

H.R.2454

American Clean Energy and Security Act of 2009 (Engrossed as Agreed to or Passed by House)

SEC. 2. DEFINITIONS.

For purposes of this Act:

- (1) ADMINISTRATOR- The term `Administrator' means the Administrator of the Environmental Protection Agency.
- (2) STATE- The term `State' has the meaning given that term in section 302 of the Clean Air Act.

SEC. 3. INTERNATIONAL PARTICIPATION.

The Administrator, in consultation with the Department of State and the United States Trade Representative, shall annually prepare and certify a report to the Congress regarding whether China and India have adopted greenhouse gas emissions standards at least as strict as those standards required under this Act. If the Administrator determines that China and India have not adopted greenhouse gas emissions standards at least as stringent as those set forth in this Act, the Administrator shall notify each Member of Congress of his determination, and shall release his determination to the media.

TITLE I--CLEAN ENERGY

Subtitle A--Combined Efficiency and Renewable Electricity Standard

SEC. 101. COMBINED EFFICIENCY AND RENEWABLE ELECTRICITY STANDARD.

(a) In General- Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by adding at the end the following:

`SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELECTRICITY STANDARD.

`(a) Definitions- For purposes of this section:

`(1) CHP SAVINGS- The term `CHP savings' means--

`(A) CHP system savings from a combined heat and power system that commences operation after the date of enactment of this section; and

`(B) the increase in CHP system savings from, at any time after the date of the enactment of this section, upgrading, replacing, expanding, or increasing the utilization of a combined heat and power system that commenced operation on or before the date of enactment of this section.

`(2) CHP SYSTEM SAVINGS- The term `CHP system savings' means the increment of electric output of a combined heat and power system that is attributable to the higher efficiency of the combined system (as compared to the efficiency of separate production of the electric and thermal outputs).

`(3) COMBINED HEAT AND POWER SYSTEM- The term `combined heat and power system' means a system that uses the same energy source both for the generation of electrical or mechanical power and the production of steam or another form of useful thermal energy, provided that--

`(A) the system meets such requirements relating to efficiency and other operating characteristics as the Commission may promulgate by regulation; and

`(B) the net sales of electricity by the facility to customers not consuming the thermal output from that facility will not exceed 50 percent of total annual electric generation by the facility.

`(4) CUSTOMER FACILITY SAVINGS- The term `customer facility savings' means a reduction in end-use electricity consumption (including recycled energy savings) at a facility of an end-use consumer of electricity served by a retail electric supplier, as compared to--

`(A) in the case of a new facility, consumption at a reference facility of average efficiency;

`(B) in the case of an existing facility, consumption at such facility during a base period, except as provided in subparagraphs (C) and (D);

`(C) in the case of new equipment that replaces existing equipment with remaining useful life, the projected consumption of the existing equipment for the remaining useful life of such equipment, and thereafter, consumption of new equipment of average efficiency of the same equipment type; and

`(D) in the case of new equipment that replaces existing equipment at the end of the useful life of the existing equipment, consumption by new equipment of average efficiency of the same equipment type.

`(5) DISTRIBUTED RENEWABLE GENERATION FACILITY- The term `distributed renewable generation facility' means a facility that--

`(A) generates renewable electricity;

`(B) primarily serves 1 or more electricity consumers at or near the facility site; and

`(C) is no greater than--

`(i) 2 megawatts in capacity; or

`(ii) 4 megawatts in capacity, in the case of a facility that is placed in service after the date of enactment of this section and generates electricity from a renewable energy resource other than by means of combustion.

`(6) ELECTRICITY SAVINGS- The term `electricity savings' means reductions in electricity consumption, relative to business-as-usual projections, achieved through measures implemented after the date of enactment of this section, limited to--

`(A) customer facility savings of electricity, adjusted to reflect any associated increase in fuel consumption at the facility;

`(B) reductions in distribution system losses of electricity achieved by a retail electricity distributor, as compared to losses attributable to new or replacement distribution system equipment of average efficiency;

`(C) CHP savings; and

`(D) fuel cell savings.

