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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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tradeable Performance Standard Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. COMBATING THE CLIMATE CRISIS.

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

"TITLE VII—GREENHOUSE GAS POLLUTION REDUCTION PROGRAM

"PART A—GLOBAL WARMING POLLUTION REDUCTION TARGETS

"SEC. 701. DEFINITIONS.

''In this title:

''(1) AVERAGE CARBON INTENSITY FOR QUALIFIED ELECTRIC FACILITIES.—The term 'average carbon intensity for qualified electric facilities'

means the number that equals the total amount of greenhouse gas emissions in metric tons of carbon dioxide equivalent emitted from qualified electric facilities in a calendar year as reported under section 714 divided by the total quantity of megawatt hours of electricity produced by qualified electric facilities in such calendar year as reported under section 714.

''(2) AVERAGE CARBON INTENSITY FOR QUALIFIED THERMAL FACILITIES.—The term 'average carbon intensity for qualified thermal facilities' means the number that equals the total amount of greenhouse gas emissions in metric tons of carbon dioxide equivalent emitted from qualified thermal facilities in a calendar year as reported under section 713 divided by the total quantity of useful thermal energy output from qualified thermal facilities in such calendar year as reported under section 713.

''(3) BOTTOMING CYCLE COGENERATION GENERATOR.—The term 'bottoming cycle cogeneration generator' means any generator that produces electricity from otherwise-wasted heat, pressure, or both, using any of the following technologies:

''(A) An organic ranking cycle.

''(B) A waste-heat recovery steam generator.

''(C) A back pressure steam turbine.

''(D) A Stirling engine.

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

''(5) COVERED ENTITY.—The term 'covered entity' means each of the following:

''(A) A qualified cogeneration facility.

''(B) A qualified electric facility.

''(C) A qualified thermal facility.

''(6) DESIGNATED REPRESENTATIVE.—The term 'designated representative' means, with respect to a covered entity, a thermal reporting entity, or any other entity receiving or holding emission allowances under this title, an individual authorized, through a certificate of representation submitted to the Administrator by the owners and operators, to represent the owners and operators in all matters pertaining to this title (including the holding, transfer, or disposition of emission allowances), and to make all submissions to the Administrator under this title.

''(7) EMISSION ALLOWANCE.—The term 'emission allowance' means a limited authorization to

emit, in an amount of, 1 metric ton of carbon dioxide equivalent of a greenhouse gas in accordance with this title.

''(8) FUEL-BASED CAPACITY.—The term 'fuel-based capacity' means—

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

''(B) for generators that produce useful thermal energy output without the combustion of fuel, the peak useful thermal energy output rate divided by 0.7.

''(9) GREENHOUSE GAS.—The term 'greenhouse gas' means any gas listed in section 711.

''(10) GREENHOUSE GAS EMISSION.—The term 'greenhouse gas emission' means the release of a greenhouse gas into the ambient air.

''(11) HOLD.—The term 'hold' means, with respect to an emission allowance, to have in the appropriate account created pursuant to the process under section 726(2).

''(12) QUALIFIED COGENERATION FACILITY.—The term 'qualified cogeneration facility' means any generator that simultaneously produces useful thermal energy output and electricity and—

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

''(B) is classified as a qualified cogeneration facility pursuant to section 724(c).

''(13) QUALIFIED ELECTRIC FACILITY.—The term 'qualified electric facility' means any generator that produces electricity, including a bottoming cycle cogeneration generator—

''(A) with a rated capacity of 2 megawatts or greater; or

''(B) with a rated capacity of less than 2 megawatts that is classified as a qualified electric facility pursuant to section 724(a).

''(14) QUALIFIED THERMAL FACILITY.—The term 'qualified thermal facility' means any generator that produces thermal energy—

''(A) with a rated fuel-based capacity of at least 50,000,000 British thermal units on a higher heating value basis per hour or greater, excluding any generator producing useful thermal energy output that the Administrator determines is used to wholly or partially provide carbon as a chemical ingredient for a process to manufacture goods; or

"(B) with a rated fuel-based capacity of less than 50,000,000 British thermal units on a higher heating value basis per hour that is classified as a qualified thermal facility pursuant to section 724(b).

