHMENT OF A CLIMATE PROGRAM**
 6 **OVERSIGHT AND COORDINATION BOARD.**

7 “(a) ESTABLISHMENT.—There is established a Cli-
 8 mate Program Oversight and Coordination Board (here-
 9 after in this Act referred to as the ‘Board’).

10 “(b) PURPOSES.—The purposes of the Board are
 11 to—

12 “(1) coordinate and review the work of the Sec-
 13 retary, the Administrator, and other agencies in im-
 14 plementing this Act;

15 “(2) make forecasts and to set targets for green
 16 house gas allowance prices;

17 “(3) review the functioning of carbon markets,
 18 including allowance auctions, secondary markets in
 19 allowances and associated financial instruments (in-
 20 cluding futures, forwards, options, swaps, and other
 21 derivative contracts);

22 “(4) review the regulation and oversight of car-
 23 bon markets; and

1 “(5) provide reports and testimony to Congress
2 in April or May of each year beginning in 2012.

3 “(c) MEMBERSHIP.—(1) The Board shall include 6
4 members who shall be appointed by the President by and
5 with the advice and consent of the Senate. In appointing
6 members of the Board, the President shall select individ-
7 uals with recognized expertise in relevant areas, including
8 climate science and economics, and energy and financial
9 markets. Such persons shall have no other employment.
10 At least one member shall be a scientist with expertise
11 in climate change and the effects of climate change on the
12 environment. In addition, Board shall include the fol-
13 lowing three voting, ex-officio members: The Secretaries
14 of the Treasury and Energy and the Administrator of the
15 Environmental Protection Agency.

16 “(2) The ex-officio members of the Board shall serve
17 without additional compensation and may not serve as
18 Chairman or Vice Chairman. The ex-officio members of
19 the Board may, from time to time, designate other officers
20 or employees of their respective organizations to carry out
21 their duties on the Board.

22 “(d) COMPENSATION.—

23 “(1) IN GENERAL.—A member of the Board
24 shall be compensated at the annual rate of basic pay

1 prescribed for level II of the Executive Schedule
2 under section 5313 of title 5, United States Code.

3 “(2) CHAIRPERSON.—The Chairperson of the
4 Board shall be compensated at the annual rate of
5 basic pay prescribed for level I of the Executive
6 Schedule under section 5312 of title 5, United
7 States Code.

8 “(e) TERMS; VACANCIES.—

9 “(1) TERMS.—The term of a member of the
10 Board shall be 10 years, except that the members
11 first appointed to the Board shall be appointed for
12 terms in a manner that ensures that the term of not
13 more than 1 member shall expire during any 2-year
14 period, and no member serves a term of more than
15 10 years.

16 “(2) OATH OF OFFICE.—A member shall take
17 the oath of office of the Board by not later than 15
18 days after the date on which the member is ap-
19 pointed.

20 “(3) REMOVAL.—A member may be removed
21 from the Board on determination of the President
22 for cause. The President shall submit to Congress a
23 notification of any determination by the President to
24 remove a member of the Board for cause.

1 “(4) VACANCIES.—A member of the Board the
2 term of whom has expired or otherwise been termi-
3 nated shall continue to serve until the date on which
4 a replacement is appointed under subparagraph
5 (A)(ii), if the President determines that service to be
6 appropriate. A vacancy on the Board shall not affect
7 the powers of the Board and shall be filled in the
8 same manner as the original appointment was made.

9 “(5) CHAIRPERSON AND VICE-CHAIRPERSON.—
10 From among members of the Board, the President
11 shall appoint 1 member to serve as Chairperson of
12 the Board for a term of 4 years and member to
13 serve as Vice-Chairperson of the Board for a term
14 of 4 years.

15 “(6) EX-OFFICIO MEMBERS NOT COVERED.—
16 The provisions of this subsection apply only to
17 Board members who are not ex-officio members.

18 “(f) PROHIBITIONS.—

19 “(1) CONFLICTS OF INTEREST.—The President
20 shall not appoint to the Board an individual em-
21 ployed by, or holding any official relationship (in-
22 cluding any shareholder) with, any entity engaged in
23 the generation, transmission, distribution, or sale of
24 energy, an individual who has any pecuniary interest
25 in the generation, transmission, distribution, or sale

1 of energy, or an individual who has a pecuniary in-
2 terest in the implementation of this Act.

3 “(2) NO OTHER EMPLOYMENT.—A member of
4 the Board (other than an ex-officio member) shall
5 not hold any other employment during the term of
6 service of the member.

7 “(g) RESOURCES.—The Board may obtain the serv-
8 ices of such experts and consultants as are necessary to
9 carry out the provisions of this Act. The administrative
10 costs of the Board shall be paid out of the revenue from
11 auctions of greenhouse gas allowances.

