The Tradeable Energy Performance Standards Act
Section-by-Section Summary

Sec. 701. Definitions.

This section defines the specialized terms used in the bill. The key terms include:

- Covered Electric Facility – A facility that produces electricity with a rated capacity of at least 2 megawatts (MW) or that is approved for voluntary participation under section 706.

- Covered Thermal Facility – A facility that produces useful thermal energy output with a rated capacity of at least 50 million British thermal units (MMBtu) or that is approved for voluntary participation under section 706.

- Covered Cogeneration Facility – A facility that produces both electricity and useful thermal energy and meets the thresholds of the above facilities.

- Covered Facility – One of the three above types of facilities.

- Output-Based CO2 Emissions:

    - For Covered Electric Facilities: The number of metric tons of CO_2 emitted by all Covered Electric Facilities in a given year divided by the amount in MWh of electricity produced by all such facilities in the same year.

    - For Covered Thermal Facilities: The number of metric tons of CO_2 emitted by all Covered Thermal Facilities in a given year divided by the amount in MMBtu of useful thermal energy output of all such facilities in the same year.

- Output-Based CO2 Emissions Baseline – For each of the above two categories of facility, the Output-Based CO2 Emissions in 2027.

- Output-Based CO2 Emissions Target ("Target") – An emissions rate that declines by at least 5% each year and sets the level in each year at which a given facility is required to buy or sell allowances.

- Total U.S. CO2 Emissions – The total metric tons of CO_2 that would be emitted into the atmosphere if all the fossil fuels imported into the United States or extracted from within the United States were fully combusted.

All years referred to in this summary are calendar years.

Sec. 702. Emission allowance submission requirement.

This section establishes the requirement that each Covered Facility submits emission allowances to EPA annually.

- Beginning in 2028, by June 1 of each year, the owner or operator of each Covered Facility will submit to EPA one emission allowance for each metric ton of carbon dioxide released by the facility during the preceding year. EPA will retire all allowances submitted to it.

- A Covered Facility may acquire allowances by receiving them from EPA under section 703 or through trade with another facility under section 704.

- Each allowance may be used for the year in which it is distributed or the following year.

Sec. 703. Emission allowance distribution.

This section establishes the process by which EPA annually allocates allowances to Covered Facilities. It also establishes an Alternative Compliance Payment system that can be used by Covered Entities instead of submitting allowances.

- All allowances ultimately submitted to EPA under section 702 are initially distributed by EPA to each Covered Facility under this section as a function of an increasingly-ambitious energy performance standard.

- The energy performance standard, referred to in the bill as the Output-Based CO2 Emissions Target ("Target"), declines by at least 5% per year.

- Under the formulas described below, EPA will be giving each facility that meets the Target exactly the amount of allowances it will need to submit to EPA for that year. Facilities with more emissions per unit of output than the Target will have to buy allowances from facilities with fewer emissions per unit of output. The formulas follow:

- By March 1 of calendar years 2028 through 2048, EPA distributes to each category of Covered Facility the following number of allowances:

  - For each Covered Electric Facility, the number of allowances is equal to:

    (the number of MWh of electricity produced by the Facility in the previous year)

    multiplied by

    (the Target for the previous year).

- For each Covered Thermal Facility, the number of allowances is equal to:

  (the number of MMBtu of useful thermal energy produced by the facility in the previous year)

  multiplied by

  (the Target for the previous year).

- For each Covered Cogeneration Facility, the number of allowances is equal to:

  (For each MWh produced by the facility, a number calculated the same way as for Covered Electric Facilities above)

  plus

  (For each MMBtu produced by the facility, a number calculated the same way as for Covered Thermal Facilities above).

- The Targets for 2028 for Covered Electric Facilities and for Covered Thermal Facilities are equal to their respective Output-Based CO2 Emissions Baselines.

- The Target for each year from 2029 through 2048 is always at least 5% lower than the Target of the previous year. The default annual reduction of the Target is 5%, but the reduction can exceed 5% under three conditions.

  - First, if Output-Based CO2 Emissions ("Emissions") in a given year decrease by more than 5%, the Target for the next year is decreased by 5% of the given year's Emissions, rather than 5% of the given year's Target. This ensures that allowance market liquidity is sustained even if markets decarbonize faster than the default reduction of the Target.

  - Second, if Total U.S. CO2 Emissions do not decline by at least 5%, the Target for the year is reduced by a greater amount to make up for the shortfall. This ensures that leakage outside of the covered sectors does not compromise the ability of the Act to achieve zero CO_2 emissions in the covered sectors by 2048.

  - Third, if both (a) Emissions in a year decrease by more than 5%, and (b) Total U.S. CO_2 Emissions do not decline by at least 5% that year, the Target for the year is both reduced by more than 5% to make up for the shortfall, and reduced from the actual Emissions level of the previous year, rather than the previous year's Target level.

- A Covered Facility may comply with some or all of its obligations under Section 703 by paying an Alternative Compliance Payment (ACP) for each allowance otherwise due.

    - From 2028 through 2038, the price of the ACP increases in even steps from \$50 per metric ton of CO_2 to \$70.

    - From 2038 through 2048, the ACP increases in even steps from \$70 to the Social Cost of Carbon, as determined by the Administrator.

    - These figures are adjusted for inflation.

    - See section 708 for use of the ACP funds.

<u>Sec. 704. Trading of emission allowances.</u>

This section establishes some of the ground rules pertaining to the trading of emission allowances.