"(15) THERMAL REPORTING ENTITY.—The term 'thermal reporting entity' means—

"(A) a qualified thermal facility;

"(B) a qualified cogeneration facility;

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

"(D) any other entity that produces or delivers useful thermal energy output the production or delivery of which results or may result in greenhouse gas emissions if the Administrator determines that reporting under section 713 by such entity will help achieve the targets specified in section 702.

"(16) USEFUL THERMAL ENERGY OUTPUT.—The term 'useful thermal energy output' means thermal energy as measured in million British thermal

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

"SEC. 702. REDUCTION TARGETS FOR COVERED ENTITIES.

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

"(1) in 2030, the aggregate quantity of greenhouse gas emissions from covered entities does not exceed 60 percent of the aggregate quantity of greenhouse gas emissions from covered entities in 2019; and

"(2) in 2040, the aggregate quantity of greenhouse gas emissions from covered entities does not exceed zero.

"(b) DEFINITION.—For purposes of this section, the term 'greenhouse gas emissions from covered entities in 2019' means greenhouse gas emissions to which section 721 would have applied if the requirements of this title for the specified year had been in effect for 2019.

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

"SEC. 711. GREENHOUSE GASES.

''For purposes of this title, the following are greenhouse gases:

''(1) Carbon dioxide.

''(2) Methane.

''(3) Nitrous oxide.

''(4) Sulfur hexafluoride.

''(5) Any perfluorocarbon.

''(6) Nitrogen trifluoride.

"SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF GREENHOUSE GASES.

''(a) IN GENERAL.—Any provision of this title that refers to a quantity or percentage of a quantity of a greenhouse gas shall be treated as a reference to the quantity or percentage of the greenhouse gas expressed in carbon dioxide equivalents.

''(b) VALUES.—Except as provided by the Administrator under subsection (c), for the purposes of this title, the carbon dioxide equivalent value of a greenhouse gas shall be equal to the 100-year global warming potential for such greenhouse gas that is provided in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

''(c) USE OF 20-YEAR GLOBAL WARMING POTENTIAL.—If the Administrator determines that it is more appropriate for a greenhouse gas, the Administrator may publish a determination in the Federal Register that such greenhouse gas has a carbon dioxide equivalent value equal to the 20-year global warming potential for such greenhouse gas that is provided in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

"SEC. 713. THERMAL ENERGY REPORTING PROGRAM.

''(a) REGULATIONS.—Not later than 18 months after the date of enactment of this title, the Administrator shall issue regulations establishing a program, to be known as the Federal thermal energy reporting program. Such regulations shall—

''(1) require each thermal reporting entity to submit to the Administrator data on—

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

''(B) the quantity of useful thermal energy output produced by such thermal reporting entity as calculated pursuant to subsection (e); and

''(C) the quantity of greenhouse gas emissions associated with such useful thermal energy output production;

''(2) require thermal reporting entities to submit to the Administrator data sufficient to ensure compliance with or implementation of the requirements of this title;

''(3) ensure the completeness, consistency, transparency, accuracy, precision, and reliability of data gathered under the Federal thermal energy reporting program;

''(4) include methods for avoiding double reporting to the maximum extent possible;

''(5) require that thermal reporting entities provide the data required in this section in reports submitted electronically to the Administrator, in such form and containing such information as may be required by the Administrator;

''(6) include requirements for keeping records supporting or related to, and protocols for auditing, data submitted under the Federal thermal energy reporting program;

''(7) establish consistent policies for calculating carbon content and greenhouse gas emissions for

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

''(8) provide for immediate dissemination, to States and Indian Tribes, of all data reported under the Federal thermal energy reporting program as soon as practicable after electronic audit by the Administrator and any resulting correction of data, except that data shall not be disseminated under this paragraph if—

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

''(B) the data is confidential business information that cannot be derived from information that is otherwise publicly available and that would cause significant calculable competitive harm if published, except that data that is confidential business information shall be provided to a State or Indian Tribe within whose jurisdiction the thermal reporting entity is located if the Administrator determines that such State or Indian Tribe has in effect protections for confidential business information that are at least as protective as protections applicable to the Federal Government;