`(7) CENTRAL PROCUREMENT STATE- The term `central procurement State' means a State that, as of January 1, 2009, had adopted and implemented a legally enforceable mandate that, in lieu of requiring utilities to submit credits or certificates issued based on generation of electricity from (or to purchase or generate electricity from) resources defined by the State as renewable, requires retail electric suppliers to collect payments from electricity ratepayers within the State that are used for central procurement, by a State agency or a public benefit corporation established pursuant to State law, of credits or certificates issued based on generation of electricity from resources defined by the State as renewable.

`(8) FEDERAL RENEWABLE ELECTRICITY CREDIT- The term `Federal renewable electricity credit' means a credit, representing one megawatt hour of renewable electricity, issued pursuant to subsection (e).

`(9) FUEL CELL- The term `fuel cell' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

`(10) FUEL CELL SAVINGS- The term `fuel cell savings' means the electricity saved by a fuel cell that is installed after the date of enactment of this section, or by upgrading a fuel cell that commenced operation on or before the date of enactment of this section, as a result of the greater efficiency with which the fuel cell transforms fuel into electricity as compared with sources of electricity delivered through the grid, provided that--

`(A) the fuel cell meets such requirements relating to efficiency and other operating characteristics as the Commission may promulgate by regulation; and

`(B) the net sales of electricity from the fuel cell to customers not consuming the thermal output from the fuel cell, if any, do

not exceed 50 percent of the total annual electricity generation by the fuel cell.

`(11) OTHER QUALIFYING ENERGY RESOURCE- The term `other qualifying energy resource' means any of the following:

`(A) Landfill gas.

`(B) Wastewater treatment gas.

`(C) Coal mine methane used to generate electricity at or near the mine mouth.

`(D) Qualified waste-to-energy.

`(12) QUALIFIED HYDROPOWER- The term `qualified hydropower' means--

`(A) energy produced from increased efficiency achieved, or additions of capacity made, on or after January 1, 1988, at a hydroelectric facility that was placed in service before that date and does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions; or

`(B) energy produced from generating capacity added to a dam on or after January 1, 1988, provided that the Commission certifies that--

`(i) the dam was placed in service before the date of the enactment of this section and was operated for flood control, navigation, or water supply purposes and was not producing hydroelectric power prior to the addition of such capacity;

`(ii) the hydroelectric project installed on the dam is licensed (or is exempt from licensing) by the Commission and is in compliance with the terms and conditions of the license or exemption, and with other applicable legal requirements for the protection of environmental quality, including applicable fish passage requirements; and

`(iii) the hydroelectric project installed on the dam is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license or exemption requirements that require changes in water surface elevation for the purpose of improving the environmental quality of the affected waterway.

`(13) QUALIFIED WASTE-TO-ENERGY- The term `qualified waste-to-energy' means energy from the combustion of municipal solid waste or construction, demolition, or disaster debris, or from the gasification or pyrolysis of such waste or debris and the combustion of the resulting gas at the same facility, provided that--

`(A) such term shall include only the energy derived from the non-fossil biogenic portion of such waste or debris;

`(B) the Commission determines, with the concurrence of the Administrator of the Environmental Protection Agency, that the total lifecycle greenhouse gas emissions attributable to the generation of electricity from such waste or debris are lower than those attributable to the likely alternative method of disposing of such waste or debris; and

`(C) the owner or operator of the facility generating electricity from such energy provides to the Commission, on an annual basis--

`(i) a certification that the facility is in compliance with all applicable State, tribal, and Federal environmental permits;

`(ii) in the case of a facility that commenced operation before the date of enactment of this section, a certification that the facility meets emissions standards promulgated under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412 or 7429) that apply as of the date of enactment of this section to new facilities within the relevant source category; and

`(iii) in the case of the combustion, pyrolyzation, or gasification of municipal solid waste, a certification that each local government unit from which such waste originates operates, participates in the operation of, contracts for, or otherwise provides for, recycling services for its residents.