12 “(h) POWERS AND DUTIES OF THE BOARD.—

13 “(1) FORECAST EMISSIONS AND ALLOWANCE
14 PRICES.—Before April 30, 2012, and before April
15 30 of each successive year through 2019, the Board
16 shall publish a forecast of gradually rising allowance
17 prices for the trading years through 2020 that the
18 Board expects shall be associated with a gradual re-
19 duction in emissions of greenhouse gases of covered
20 entities until reaching the level of 4,911 million tons
21 in 2020. In deciding upon a forecast of allowance
22 prices the Board shall—

23 “(A) review forecasts made by the Sec-
24 retary of Energy (acting through the Energy
25 Information Agency) and the Administrator of

1 the Environmental Protection Agency, as well
2 as those of private sector forecasters; and

3 “(B) in the years 2013 through 2019, re-
4 view and update its allowance price forecast as
5 part of the assessment under paragraph (4) of
6 this subsection.

7 “(2) SELECT ANNUAL PRICE TARGETS.—Before
8 April 30, 2012, and before April 30 of each succes-
9 sive year through 2019, the Board shall select a tar-
10 get allowance price for the trading year that begins
11 on April 1 of that calendar year, as follows:

12 “(A) In 2012, the target price shall be set
13 at the price the Board determines will achieve
14 the annual emission expectation for the year as
15 set forth in section 9912.

16 “(B) In 2013 through 2019, the target
17 price shall be the same as its forecast price for
18 that year, which may have been revised accord-
19 ing to paragraph (4).

20 “(3) AUCTION PROCEDURES.—The Board shall
21 establish procedures for auctions of allowances that
22 would achieve the target price on average over all
23 trading of allowances during the year, including the
24 sales of allowances in auctions as well as in sec-
25 ondary market trading. To achieve the target price,

1 the total number of emission allowances issued in
2 auctions in any particular year may be more or less
3 than the expected emissions for that year as set
4 forth in section 9912.

5 “(4) CONDUCT AN ANNUAL ASSESSMENT.—On
6 or before April 30 of each year beginning in 2013,
7 in consultation with the Secretary, the Secretary of
8 Energy, and the Administrator, the Board shall pre-
9 pare an assessment of the program. In Phase I of
10 the program, the assessment shall include each of
11 the following:

12 “(A) Actual emissions of covered enti-
13 ties in the previous calendar year.

14 “(B) The progress in achieving the
15 environmental goals of the program.

16 “(C) The effectiveness of the moni-
17 toring of emissions, the registration of al-
18 lowances, and the enforcement of compli-
19 ance requirements for covered entities.

20 “(D) An analysis of the behavior of
21 greenhouse gases markets.

22 “(E) The effectiveness of the price
23 target.

24 “(F) The reasons for the difference
25 between actual emissions and the expected

1 levels given in section 9912. In considering
2 the difference between actual and expected
3 emissions, the Board shall estimate—

4 “(i) the amount of the difference
5 that was attributable to influences
6 that pertain only to the given calendar
7 year, including but not limited to un-
8 usual weather or other transitory
9 changes in economic activity and en-
10 ergy use; and

11 “(ii) the amount of the difference
12 attributable to influences that shall
13 likely persist for multiple calendar
14 years and the likely duration of each
15 such influence.

16 “(G) A revision in its forecast of al-
17 lowance prices through 2020 in response to
18 the persistent influences identified in
19 clause (ii) of subparagraph (F), but not in
20 response to the transitory influences identi-
21 fied in clause (i) of subparagraph (F).

22 “(5) MAKE ANNUAL REPORTS TO CONGRESS.—

23 The Chairman of the Board shall present the assess-
24 ment in a written report and in testimony before

1 each house of Congress in April or May of each
 2 year.

3 “(6) CONDUCT A PROGRAM REVIEW IN 2017.—

4 The Board shall present a report containing a thor-
 5 ough review of the program to the Congress by Oc-
 6 tober 1, 2017, and include in this report its rec-
 7 ommendations for any adjustments in the design
 8 features for Phase II of the program.

9 “(i) REVIEW BY GOVERNMENT ACCOUNTABILITY OF-
 10 FICE.—Not later than January 1, 2015, and every three
 11 years thereafter, the Comptroller General of the United
 12 States shall conduct a review of the efficacy of the Board
 13 in fulfilling the purposes and duties of the Board under
 14 this Act.

15 **“SEC. 9912. INITIAL EXPECTATIONS FOR ANNUAL EMIS-**
 16 **SIONS.**

17 “The initial expectation of the greenhouse gas emis-
 18 sions of covered facilities in the cap and trade program
 19 are the amounts for each of the calendar years 2012
 20 through 2050 set forth in the following table:

“Calendar Year	Initial Expectation of Emissions (millions of tons of greenhouse gases)
2012	6,153
2013	5,998
2014	5,843
2015	5,687

“Calendar Year	Initial Expectation of Emissions (millions of tons of greenhouse gases)
2016	5,532
2017	5,377
2018	5,222
2019	5,066
2020	4,911
2021	4,756
2022	4,600
2023	4,445
2024	4,290
2025	4,135
2026	3,979
2027	3,824
2028	3,669
2029	3,514
2030	3,358
2031	3,203
2032	3,048
2033	2,892
2034	2,737
2035	2,582
2036	2,427
2037	2,271
2038	2,116
2039	1,961
2040	1,806
2041	1,650
2042	1,495

“Calendar Year	Initial Expectation of Emissions (millions of tons of greenhouse gases)
2043	1,340
2044	1,184
2045	1,029
2046	874
2047	719
2048	563
2049	408
2050	253

1 “Subchapter C—Auction Revenue Trust Fund

“Sec. 9921. Trust Fund.