''(9) provide that the Administrator publish an aggregate summary of all data reported under the Federal thermal energy reporting program publicly on the internet as soon as practicable after electronic audit by the Administrator and any resulting correction of data, including publication of—

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

''(B) at the discretion of the President, data the nondissemination of which was determined to be vital to the national security of the United States under paragraph (8)(A);

''(10) prescribe methods by which the Administrator shall, in cases in which satisfactory data are not submitted by a thermal reporting entity under the Federal thermal energy reporting program to the Administrator for any period of time, estimate the data for such thermal reporting entity required under paragraph (1) with—

''(A) in the case of a thermal reporting entity that is a qualified thermal facility or a qualified cogeneration facility, an estimate of the highest greenhouse gas emission levels that may have occurred during the period for which data are missing; or

"(B) in the case of any other thermal reporting entity, a reasonable estimate of the greenhouse gas emission levels that may have occurred during the period for which data are missing;

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

"(12) require an appropriate certification, by the designated representative for the thermal reporting entity, of accurate and complete accounting of the data required under paragraph (1), as determined by the Administrator; and

"(13) include requirements for the submission of other data necessary for accurate and complete accounting of the quantity of useful thermal energy output, and the quantity of greenhouse gas emissions associated with such useful thermal energy output production, as determined by the Administrator, including data for quality assurance of monitoring systems and other measurement devices.

"(b) TIMING.—

"(1) CALENDAR YEARS 2019 THROUGH 2022.—

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

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

"(B) WAIVER OR MODIFICATION.—The Administrator may waive or modify reporting requirements for calendar years 2019 through 2022 for thermal reporting entities to the extent that the Administrator determines that the thermal reporting entities did not keep data or records necessary to meet such reporting requirements. The Administrator may, in addition to or in lieu of such reporting requirements, collect additional information on energy consumption and production.

"(2) SUBSEQUENT CALENDAR YEARS.—With respect to calendar year 2023 and each subsequent calendar year, each thermal reporting entity shall submit quarterly data required under the Federal thermal energy reporting program to the Administrator not later than 60 days after the end of the applicable quarter, except when the data is already being reported to the Administrator on an earlier timeframe for another program.

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

porting requirements under this section for specific entities to the extent that the Administrator determines that sufficient and equally or more reliable verified and timely data are available to the Administrator and the public under other statutory requirements.

''(d) INTERRELATIONSHIP WITH OTHER SYSTEMS.—

''(1) IN GENERAL.—In developing the regulations issued under subsection (a), the Administrator shall take into account the work done by the Energy Information Administration and other mandatory Federal, State, or multistate programs to collect information that is similar to the information to be collected under this section.

''(2) EXPLANATION.—Regulations issued under subsection (a) shall include an explanation of any major differences in information collected between the Federal thermal energy reporting program and information available from the Energy Information Administration and other mandatory Federal, State, or multistate programs to collect similar information.

''(e) CALCULATION OF USEFUL THERMAL ENERGY OUTPUT.—The Administrator and thermal reporting entities shall—

''(1) in the case of thermal reporting entities that have revenue-grade send out meters, calculate useful thermal energy output by using the data provided by those meters; and

''(2) in the case of thermal reporting entities that do not have such meters, or that have such meters but for which the Administrator determines that the values obtained by calculating useful thermal energy output under paragraph (1) are unreasonable, calculate useful thermal energy output based on the metered fuel use for a given quarter multiplied by the average conversion efficiency of fuel to useful thermal energy output in all other similarly situated facilities using the same fuel.

''SEC. 714. EIA AND EPA REPORTING.

''(a) IN GENERAL.—Beginning with calendar year 2022, by the end of each month, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency information on the total amount of electricity produced from qualified electric facilities during the previous month.

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

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

"PART C—PROGRAM RULES

"SEC. 721. REQUIREMENTS.

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

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

"(1) By receiving emission allowances as provided in section 722.

"(2) By purchase, exchange, or transfer under section 723.

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

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

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

"(2) the following calendar year.