`(14) RECYCLED ENERGY SAVINGS- The term `recycled energy savings' means a reduction in electricity consumption that results from a modification of an industrial or commercial system that commenced operation before the date of enactment of this section, in order to recapture electrical, mechanical, or thermal energy that would otherwise be wasted.

`(15) RENEWABLE BIOMASS- The term `renewable biomass' means any of the following:

`(A) Materials, pre-commercial thinnings, or removed invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), including those that are byproducts of preventive treatments (such as trees, wood, brush, thinnings, chips, and slash), that are removed as part of a federally recognized timber sale, or that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health, and that are--

`(i) not from components of the National Wilderness Preservation System, Wilderness Study Areas, Inventoried Roadless Areas, old growth stands, late-successional stands (except for dead, severely damaged, or badly infested trees), components of the

National Landscape Conservation System, National Monuments, National Conservation Areas, Designated Primitive Areas, or Wild and Scenic Rivers corridors;

` (ii) harvested in environmentally sustainable quantities, as determined by the appropriate Federal land manager; and

` (iii) harvested in accordance with Federal and State law, and applicable land management plans.

` (B) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including--

` (i) renewable plant material, including--

` (I) feed grains;

` (II) other agricultural commodities;

` (III) other plants and trees; and

` (IV) algae; and

` (ii) waste material, including--

` (I) crop residue;

` (II) other vegetative waste material (including wood waste and wood residues);

` (III) animal waste and byproducts (including fats, oils, greases, and manure);

` (IV) construction waste; and

` (V) food waste and yard waste.

` (C) Residues and byproducts from wood, pulp, or paper products facilities.

` (16) RENEWABLE ELECTRICITY- The term `renewable electricity' means electricity generated (including by means of a fuel cell) from a renewable energy resource or other qualifying energy resources.

` (17) RENEWABLE ENERGY RESOURCE- The term `renewable energy resource' means each of the following:

` (A) Wind energy.

` (B) Solar energy.

` (C) Geothermal energy.

` (D) Renewable biomass.

` (E) Biogas derived exclusively from renewable biomass.

` (F) Biofuels derived exclusively from renewable biomass.

` (G) Qualified hydropower.

` (H) Marine and hydrokinetic renewable energy, as that term is defined in section 632 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17211).

` (18) RETAIL ELECTRIC SUPPLIER-

` (A) IN GENERAL- The term `retail electric supplier' means, for any given year, an electric utility that sold not less than 4,000,000 megawatt hours of electric energy to electric

consumers for purposes other than resale during the preceding calendar year.

`(B) INCLUSIONS AND LIMITATIONS- For purposes of determining whether an electric utility qualifies as a retail electric supplier under subparagraph (A)--

`(i) the sales of any affiliate of an electric utility to electric consumers, other than sales to the affiliate's lessees or tenants, for purposes other than resale shall be considered to be sales of such electric utility; and

`(ii) sales by any electric utility to an affiliate, lessee, or tenant of such electric utility shall not be treated as sales to electric consumers.

`(C) AFFILIATE- For purposes of this paragraph, the term `affiliate' when used in relation to a person, means another person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, such person, as determined under regulations promulgated by the Commission.

`(19) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT- The term `retail electric supplier's base amount' means the total amount of electric energy sold by the retail electric supplier, expressed in megawatt hours, to electric customers for purposes other than resale during the relevant calendar year, excluding--

`(A) electricity generated by a hydroelectric facility that is not qualified hydropower;

`(B) electricity generated by a nuclear generating unit placed in service after the date of enactment of this section; and

`(C) the proportion of electricity generated by a fossil-fueled generating unit that is equal to the proportion of greenhouse gases produced by such unit that are captured and geologically sequestered.

`(20) RETIRE AND RETIREMENT- The terms `retire' and `retirement' with respect to a Federal renewable electricity credit, means to disqualify such credit for any subsequent use under this section, regardless of whether the use is a sale, transfer, exchange, or submission in satisfaction of a compliance obligation.