2 “SEC. 9921. TRUST FUND.

“(a) CREATION OF AUCTION REVENUE TRUST
FUND.—There is established in the Treasury of the
United States, the Auction Revenue Trust Fund.

6 “(b) FUNDS.—An amount equivalent to all revenues
7 received from the auction in subchapter A shall be credited
8 to the Trust Fund.

9 **“Subchapter D—Assurance of Cumulation**
10 **Emissions**

“Sec. 9931. Assurance of cumulative emissions reductions.

11 "SEC. 9931. ASSURANCE OF CUMULATIVE EMISSIONS RE-
12 DUCTIONS.

“(a) **EXCESS EMISSIONS 2012–2019.**—If the cumulative emissions of covered entities over the years 2012 through 2019 exceed 1.1 times the sum of the expected

1 emissions over those years shown in the table in section
 2 9912 (1.1 times 44,878 million tons = 49,366 million
 3 tons), the excess over 49,366 million tons shall be made
 4 up through a reduction in the target for emissions in the
 5 year 2020 by an equivalent amount of tons.

6 “(b) EXCESS EMISSIONS 2012–2020.—If the cumu-
 7 lative emissions of covered entities over the years 2012
 8 through 2020 exceed the sum of the expected emissions
 9 over those years shown in section 9912 (49,789 million
 10 tons), the difference shall be made up through reductions
 11 in the expected emissions for the years 2021 through
 12 2030. Equal percentage reductions shall be made in ex-
 13 pected emissions for the years 2021 through 2030 so that
 14 the sum of those reductions equals the excess of actual
 15 emissions over the expected cumulative emissions for the
 16 years 2012 through 2020.

17 “(c) LOWER EMISSIONS.—If the cumulative emis-
 18 sions of covered entities over the years 2012 to 2020 are
 19 less than the sum of the expected emissions over those
 20 years shown in the above table (49,789 million tons), no
 21 adjustment shall be made in expected emissions in the
 22 years 2021 through 2030.

23 **“Subchapter E—Definitions**

“Sec. 9941. Definitions.

1 **“SEC. 9941. DEFINITIONS.**

2 “For purposes of this subtitle:

3 “(1) The term ‘Administrator’ means the Ad-
4 ministrator of the Environmental Protection Agency.

5 “(2) The term ‘carbon dioxide equivalent’
6 means, for each greenhouse gas, the quantity of
7 greenhouse gas that the Administrator determines
8 makes the same contribution to global warming as
9 1 metric ton of carbon dioxide.

10 “(3) The term ‘covered facility’ means, for each
11 calendar year, a facility that emits greenhouse gases
12 in that year and that has an obligation to submit
13 emission allowances for such greenhouse gas emis-
14 sions under any cap-and-trade program.

15 “(4) The term ‘emission allowance’ “ means an
16 authorization, under any cap-and-trade program, to
17 emit 1 carbon dioxide equivalent of greenhouse gas.

18 “(5) The term ‘Emissions Registry’ “ means a
19 greenhouse gases emissions registry for all United
20 States emissions of greenhouse gases developed by
21 the Administrator.

22 “(6) The term ‘program’ or ‘cap and trade pro-
23 gram’ means an economy-wide program enacted by
24 Congress that auctions emission allowances for the
25 control of greenhouse gases.

1 “(7) The term ‘Phase I of the program’ “
2 means the years 2012 through 2019.

3 “(8) The term ‘Phase II of the program’ “
4 means the years 2020 through 2050.

5 “(9) The term ‘price path’ is the forecast of
6 emission allowance prices by the Climate Program
7 Oversight and Coordination Board.

8 “(10) The term ‘Secretary’ means the Secretary
9 of the Treasury.

10 “(11) The term ‘trading year’ means the period
11 from April 1 of the concurrent calendar year
12 through March 31 of the following calendar year (or
13 the first subsequent business day if those dates fall
14 on a weekend or holiday).

15 “(12) The term ‘Auction Revenue Trust Fund’
16 means the trust fund established in the Treasury
17 under section 9921.”.

18 (b) CLERICAL AMENDMENT.—The table of subtitles
19 for the Internal Revenue Code of 1986 is amended by add-
20 ing at the end the following new item:

“Subtitle L. Auction based carbon market.”.

○