''(e) ADJUSTMENT OF DEADLINE.—The Administrator may, by rule, establish a deadline for compliance with subsection (a) with respect to a calendar year that is later than 12:01 a.m. on April 1 of the following calendar year, as necessary to ensure the availability of greenhouse gas emissions data, but in no event shall the adjusted deadline be later than June 1.

"SEC. 722. DISTRIBUTION OF EMISSION ALLOWANCES.

''(a) QUALIFIED ELECTRIC FACILITIES.—During a calendar year, the Administrator shall distribute, on a continual basis, to a qualified electric facility for each megawatt hour of electricity produced by the qualified electric facility a number of emission allowances (or fractions thereof) equal to the product of one multiplied by the greater of—

''(1) zero; and

''(2) the lesser of—

''(A) the value equal to the product of 0.93 and the preceding calendar year's average carbon intensity for qualified electric facilities;

''(B) the value equal to the difference of—

''(i) the preceding calendar year's average carbon intensity for qualified electric facilities; minus

''(ii) the product of 0.06 multiplied by calendar year 2022's average carbon intensity for qualified electric facilities; or

''(C) a value set by the Administrator for purposes of this subsection to ensure that the aggregate quantity of greenhouse gas emissions from covered entities does not exceed the targets specified in section 702(a).

''(b) QUALIFIED THERMAL FACILITIES.—During a calendar year, the Administrator shall distribute, on a continual basis, to a qualified thermal facility for each million British thermal units of useful thermal energy output produced by the qualified thermal facility a number of emission allowances (or fractions thereof) equal to the product of one multiplied by the greater of—

''(1) zero; and

''(2) the lesser of—

''(A) the value equal to the product of 0.93 and the preceding calendar year's average carbon intensity for qualified thermal facilities;

''(B) the value equal to the difference of—

''(i) the preceding calendar year's average carbon intensity for qualified thermal facilities; minus

''(ii) the product of 0.06 multiplied by calendar year 2022's average carbon intensity for qualified thermal facilities; or

''(C) a value set by the Administrator for purposes of this subsection to ensure that the aggregate quantity of greenhouse gas emissions from covered entities does not exceed the targets specified in section 702(a).

''(c) QUALIFIED COGENERATION FACILITIES.—During a calendar year, the Administrator shall distribute, on a continual basis, to a qualified cogeneration facility—

''(1) for each megawatt hour of electricity produced by the qualified cogeneration facility, a number of emission allowances (or fractions thereof) calculated in accordance with subsection (a); and

''(2) for each million British thermal units of useful thermal energy output produced by the qualified cogeneration facility, a number of emission allowances (or fractions thereof) calculated in accordance with subsection (b).

''(d) ADJUSTED DISTRIBUTION FOR ENTERING INTO CERTAIN AGREEMENTS.—

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

the period of the agreement the Administrator shall distribute emission allowances to such facility in accordance with this subsection in lieu of subsection (a), (b), or (c).

''(2) AGREEMENT.—An agreement described in this paragraph is a 10-year or longer bilateral agreement signed after the date of enactment of this title between an existing qualified electric facility, an existing qualified thermal facility, or an existing qualified cogeneration facility, and a newly constructed low-emission facility for the annual purchase of a specified amount of emission allowances.

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'existing' means, with respect to a facility, in operation as of the date of entry into an agreement described in paragraph (2).

''(B) The term 'existing facility' means an existing qualified electric facility, an existing qualified thermal facility, or an existing qualified cogeneration facility that is a party to an agreement described in paragraph (2).

''(C) The term 'newly constructed' means that the facility involved did not produce electricity or useful thermal energy output prior to

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

''(D) The term 'newly constructed low-emission facility' means a newly constructed qualified electric facility, a newly constructed qualified thermal facility, or a newly constructed qualified cogeneration facility that would emit a lesser quantity of greenhouse gases per megawatt hour of electricity or per million British thermal units of useful thermal energy output, as applicable, than the Administrator distributes to covered entities under subsection (a), (b), or (c), as applicable, in the first full calendar year during which the newly constructed facility operates and is a party to an agreement described in paragraph (2).