`(21) THIRD-PARTY EFFICIENCY PROVIDER- The term `third-party efficiency provider' means any retailer, building owner, energy service company, financial institution or other commercial, industrial or nonprofit entity that is capable of providing electricity savings in accordance with the requirements of this section.

`(22) TOTAL ANNUAL ELECTRICITY SAVINGS- The term `total annual electricity savings' means electricity savings during a specified calendar year from measures implemented since the date of the enactment of this section, taking into account verified measure lifetimes or verified annual savings attrition rates, as determined in accordance with such regulations as the Commission may promulgate and measured in megawatt hours.

`(b) Annual Compliance Obligation-

`(1) IN GENERAL- For each of calendar years 2012 through 2039, not later than March 31 of the following calendar year, each retail electric supplier shall submit to the Commission an amount of Federal renewable electricity credits and demonstrated total annual electricity savings that, in the aggregate, is equal to such retail electric supplier's annual combined target as set forth in subsection (d), except as otherwise provided in subsection (h).

`(2) DEMONSTRATION OF SAVINGS- For purposes of this subsection, submission of demonstrated total annual electricity savings means submission of a report that demonstrates, in accordance with the requirements of subsection (f), the total annual electricity savings achieved by the retail electric supplier within the relevant compliance year.

`(3) RENEWABLE ELECTRICITY CREDITS PORTION- Except as provided in paragraph (4), each retail electric supplier must submit Federal renewable electricity credits equal to at least three quarters of the retail electric supplier's annual combined target.

`(4) STATE PETITION-

`(A) IN GENERAL- Upon written request from the Governor of any State (including, for purposes of this paragraph, the Mayor of the District of Columbia), the Commission shall increase, to not more than two fifths, the proportion of the annual combined targets of retail electric suppliers located within such State that may be met through submission of demonstrated total annual electricity savings, provided that such increase shall be effective only with regard to the portion of a retail electric supplier's annual combined target that is attributable to electricity sales within such State.

`(B) CONTENTS- A Governor's request under this paragraph shall include an explanation of the Governor's rationale for determining, after consultation with the relevant State regulatory authority and other retail electricity ratemaking authorities within the State, to make such request. The request shall specify the maximum proportion of annual combined targets (not more than two fifths) that can be met through demonstrated total annual electricity savings, and the period for which such proportion shall be effective.

`(C) REVISION- The Governor of any State may, after consultation with the relevant State regulatory authority and other retail electricity ratemaking authorities within the State, submit a written request for revocation or revision of a previous request submitted under this paragraph. The Commission shall grant such request, provided that--

`(i) any revocation or revision shall not apply to the combined annual target for any year that is any earlier than 2 calendar years after the calendar year in which such request is submitted, so as to provide retail

electric suppliers with adequate notice of such change;
and

`(ii) any revision shall meet the requirements of
subparagraph (A).

`(c) Establishment of Program- Not later than 1 year after the date of enactment of this section, the Commission shall promulgate regulations to implement and enforce the requirements of this section. In promulgating such regulations, the Commission shall, to the extent practicable--

`(1) preserve the integrity, and incorporate best practices, of existing State and tribal renewable electricity and energy efficiency programs;

`(2) rely upon existing and emerging State, tribal, or regional tracking systems that issue and track non-Federal renewable electricity credits; and

`(3) cooperate with the States and Indian tribes to facilitate coordination between State, tribal, and Federal renewable electricity and energy efficiency programs and to minimize administrative burdens and costs to retail electric suppliers.

`(d) Annual Compliance Requirement-

`(1) ANNUAL COMBINED TARGETS- For each of calendar years 2012 through 2039, a retail electric supplier's annual combined target shall be the product of--

`(A) the required annual percentage for such year, as set forth in paragraph (2); and

`(B) the retail electric supplier's base amount for such year.

`(2) REQUIRED ANNUAL PERCENTAGE- For each of calendar years 2012 through 2039, the required annual percentage shall be as follows: