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S.1733

Clean Energy Jobs and American Power Act (Introduced in Senate)

>

Subtitle D--Carbon Market Assurance

SEC. 131. CARBON MARKET ASSURANCE.

It is the sense of the Senate that there shall be a single, integrated carbon market oversight program--

(1) to provide for effective and comprehensive market oversight and enforcement;

(2) to lower systemic risk and protect consumers;

(3) to ensure market liquidity and allowance availability;

(4) to enhance the price discovery function of such markets, ensuring that the price for emission allowances and offset credits reflects the marginal cost of abatement;

(5) to prevent excessive speculation that contributes to price volatility, including the establishment of robust aggregate position limits and margin requirements;

(6) to ensure that market mechanisms and associated oversight support the environmental integrity of the program established under title VII of the Clean Air Act (as added by section 101 of this division);

(7) to establish provisions for market transparency that provide authority, resources, and information needed to prevent fraud and manipulation in such markets;

(8) to establish standards for trading as, and operation of, trading facilities;

(9) to ensure a well-functioning, well-regulated market, including a futures market, designed to manage risk and facilitate investment in emission reductions;

(10) to establish clear, professional standards for dealers, traders, and other market participants;

(11) to provide for appropriate criminal and civil penalties; and

(12) to prevent any excessive leverage by market participants that creates risk to the economy.

Subtitle E--Ensuring Real Reductions in Industrial Emissions

SEC. 141. ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS.

Title VII of the Clean Air Act (as amended by section 322 of division A) is amended by adding at the end the following:

`PART F--ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

`SEC. 761. PURPOSES.

`The purposes of this part are--

`(1) to promote a strong global effort to significantly reduce greenhouse gas emissions, and, through this global effort, stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous anthropogenic interference with the climate system;

`(2) to prevent an increase in greenhouse gas emissions in countries other than the United States as a result of direct and indirect compliance costs incurred under this title;

`(3) to provide a rebate to the owners and operators of entities in domestic eligible industrial sectors for their greenhouse gas emission costs incurred under this title, but not for costs associated with other related or unrelated market dynamics;

`(4) to design such rebates in a way that will prevent carbon leakage while also rewarding innovation and facility-level investments in energy efficiency performance improvements; and

`(5) to eliminate or reduce distribution of emission allowances under this part when such distribution is no longer necessary to prevent carbon leakage from eligible industrial sectors.

`SEC. 762. DEFINITIONS.

`In this part:

`(1) CARBON LEAKAGE- The term `carbon leakage' means any substantial increase (as determined by the Administrator) in greenhouse gas emissions by industrial entities located in other countries if such increase is caused by an incremental cost of production increase in the United States resulting from the implementation of this title.

`(2) ELIGIBLE INDUSTRIAL SECTOR- The term `eligible industrial sector' means an industrial sector determined by the Administrator under section 763 (b) to be eligible to receive emission allowance rebates under this part.

`(3) INDUSTRIAL SECTOR- The term `industrial sector' means any sector that is in the manufacturing sector (as defined in NAICS codes 31, 32, and 33) or that beneficiates or otherwise processes (including agglomeration) metal ores, including iron and copper ores, soda ash, or phosphate. The extraction of metal ores, soda ash, or phosphate shall not be considered to be an industrial sector.

`(4) NAICS- The term `NAICS' means the North American Industrial Classification System of 2002.

`(5) OUTPUT- The term `output' means the total tonnage or other standard unit of production (as determined by the Administrator) produced by an entity in an industrial sector. The output of the cement sector is hydraulic cement, and not clinker.

`SEC. 763. ELIGIBLE INDUSTRIAL SECTORS.

`(a) List-

`(1) INITIAL LIST- Not later than June 30, 2011, the Administrator shall publish in the Federal Register a list of eligible industrial sectors pursuant to subsection (b). Such list shall include the amount of the emission allowance rebate per unit of production that shall be provided to entities in each eligible industrial sector in the following two calendar years pursuant to section 764.

`(2) SUBSEQUENT LISTS- Not later than February 1, 2013, and every 4 years thereafter, the Administrator shall publish in the Federal Register an updated version of the list published under paragraph (1).

`(b) Eligible Industrial Sectors-

`(1) IN GENERAL- Not later than June 30, 2011, the Administrator shall promulgate a rule designating, based on the criteria under paragraph (2), the industrial sectors eligible for emission allowance rebates under this part.

`(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL SECTORS-

`(A) ELIGIBILITY CRITERIA-

`(i) IN GENERAL- An owner or operator of an entity shall be eligible to receive emission allowance rebates under this part if such entity is in an industrial sector that is included in a six-digit classification of the NAICS that meets the criteria in both clauses (ii) and (iii), or the criteria in clause (iv).

`(ii) ENERGY OR GREENHOUSE GAS INTENSITY- As determined by the Administrator, the industrial sector had--

`(I) an energy intensity of at least 5 percent, calculated by dividing the cost of purchased electricity and fuel costs of the sector by the value of the shipments of the sector, based on data described in subparagraph (D); or

`(II) a greenhouse gas intensity of at least 5 percent, calculated by dividing--

`(aa) the number 20 multiplied by the number of tons of carbon dioxide equivalent greenhouse gas emissions (including direct emissions from fuel combustion, process emissions, and indirect emissions from the generation of electricity used to produce the output of the sector) of the sector based on data described in subparagraph (D); by

`(bb) the value of the shipments of the sector, based on data described in subparagraph (D).

`(iii) TRADE INTENSITY- As determined by the Administrator, the industrial sector had a trade intensity of at least 15 percent, calculated by dividing the value of the total imports and exports of such sector by the value of the shipments plus the value of imports of such sector, based on data described in subparagraph (D).

`(iv) VERY HIGH ENERGY OR GREENHOUSE GAS INTENSITY- As determined by the Administrator, the industrial sector had an energy or greenhouse gas intensity, as calculated under clause (ii)(I) or (II), of at least 20 percent.

`(B) METAL AND PHOSPHATE PRODUCTION CLASSIFIED UNDER MORE THAN ONE NAICS CODE- For purposes of this section, the Administrator shall--

`(i) aggregate data for the beneficiation or other processing (including agglomeration) of metal ores, including iron and copper ores, soda ash, or phosphate with subsequent steps in the process of metal and phosphate manufacturing, regardless of the NAICS code under which such activity is classified; and

`(ii) aggregate data for the manufacturing of steel with the manufacturing of steel pipe and tube made from purchased steel in a nonintegrated process.

`(C) EXCLUSION- The petroleum refining sector shall not be an eligible industrial sector.

`(D) DATA SOURCES-

`(i) ELECTRICITY AND FUEL COSTS, VALUE OF SHIPMENTS- The Administrator shall determine electricity and fuel costs and the value of shipments under this subsection from data from the United States Census Annual Survey of Manufacturers. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available. If such data are unavailable, the Administrator shall make a determination based upon 2002 or 2006 data from the most detailed industrial classification level of Energy Information Agency's Manufacturing Energy Consumption Survey (using 2006 data if it is available) and the 2002 or 2007 Economic Census of the United States (using 2007 data if it is available). If data from the Manufacturing Energy Consumption Survey or Economic Census are unavailable for any sector at the six-digit classification level in the NAICS, then the Administrator may extrapolate the information necessary to determine the eligibility of a sector under this paragraph from available Manufacturing Energy Consumption Survey or Economic Census data pertaining to a broader industrial category classified in the NAICS. If data relating to the beneficiation or other processing (including agglomeration) of metal ores, including iron and copper ores, soda ash, or phosphate are not available from the specified data sources, the Administrator shall use the best available Federal or State government data and may use, to the extent necessary, representative data submitted by entities that perform such beneficiation or other processing (including agglomeration), in making a determination. Fuel cost data shall not include the cost of fuel used as feedstock by an industrial sector.

`(ii) IMPORTS AND EXPORTS- The Administrator shall base the value of imports and exports under this subsection on United States International Trade Commission data. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available. If data from the United States International Trade Commission are unavailable for any sector at the six-digit classification level in the NAICS, then the Administrator may extrapolate the information necessary to determine the eligibility of a sector under this paragraph from available United States International Trade Commission data pertaining to a broader industrial category classified in the NAICS.

`(iii) PERCENTAGES- The Administrator shall round the energy intensity, greenhouse gas intensity, and trade intensity percentages under subparagraph (A) to the nearest whole number.

`(iv) GREENHOUSE GAS EMISSION CALCULATIONS- When calculating the tons of carbon dioxide equivalent greenhouse gas emissions for each sector under subparagraph (A)(ii)(II)(aa), the Administrator--

`(I) shall use the best available data from as many of the years 2004, 2005, and 2006 for which such data is available; and

`(II) may, to the extent necessary with respect to a sector, use economic and engineering models and the best available information on technology performance levels for such sector.

`(3) ADMINISTRATIVE DETERMINATION OF ADDITIONAL ELIGIBLE INDUSTRIAL SECTORS-

`(A) UPDATED TRADE INTENSITY DATA- The Administrator shall designate as eligible to receive emission allowance rebates under this part an industrial sector that--

`(i) met the energy or greenhouse gas intensity criteria in paragraph (2)(A)(ii) as of the date of promulgation of the rule under paragraph (1); and

`(ii) meets the trade intensity criteria in paragraph (2)(A)(iii), using data from any year after 2006.

`(B) INDIVIDUAL SHOWING PETITION-

`(i) PETITION- In addition to designation under paragraph (2) or subparagraph (A) of this paragraph, the owner or operator of an entity in an industrial sector may petition the Administrator to designate as eligible industrial sectors under this part an entity or a group of entities that--

`(I) represent a subsector of a six-digit section of the NAICS code; and

`(II) meet the eligibility criteria in both clauses (ii) and (iii) of paragraph (2)(A), or the eligibility criteria in clause (iv) of paragraph (2)(A).

`(ii) DATA- In making a determination under this subparagraph, the Administrator shall consider data submitted by the petitioner that is specific to the entity, data solicited by the Administrator from other entities in the subsector, if such other entities exist, and data specified in paragraph (2)(D).

`(iii) BASIS OF SUBSECTOR DETERMINATION- The Administrator shall determine an entity or group of entities to be a subsector of a six-digit section of the NAICS code based only upon the products manufactured and not the industrial process by which the products are manufactured, except that the Administrator may determine an entity or group of entities that manufacture a product from primarily virgin material to be a separate subsector from another entity or group of entities that manufacture the same product primarily from recycled material.

`(iv) USE OF MOST RECENT DATA- In determining whether to designate a sector or subsector as an eligible industrial sector under this subparagraph, the Administrator shall use the most recent data available from the sources described in paragraph (2)(D), rather than the data from the years specified in paragraph (2)(D), to determine the trade intensity of such sector or subsector, but only for determining such trade intensity.

`(v) FINAL ACTION- The Administrator shall take final action on such petition no later than 6 months after the petition is received by the Administrator.

`SEC. 764. DISTRIBUTION OF EMISSION ALLOWANCE REBATES.

`(a) Distribution Schedule-

`(1) IN GENERAL- For each vintage year, the Administrator shall distribute pursuant to this section emission allowances made available under section 771(a)(5), no later than October 31 of the preceding calendar year. The Administrator shall make such annual distributions to the owners and operators of each entity in an eligible industrial sector in the amount of emission allowances calculated under subsection (b), except that--

`(A) for vintage years 2012 and 2013, the distribution for a covered entity shall be pursuant to the entity's indirect carbon factor as calculated under subsection (b)(3);

`(B) for vintage year 2026 and thereafter, the distribution shall be pursuant to the amount calculated under subsection (b) multiplied by, for a sector--

`(i) 90 percent for vintage year 2026;

`(ii) 80 percent for vintage year 2027;

`(iii) 70 percent for vintage year 2028;

`(iv) 60 percent for vintage year 2029;

`(v) 50 percent for vintage year 2030;

`(vi) 40 percent for vintage year 2031;

`(vii) 30 percent for vintage year 2032;

`(viii) 20 percent for vintage year 2033;

`(ix) 10 percent for vintage year 2034; and

`(x) 0 percent for vintage year 2035 and thereafter.

`(2) NEWLY ELIGIBLE SECTORS- In addition to receiving a distribution of emission allowances under this section in the first distribution occurring after an industrial sector is designated as eligible under section 763(b)(3), the owner or operator of an entity in that eligible industrial sector may receive a prorated share of any emission allowances made available for distribution under this section that were not distributed for the year in which the petition for eligibility was granted under section 763(b)(3)(A).

`(3) CESSATION OF QUALIFYING ACTIVITIES- If, as determined by the Administrator, a facility is no longer in an eligible industrial sector designated under section 763--

`(A) the Administrator shall not distribute emission allowances to the owner or operator of such facility under this section; and

`(B) the owner or operator of such facility shall return to the Administrator all allowances that have been distributed to it for future vintage years and a pro-rated amount of allowances distributed to the facility under this section for the vintage year in which the facility ceases to be in an eligible industrial sector designated under section 763.

`(b) Calculation of Direct and Indirect Carbon Factors-

`(1) IN GENERAL-

`(A) COVERED ENTITIES- Except as provided in subsection (a), for covered entities that are in eligible industrial sectors, the amount of emission allowance rebates shall be based on the sum of the covered entity's direct and indirect carbon factors.

`(B) OTHER ELIGIBLE ENTITIES- For entities that are in eligible industrial sectors but are not covered entities, the amount of emission allowance rebates shall be based on the entity's indirect carbon factor.

`(C) NEW ENTITIES- Not later than 2 years after the date of enactment of this title, the Administrator shall issue regulations governing the distribution of emission allowance rebates for the first and second years of operation of a new entity in an eligible industrial sector. These regulations shall provide for--

`(i) the distribution of emission allowance rebates to such entities based on comparable entities in the same sector; and

`(ii) an adjustment in the third and fourth years of operation to reconcile the total amount of emission allowance rebates received during the first and second years of operation to the amount the entity would have received during the first and second years of operation had the appropriate data been available.

`(2) DIRECT CARBON FACTOR- The direct carbon factor for a covered entity for a vintage year is the product of--

`(A) the average annual output of the covered entity for the 2 years preceding the year of the distribution; and

`(B) the most recent calculation of the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all covered entities in the sector, as determined by the Administrator under paragraph (4).

`(3) INDIRECT CARBON FACTOR-

`(A) IN GENERAL- The indirect carbon factor for an entity for a vintage year is the product obtained by multiplying the average annual output of the entity for the 2 years preceding the year of the distribution by both the electricity emissions intensity factor determined pursuant to subparagraph (B) and the electricity efficiency factor determined pursuant to subparagraph (C) for the year concerned.

`(B) ELECTRICITY EMISSIONS INTENSITY FACTOR-

`(i) IN GENERAL- Each person selling electricity to the owner or operator of an entity in any sector designated as an eligible industrial sector under section 763(b) shall provide the owner or operator of the entity and the Administrator, on an annual basis, the electricity emissions intensity factor for the entity.

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