

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.

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

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 lowances (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 facilities;
7

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 ministrator 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.”.

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