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110TH CONGRESS
2D SESSION

H. R. 7146

To distribute emission allowances under a domestic climate policy to facilities in certain domestic energy-intensive industrial sectors to prevent an increase in greenhouse gas emissions by manufacturing facilities located in countries without commensurate greenhouse gas regulation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2008

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

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A BILL

To distribute emission allowances under a domestic climate policy to facilities in certain domestic energy-intensive industrial sectors to prevent an increase in greenhouse gas emissions by manufacturing facilities located in countries without commensurate greenhouse gas regulation, 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 ''Carbon Leakage Prevention Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) All domestic and foreign industries should contribute to climate stabilization.

(2) Domestic producers of certain energy-intensive products subject to international competition present a unique challenge for United States climate policy because increased costs associated with compliance may unintentionally cause domestic industry to divert new investments and production to facilities located in countries without commensurate greenhouse gas regulation.

(3) Without exempting any industries, the United States must move forward with economy-wide action on climate change while reducing incentives for producers to relocate to unregulated countries, which could displace both jobs and emissions.

(4) International agreements are the most appropriate means to reduce emissions from energy-intensive industries because unilateral domestic efforts to reduce greenhouse gas emissions could accelerate the relocation of energy-intensive manufacturing abroad.

(5) Carbon leakage can be mitigated substantially through the output-based distribution of emission allowances.

(6) Output-based emission allowance distribution is an appropriate temporary measure that should complement other targeted domestic and international policies and agreements meant to encourage United States trading partners to substantially reduce global greenhouse gas emissions.

SEC. 3. PURPOSES.

The purposes of this Act are as follows:

(1) To compensate certain facilities from a subset of eligible domestic industrial sectors for carbon emission costs incurred under any cap-and-trade program.

(2) To limit compensation to facilities in eligible industrial sectors to an amount of emission allowances that will prevent carbon leakage while also rewarding innovation and facility-level investments in performance improvements.

(3) To provide compensation to the owners and operators of facilities for both the direct and indirect costs of purchasing emission allowances needed for compliance with a domestic cap-and-trade program, but not for costs associated with other related or unrelated market dynamics.

(4) To prevent carbon leakage resulting from direct and indirect compliance costs incurred under a domestic cap-and-trade program.

SEC. 4. DEFINITIONS.

In this Act:

(1) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) The term ''cap-and-trade program'' means an economy-wide program enacted by Congress that distributes or auctions emission allowances for the control of greenhouse gas emissions.

(3) The term ''carbon dioxide equivalent'' means, for each greenhouse gas, the quantity of greenhouse gas that the Administrator determines makes the same contribution to global warming as 1 metric ton of carbon dioxide.

(4) The term ''carbon leakage'' means any substantial increase (as determined by the Administrator) in greenhouse gas emissions by manufacturing facilities located in countries without commensurate greenhouse gas regulation caused by an incremental cost of production increase in the United States as a result of a domestic cap-and-trade program.

(5) The term ''covered facility'' means, for each calendar year, a facility that emits greenhouse gases in that year and that has an obligation to submit emission allowances for such greenhouse gas emissions under any cap-and-trade program.

(6) The term ''emission allowance'' means an authorization, under any cap-and-trade program, to emit 1 carbon dioxide equivalent of greenhouse gas.

(7) The term ''facility'' means 1 or more buildings, structures, or installations of an entity on 1 or more contiguous or adjacent properties located in the United States.

(8) The term ''greenhouse gas'' means any gas designated as a greenhouse gas under a cap-and-trade program.

(9) The term ''output'' means the total tonnage or other standard unit of production (as determined by the Administrator) produced by a manufacturing facility.

SEC. 5. DISTRIBUTION OF EMISSION ALLOWANCES TO CERTAIN ENERGY-INTENSIVE MANUFACTURING FACILITIES.

(a) DISTRIBUTION OF EMISSION ALLOWANCES.—

(1) IN GENERAL.—The Administrator shall annually distribute emission allowances, in amounts

calculated under subsection (c), to the owners and operators of facilities in eligible industrial sectors and subsectors identified under subsection (b), subject to the maximum quantity limitation established under paragraph (2) of this subsection.