''(4) DISTRIBUTION OF ALLOWANCES TO AN EXISTING FACILITY.—

''(A) IN GENERAL.—For calendar years that are covered by an agreement described in paragraph (2), beginning with the first full calendar year during which the newly constructed low-emission facility operates, the Administrator shall distribute, on a continual basis, to the existing facility—

''(i) for megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by the existing facility that are covered by the agreement, a number of emission allowances that is equal to—

''(I) such number of megawatt hours or million British thermal units, as applicable; multiplied by

''(II) the average carbon intensity for qualified electric facilities or the average carbon intensity for qualified thermal facilities, as applicable, for such first full calendar year; and

''(ii) for megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by the existing facility exceeding those that are covered by the agreement, the number of emission allowances calculated under subsection (a), (b), or (c), as applicable.

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

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

''(i) the number of emission allowances sold to the existing facility pursuant to the agreement for the first full calendar year described in subparagraph (A), divided by the difference of—

''(I) the number of emission allowances surrendered by the existing facility to the Administrator for such first full calendar year; minus

''(II) the number of emission allowances distributed to the existing facility by the Administrator for such first full calendar year; multiplied by

''(ii) the total number of megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by the existing facility in such first full calendar year.

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

''(A) IN GENERAL.—For calendar years that are covered by an agreement described in paragraph (2), beginning with the first full calendar year during which the newly constructed low-emission facility operates, the Administrator shall distribute, on a continual basis, to the newly constructed low-emission facility—

''(i) for megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by the newly constructed low-emission facility that are covered by the agreement, a number of emission allowances that is equal to—

''(I) such number of megawatt hours or million British thermal units of useful thermal energy output; multiplied by

''(II) the average carbon intensity for qualified electric facilities or the average carbon intensity for qualified thermal facilities, as applicable, in such first full calendar year; and

"(ii) for megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by the newly constructed low-emission facility exceeding those that are covered by the agreement, the number of emission allowances calculated under subsection (a), (b), or (c), as applicable.

"(B) CALCULATION OF MEGAWATT HOURS OR MILLION BRITISH THERMAL UNITS COVERED BY AGREEMENT.—For purposes of subparagraph (A), the number of megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by a newly constructed low-emission facility that are covered by the agreement described in paragraph (2) shall be equal to—

"(i) the number of emission allowances sold to the existing facility pursuant to the agreement for the first full calendar year described in subparagraph (A), divided by the difference of—

"(I) the number of emission allowances surrendered by the newly constructed low-emission facility to

the Administrator for such first full calendar year; minus

''(II) the number of emission allowances distributed to the newly constructed low-emission facility by the Administrator for such first full calendar year; multiplied by

''(ii) the total number of megawatt hours of electricity or million British thermal units of useful thermal energy output, as applicable, produced by the existing facility in such first full calendar year.

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

''(A) such facility provides the Administrator a copy of—

''(i) the applicable bilateral agreement; and

''(ii) any amendment to such bilateral agreement within 30 days of the amendment being made; and

''(B) the Administrator certifies that allowing the facility to maintain the bilateral agree-

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

"(i) upon receiving the applicable bilateral agreement, and at least once every 5 years thereafter; and

"(ii) upon receiving any amendment thereto.

"SEC. 723. TRADING.

"(a) PERMITTED TRANSACTIONS.—Except as otherwise provided in this title, the lawful holder of an emission allowance may, without restriction, sell, exchange, transfer, hold, or surrender to the Administrator, the emission allowance.

"(b) IDENTIFICATION NUMBERS.—The Administrator shall assign to each emission allowance a unique identification number.

"(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

"(1) IN GENERAL.—An emission allowance distributed by the Administrator under this title does not constitute a property right.

"(2) TERMINATION OR LIMITATION.—Nothing in this Act or any other provision of law shall be construed to limit or alter the authority of the United States to terminate or limit emission allowances.

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

''(d) EFFECTIVENESS OF EMISSION ALLOWANCE TRANSFERS.—No transfer of an emission allowance shall be effective for purposes of this title until a certification of the transfer, signed by the designated representative of the transferor, is received and recorded by the Administrator in accordance with regulations promulgated under section 729.

''SEC. 724. VOLUNTARY PROGRAM PARTICIPATION.

''(a) VOLUNTARY PROGRAM PARTICIPATION AS QUALIFIED ELECTRIC FACILITY.—

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

''(2) QUALIFICATION.—In order for a generator with a rated capacity of less than 2 megawatts to be classified as a qualified electric facility, the generator shall—

"(A) submit a notification to the Administrator of the intention of the generator to elect to be classified as a qualified electric facility;

"(B) receive approval of such classification from the Administrator; and

"(C) designate a representative as required under section 727(b).

"(3) APPROVAL.—Not later than 90 after receipt of a notification under paragraph (2)(A), the Administrator shall notify the applicable generator whether the Administrator approves or disapproves the classification of such generator as a qualified electric facility.

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

"(b) VOLUNTARY PROGRAM PARTICIPATION AS A QUALIFIED THERMAL FACILITY.—

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

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

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

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

''(B) submit a notification to the Administrator of the intention of the generator to elect to be classified as a qualified thermal facility;

''(C) receive approval of such classification from the Administrator;

''(D) report annually to the Administrator relevant information collected on type, quality, and quantity of fuel used for onsite useful thermal energy output production, the quantity of useful thermal energy output, and the quantity of associated greenhouse gas emissions under section 713; and

''(E) designate a representative as required under section 727(b).

''(3) CLASSIFICATION.—If a generator that produces useful thermal energy output elects to be classified as a qualified thermal facility pursuant to this subsection, such classification shall remain in effect unless the facility—

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

''(B) produces no useful thermal energy output over the previous calendar year.

''(c) VOLUNTARY PROGRAM PARTICIPATION AS QUALIFIED COGENERATION FACILITY.—

''(1) IN GENERAL.—A generator that simultaneously produces useful thermal energy output and electricity with a rated capacity of less than 2 megawatts may, in accordance with this subsection, elect to be classified as a qualified cogeneration facility for purposes of this title.

''(2) QUALIFICATION.—In order for a generator that simultaneously produces useful thermal energy output and electricity with a rated capacity of less than 2 megawatts to be classified as a qualified cogeneration facility, the facility shall—

''(A) submit a notification to the Administrator of the intention of the generator to elect

to be classified as a qualified cogeneration facility;

''(B) receive approval of the classification from the Administrator;

''(C) report annually to the Administrator relevant information collected on type, quality, and quantity of fuel used for onsite useful thermal energy output production, the quantity of useful thermal energy output, and the quantity of associated greenhouse gas emissions under section 713; and

''(D) designate a representative as required under section 727(b).

''(3) CLASSIFICATION.—If a generator elects to be classified as a qualified cogeneration facility pursuant to this subsection, such classification shall remain in effect unless the facility produces no electricity over the previous calendar year.

''SEC. 725. PENALTY FOR NONCOMPLIANCE.

''(a) CIVIL PENALTY.—

''(1) IN GENERAL.—The owner or operator of a covered entity that fails to surrender an emission allowance as required by section 721(a) shall be liable for payment to the Administrator of a penalty in the amount described in paragraph (2).

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

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

''(B) the number of emission allowances which the owner or operator of the covered entity failed to surrender as described in paragraph (1).

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

''(4) NO EFFECT ON LIABILITY.—A penalty due and payable by the owners or operators of a covered entity under this subsection shall not diminish the liability of the owners or operators for any fine, penalty, or assessment against the owners or operators for the same violation under any other provision of this Act or any other law.

''(b) REPLACEMENT EMISSION ALLOWANCES.—The owner or operator of a covered entity that fails to surrender one or more emission allowances as required by sec-

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

"SEC. 726. EMISSION ALLOWANCE TRACKING SYSTEM.

''The regulations promulgated under section 729 shall provide for—

''(1) the establishment of a system to distribute emission allowances to covered entities;

''(2) a process to create accounts in which covered entities and any other entities that buy or sell emission allowances may hold emission allowances;

''(3) the establishment of an emission allowance tracking system to track—

''(A) the number of emission allowances transferred;

''(B) the price or monetary value for which emission allowances are transferred;

''(C) the date of each such transfer;

''(D) the parties involved in the transfer; and

''(E) any additional information the Administrator determines necessary for each such transfer; and

''(4) the publication by the Administrator on the internet of—

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

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

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

''(D) the number of emission allowances distributed by the Administrator under section 722 each month to qualified cogeneration facilities;

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

qualified electric facilities at the end of each month;

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

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

"(H) the number of emission allowances distributed by the Administrator under section 722 during a calendar year that are held by entities other than covered entities at the end of each month;

"(I) the number of emission allowances surrendered to the Administrator each year by qualified electric facilities;

"(J) the number of emission allowances surrendered to the Administrator each year by qualified thermal facilities; and

''(K) the number of emission allowances surrendered to the Administrator each year by qualified cogeneration facilities.

''SEC. 727. OTHER PROGRAM RULES.

''(a) THRESHOLD REVIEW.—For each category of covered entities listed in section 701(5), the Administrator—

''(1) in 2025, and once every 5 years thereafter, shall review the threshold for electricity or useful thermal energy output production that is used to define covered entities in such category; and

''(2) may by rule lower such threshold after consideration of—

''(A) greenhouse gas emissions from covered entities in such category, and from other entities of the same type that produce less electricity or useful thermal energy output (including greenhouse gas emission sources that commence operation after the date of enactment of this title that are not covered entities); and

''(B) whether greater greenhouse gas emission reductions can be cost-effectively achieved by lowering the applicable threshold.

''(b) DESIGNATED REPRESENTATIVES.—The regulations promulgated under section 729 shall require that

each covered entity, and each entity holding an emission allowance or receiving an emission allowance from the Administrator under this title, submit to the Administrator a certificate of representation designating a designated representative.

''(c) SAVINGS PROVISION.—Nothing in this title shall be construed—

''(1) as requiring a change of any kind in any State law regulating electric utility rates and charges, or as affecting any State law regarding such State regulation, or as limiting State regulation (including any prudency review) under such a State law;

''(2) as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act; or

''(3) as interfering with or impairing any program for competitive bidding for power supply in a State in which such a program is established.

''(d) POSITION LIMITS.—

''(1) IN GENERAL.—The regulations promulgated under section 729 shall limit the number of emission allowances that an entity may hold at any time in a calendar year.

''(2) LIMITS.—The Administrator, in consultation with the Commodity Futures Trading Commission, shall set limits under paragraph (1)—

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

''(B) on the total number of emission allowances that an entity may hold in a calendar year;

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

''(D) in a manner that will ensure adequate liquidity for buyers and sellers of emission allowances.

''(e) STATUS OF SURRENDERED EMISSION ALLOWANCES.—Once an emission allowance is surrendered to the Administrator under this title, the emission allowance shall be disqualified from subsequent use under this title, including subsequent sale, exchange, or submission.

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

"SEC. 728. OVERSIGHT.

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

''(1) the results of implementation of this title; and

''(2) the progress in meeting the targets specified in section 702(a).

''(b) CONTENTS.—Each report under subsection (a) shall include—

''(1) a comprehensive evaluation of—

''(A) the efficiency, transparency, and soundness of the distribution of emission allowances under this title, and the Federal thermal energy reporting program;

''(B) the cost-effectiveness of this title in achieving the targets specified in section 702(a); and

''(C) the effectiveness of this title in facilitating the deployment of additional zero-carbon electricity capacity and useful thermal energy output capacity; and

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

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

''(1) creating and preserving jobs;

''(2) ensuring a manageable transition to a zero-emission economy for working families and workers;

''(3) reducing, or enhancing sequestration of, greenhouse gases;

''(4) developing clean technologies; and

''(5) maintaining a liquid market for emission allowances.

''SEC. 729. REGULATIONS.

''Except as otherwise specified in this title, the Administrator shall promulgate final regulations to carry out this title not later than 24 months after the date of enactment of this title.

''SEC. 730. SAVINGS PROVISIONS.

''Nothing in this title shall be interpreted to relieve any person from complying with any requirement of another title of this Act.''.

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