- An emissions allowance does not constitute a property right. Nothing in this bill limits or alters the authority of the United States to terminate or limit the sale, exchange, transfer, holding, or submission of emission allowances.

- No sale, exchange, transfer, or submission of an emission allowance is considered effective until a certification of the transaction is signed by the designated representative of the entity holding the emission allowance and has been received and recorded by EPA under section 707.

<u>Sec. 705. Emission allowance bilateral purchase agreements.</u>

This section establishes a framework under which an Existing Covered Facility and a Newly Constructed Low-Emission Covered Facility may negotiate a ten-year or longer contract under which a fixed number of the new facility's future allowances will be allocated by EPA to the existing facility for a fixed price to be paid by the existing facility to the new facility. This provision guarantees a stream of revenue to the new facility, which will be helpful in its initial financing.

- An Existing Covered Facility and a Newly-Constructed Low-Emission Covered Facility may enter into a ten-year or longer bilateral agreement in accord with this section.

- For each year covered by the agreement, EPA shall distribute to each of the facilities the following number of allowances:

  For the fraction of MWh or MMBtu produced by the facility that are covered by the agreement:

(the number of covered MWh or MMBtu)

multiplied by

(the Output-Based CO_2 Emissions for the relevant category of facility for the first full year)

For the remainder of MWh or MMBtu produced by the facility, which are not covered by the agreement, the number of allowances calculated as per Section 703.

Sec. 706. Voluntary program participation.

This section establishes the process by which facilities producing electricity or thermal energy in amounts smaller than the default thresholds established for Covered Facilities under Section 701 can voluntarily participate in the program.

- A facility that produces electricity at less than 2 MW or useful thermal energy output at less than 50 MMBtu is eligible to participate in the cap-and-trade program established by this Act.

- EPA shall approve a request to participate voluntarily if the facility appoints a designated representative.

- EPA shall terminate that facility's participation if during the previous year the facility produced neither electricity nor useful thermal energy output.

Sec. 707. Emission allowance tracking system.

This section establishes EPA's emission allowance tracking system.

- EPA will establish an emission allowance tracking system to process the distribution of allowances under section 703 and 705 and create accounts in which Covered Facilities and other entities may hold allowances.

- EPA will publish a weekly summary of the average prices of allowances, the number distributed, traded, and submitted to EPA, the number held at the end of each month by each category of Covered Facility, and any additional information necessary to ensure the integrity and efficiency of the allowance market.

- EPA, in consultation with the Commodity Futures Trading Commission, will establish limits on the number of allowances any entity may hold, so that:

    - no entity shall hold a number of allowances that may influence the price or monetary value of allowances, and
    - adequate liquidity of buyers and sellers of allowances shall be ensured.

- Once an allowance has been submitted to EPA, it is retired and disqualified from further use.

Sec. 708. Offset program.

This section establishes a program under which funds received as Alternative Compliance Payments are used to purchase the most cost-effective offsets, thus maintaining the annual net CO_2 reduction budget and ensuring the achievement of net zero emissions by 2048.

- EPA will establish a Carbon Mitigation Fund into which Alternative Compliance Payments made under Section 703 and civil penalties paid under Section 709 will be deposited.

- EPA will use the Carbon Mitigation Fund solely to award grants to activities that either prevent the emissions of greenhouse gases (GHG) or store CO_2 for at least 200 years. EPA is required to give the grants only to the most cost-effective of these activities, with cost effectiveness measured in terms of metric tons of mitigated GHG per dollar awarded by EPA.

- EPA may only award grants under this program where EPA determines that:

    - The amount of GHG emissions avoided or permanently sequestered is adequately confirmed through monitoring, reporting and verification;
    - The risk that some of the CO_2 to be sequestered may reenter the atmosphere before 200 years is adequately reflected by a discounting of the credited amount (thus addressing the "permanence" issue);
    - The risk that the activity may directly or indirectly increase the release of GHGs elsewhere has been adequately addressed (addressing the "leakage" issue);
    - The activity is not required or being supported by another federal, state, or local law, program or activity (ensuring "additionality"); and
    - If the activity involves land use, it aligns with the United Nation's Sustainable Development Goals.

- EPA will solicit proposals for these offsets each year by February 1, receive proposals by March 1, and identify the qualifying proposals by June 1.

Sec. 709. Penalty for noncompliance.

This section establishes penalties for noncompliance with the requirements of this Act.

- The owner or operator of a Covered Facility that fails to submit emission allowances as required by Section 702 shall be liable for a penalty three times the highest price or monetary value of allowances during the previous year, and required to submit the required allowances the following year.

Sec. 710. Comptroller General reports.

This section requires the Comptroller General to report regularly on the implementation of this Act.

- The Comptroller General shall by January 1, 2029 and every 2 years thereafter report to Congress on the results of the implementation of this Act, including:
    - An evaluation of the efficiency, transparency and integrity of the allowance distribution process under Section 705;
    - The cost-effectiveness of this Act in reducing GHG emissions;
    - The effectiveness of this Act in creating jobs, ensuring a manageable transmission to a zero-economy economy, driving innovation and deployment of zero-emission technologies, and maintaining an orderly and efficient allowance market; and
    - Any recommendations for legislative, regulatory, or administrative change to improve the program's effectiveness.

Sec. 711. Final regulations.

This section requires EPA to issue final regulations to implement this rule within 24 months of enactment.

Sec. 712. Savings provisions.

This section clarifies that nothing in this Act shall be interpreted to affect the requirements of the Clean Air Act to which this Act amends, or any other bill.