(2) MAXIMUM.—The maximum quantity of emission allowances distributed under paragraph (1) each year shall equal 15 percent of the total quantity of allowances distributed or auctioned under a cap-and-trade program for emissions occurring during the first year for which allowances are required to be submitted under such program. If the total allowances calculated under subsection (c) exceed such maximum, the Administrator shall reduce the amount distributed to owners and operators under paragraph (1) on a pro rata basis.

(b) ELIGIBLE INDUSTRIAL SECTORS AND SUBSECTORS.—

(1) IN GENERAL.—Not later than January 1, 2011, the Administrator shall promulgate a rule identifying, based on the criteria under paragraph (2), the industrial sectors and subsectors eligible to receive emission allowances under this Act. The Administrator shall consider, among others, the iron, steel, pulp, paper, cement, rubber, basic chemicals,

glass, industrial ceramics, and aluminum and other non-ferrous metals industrial sectors and subsectors.

(2) CRITERIA.—To minimize the potential for carbon leakage, in identifying eligible sectors and subsectors under paragraph (1), the Administrator shall take into account each of the following:

(A) The greenhouse gas intensity of the domestic production, including direct emissions from the combustion of fuels and process emissions at the facility and the indirect emissions by electric power providers.

(B) The potential for greater foreign sourcing of production or services and the effect of international competition on domestic production.

(C) The effect of international markets on product pricing.

(D) The potential for net imports to increase or exports to decrease (resulting in a loss of market share held by domestic manufacturers to manufacturers located in other countries) caused by the direct and indirect compliance costs under a domestic cap-and-trade program.

(E) The state of international negotiations, agreements, and activities to reduce global greenhouse gas emissions.

(c) CALCULATION OF ALLOWANCES.—

(1) COVERED FACILITIES.—Except as provided in subsection (a)(2), the quantity of emission allowances distributed by the Administrator under this Act for a calendar year to the owner or operator of a covered facility shall be equal to the sum of the facility's direct compliance allowance factor and the facility's indirect carbon allowance factor. Calculations under this paragraph shall be based on data from 2 calendar years prior to the calendar year of distribution. For purposes of determining such amounts:

(A) DIRECT COMPLIANCE ALLOWANCE FACTOR.—The direct compliance allowance factor for a facility for a calendar year is the amount obtained by multiplying the output of the facility by 85 percent of the average tonnage of greenhouse gas emissions per unit of output for all facilities in the sector or subsector, as determined by the Administrator based on reports provided under subparagraph (C).

(B) INDIRECT CARBON ALLOWANCE FACTOR.—The indirect carbon allowance factor for a facility for a calendar year is the product obtained by multiplying the total output of the facility by the fraction set forth in clause (i) (the emissions intensity factor) and the fraction set forth in clause (ii) (the electricity efficiency factor) for the year concerned.

(i) EMISSIONS INTENSITY FACTOR.—

(I) REGULATED ELECTRICITY MARKETS.—In a regulated electricity market, the emissions intensity factor is the average tonnage of greenhouse gas emissions per kilowatt hour of the electricity purchased by the facility, as determined by the facility owner or operator based on reports provided under subparagraph (D).

(II) WHOLESALE COMPETITIVE ELECTRICITY MARKETS.—In a wholesale competitive electricity market, the emissions intensity factor is the average tonnage of greenhouse gas emissions per kilowatt hour of the marginal source of supply of electricity purchased by the facility, as determined by the facility owner or operator based on reports provided under subparagraph (D).

(ii) ELECTRICITY EFFICIENCY FACTOR.—The electricity efficiency factor is 85 percent of the average amount of electricity (in kilowatt hours) used per ton of production for all facilities in the sector or subsector concerned, as determined by the Administrator based on reports provided under subparagraph (C).

(C) REPORT TO ADMINISTRATOR.—Each owner or operator of a facility in any sector or subsector identified under subsection (b) and each department, agency, or instrumentality of the United States shall provide the Administrator with such information as the Administrator finds necessary to determine the direct compliance allowance factor and the indirect carbon allowance factor for each facility subject to this Act.

(D) GREENHOUSE GASES FROM ELECTRICITY.—Each person selling electricity to the owner or operator of a facility in any sector or subsector identified under subsection (b) shall provide the owner or operator of the facility and the Administrator, on a quarterly basis, such information as is required to determine the emissions intensity factor under subparagraph (B)(i).

(E) EMISSIONS INTENSITY FACTOR REDUCTION.—The numerator of the emissions intensity factor under subparagraph (B)(i) shall be reduced by the tonnage of allowances the Administrator determines are distributed at no cost under any cap-and-trade program to the person making the sale of electricity and are used by such person to prevent electricity rate increases to the owner or operator of the facility.

(F) IRON AND STEEL SECTOR OR SUBSECTORS.—For the purposes of determining the quantity of emission allowances to be distributed under this section to the owner or operator of any iron and steel manufacturing facility in a sector or subsector identified under subsection (b), the Administrator shall differentiate between facilities using integrated iron and steelmaking technologies (including coke ovens, blast furnaces, and other iron-making technologies) and facilities using electric arc furnace technologies when calculating sector or subsector averages under subparagraphs (A) and (B)(ii).

(2) OTHER ELIGIBLE ENTITIES.—The quantity of emission allowances distributed by the Administrator for a calendar year to an owner or operator of a facility in an eligible industrial sector or subsector that is not a covered facility shall be equal to the indirect carbon allowance factor for the facility, as determined under paragraph (1)(B). Calculations under this paragraph shall be based on data from 2 calendar years prior to the calendar year of distribution.

(3) NEW FACILITIES.—

(A) FIRST AND SECOND YEAR OF OPERATION.—In the first and second year of operation of a facility in any sector or subsector identified under subsection (b), the owner or operator of such facility shall receive a quantity of emission allowances under this Act equal to emission allowances distributed under this Act to the owner or operator of a comparable facility in the same sector or subsector that produces equivalent output using a substantially similar production process, as determined by the Administrator.

(B) SUBSEQUENT YEARS OF OPERATION.—In the third year of operation of a facility in any sector or subsector identified under subsection (b), the Administrator shall adjust the quantity of emission allowances to be distributed to the owner or operator of such facility in such year to reconcile the total quantity of allowances received during the first and second years of operation to the quantity the facility would have received during the first and second years of operation had the appropriate data been available for such years.

SEC. 6. REPORTS TO CONGRESS.

Not later than one year after the first year in which allowances are distributed pursuant to this Act, and at least every two years thereafter, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Energy, the Secretary of State, and the United States Trade Representative, shall submit to Congress a report on the carbon leakage of domestic energy-intensive industrial manufacturers and the effectiveness of the distribution of emission allowances under section 5 in achieving the purposes of this Act. Such reports shall include recommendations on how to better achieve the purposes of this Act.

SEC. 7. MODIFICATION OR ELIMINATION OF DISTRIBUTION OF ALLOWANCES TO ENERGY-INTENSIVE MANUFACTURING FACILITIES.

(a) PRESIDENTIAL DETERMINATION AND MODIFICATION.—If the President finds that international governmental activities to reduce global greenhouse gas emissions have substantially mitigated—

(1) the disadvantage to domestic manufacturers of energy-intensive products subject to competition from facilities in countries without commensurate greenhouse gas regulation; and

(2) the carbon leakage and related diversion of production of such products to facilities located in countries without commensurate greenhouse gas regulation;

then the Administrator shall, pursuant to a rule, reduce the amount of emission allowances distributed under this Act in an amount reasonably calculated to achieve the purposes of this Act.

(b) TERMINATION.—If the President determines that the competitive disadvantage to domestic manufacturers described in subsection (a) has been rendered insignificant, the Administrator shall terminate the distribution of emission allowances under this Act.

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