

108TH CONGRESS
1ST SESSION

H. R. 3093

To amend the Clean Air Act to establish a national uniform multiple air pollutant regulatory program for the electric generating sector.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2003

Mr. BASS (for himself, Mr. DAVIS of Florida, Mr. COOPER, and Mr. BRADLEY of New Hampshire) 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 national uniform multiple air pollutant regulatory program for the electric generating sector.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Clean Air Planning Act of 2003”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Integrated air quality planning for the electric generating sector.
- Sec. 4. New source review program.

Sec. 5. Revisions to sulfur dioxide allowance program.

Sec. 6. Relationship to other law.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) fossil fuel-fired electric generating facilities,
4 consisting of facilities fueled by coal, fuel oil, and
5 natural gas, produce nearly $\frac{2}{3}$ of the electricity gen-
6 erated in the United States;

7 (2) fossil fuel-fired electric generating facilities
8 produce approximately $\frac{2}{3}$ of the total sulfur dioxide
9 emissions, $\frac{1}{3}$ of the total nitrogen oxides emissions,
10 $\frac{1}{3}$ of the total carbon dioxide emissions, and $\frac{1}{3}$ of
11 the total mercury emissions, in the United States;

12 (3)(A) many electric generating facilities have
13 been exempt from the emission limitations applicable
14 to new units based on the expectation that over time
15 the units would be retired or updated with new pol-
16 lution control equipment; but

17 (B) many of the exempted units continue to op-
18 erate and emit pollutants at relatively high rates;

19 (4) pollution from existing electric generating
20 facilities can be reduced through adoption of modern
21 technologies and practices;

22 (5) the electric generating industry is being re-
23 structured with the objective of providing lower elec-
24 tricity rates and higher quality service to consumers;

1 (6) the full benefits of competition will not be
2 realized if the environmental impacts of generation
3 of electricity are not uniformly internalized; and

4 (7) the ability of owners of electric generating
5 facilities to effectively plan for the future is impeded
6 by the uncertainties surrounding future environ-
7 mental regulatory requirements that are imposed in-
8 efficiently on a piecemeal basis.

9 (b) PURPOSES.—The purposes of this Act are—

10 (1) to protect and preserve the environment and
11 safeguard public health by ensuring that substantial
12 emission reductions are achieved at fossil fuel-fired
13 electric generating facilities;

14 (2) to significantly reduce the quantities of
15 mercury, carbon dioxide, sulfur dioxide, and nitrogen
16 oxides that enter the environment as a result of the
17 combustion of fossil fuels;

18 (3) to encourage the development and use of re-
19 newable energy;

20 (4) to internalize the cost of protecting the val-
21 ues of public health, air, land, and water quality in
22 the context of a competitive market in electricity;

23 (5) to ensure fair competition among partici-
24 pants in the competitive market in electricity that

1 will result from fully restructuring the electric gener-
 2 ating industry;

3 (6) to provide a period of environmental regu-
 4 latory stability for owners and operators of electric
 5 generating facilities so as to promote improved man-
 6 agement of existing assets and new capital invest-
 7 ments; and

8 (7) to achieve emission reductions from electric
 9 generating facilities in a cost-effective manner.

10 **SEC. 3. INTEGRATED AIR QUALITY PLANNING FOR THE**
 11 **ELECTRIC GENERATING SECTOR.**

12 The Clean Air Act (42 U.S.C. 7401 et seq.) is amend-
 13 ed by adding at the end the following:

14 **“TITLE VII—INTEGRATED AIR**
 15 **QUALITY PLANNING FOR THE**
 16 **ELECTRIC GENERATING SEC-**
 17 **TOR**

“Sec. 701. Definitions.

“Sec. 702. National pollutant tonnage limitations.

“Sec. 703. Nitrogen oxide and mercury allowance trading programs.

“Sec. 704. Carbon dioxide allowance trading program.

18 **“SEC. 701. DEFINITIONS.**

19 “In this title:

20 “(1) AFFECTED UNIT.—

21 “(A) MERCURY.—The term ‘affected unit’,
 22 with respect to mercury, means a coal-fired

1 electric generating facility (including a cogener-
2 ating facility) that—

3 “(i) has a nameplate capacity greater
4 than 25 megawatts; and

5 “(ii) generates electricity for sale.

6 “(B) NITROGEN OXIDES AND CARBON DI-
7 OXIDE.—The term ‘affected unit’, with respect
8 to nitrogen oxides and carbon dioxide, means a
9 fossil fuel-fired electric generating facility (in-
10 cluding a cogenerating facility) that—

11 “(i) has a nameplate capacity greater
12 than 25 megawatts; and

13 “(ii) generates electricity for sale.

14 “(C) SULFUR DIOXIDE.—The term ‘af-
15 fected unit’, with respect to sulfur dioxide, has
16 the meaning given the term in section 402.

17 “(2) CARBON DIOXIDE ALLOWANCE.—The term
18 ‘carbon dioxide allowance’ means an authorization
19 allocated by the Administrator under this title to
20 emit 1 ton of carbon dioxide during or after a speci-
21 fied calendar year.

22 “(3) COVERED UNIT.—The term ‘covered unit’
23 means—

24 “(A) an affected unit;

1 “(B) a nuclear generating unit with re-
2 spect to incremental nuclear generation; and

3 “(C) a renewable energy unit.

4 “(4) GREENHOUSE GAS.—The term ‘greenhouse
5 gas’ means—

6 “(A) carbon dioxide;

7 “(B) methane;

8 “(C) nitrous oxide;

9 “(D) hydrofluorocarbons;

10 “(E) perfluorocarbons; and

11 “(F) sulfur hexafluoride.

12 “(5) INCREMENTAL NUCLEAR GENERATION.—

13 The term ‘incremental nuclear generation’ means
14 the difference between—

15 “(A) the quantity of electricity generated
16 by a nuclear generating unit in a calendar year;
17 and

18 “(B) the quantity of electricity generated
19 by the nuclear generating unit in calendar year
20 1990;

21 as determined by the Administrator and measured in
22 megawatt hours.

23 “(6) MERCURY ALLOWANCE.—The term ‘mer-
24 cury allowance’ means an authorization allocated by

1 the Administrator under this title to emit 1 pound
2 of mercury during or after a specified calendar year.

3 “(7) NEW RENEWABLE ENERGY UNIT.—The
4 term ‘new renewable energy unit’ means a renewable
5 energy unit that has operated for a period of not
6 more than 3 years.

7 “(8) NEW UNIT.—The term ‘new unit’ means
8 an affected unit that has operated for not more than
9 3 years and is not eligible to receive—

10 “(A) sulfur dioxide allowances under sec-
11 tion 417(b);

12 “(B) nitrogen oxide allowances or mercury
13 allowances under section 703(c)(2); or

14 “(C) carbon dioxide allowances under sec-
15 tion 704(c)(2).

16 “(9) NITROGEN OXIDE ALLOWANCE.—The term
17 ‘nitrogen oxide allowance’ means an authorization
18 allocated by the Administrator under this title to
19 emit 1 ton of nitrogen oxides during or after a speci-
20 fied calendar year.

21 “(10) NUCLEAR GENERATING UNIT.—The term
22 ‘nuclear generating unit’ means an electric gener-
23 ating facility that—

24 “(A) uses nuclear energy to supply elec-
25 tricity to the electric power grid; and

1 “(B) commenced operation in calendar
2 year 1990 or earlier.

3 “(11) RENEWABLE ENERGY.—The term ‘renew-
4 able energy’ means electricity generated from—

5 “(A) wind;

6 “(B) organic waste (excluding incinerated
7 municipal solid waste);

8 “(C) biomass (including anaerobic diges-
9 tion from farm systems and landfill gas recov-
10 ery);

11 “(D) fuel cells; or

12 “(E) a hydroelectric, geothermal, solar
13 thermal, photovoltaic, or other nonfossil fuel,
14 nonnuclear source.

15 “(12) RENEWABLE ENERGY UNIT.—The term
16 ‘renewable energy unit’ means an electric generating
17 facility that uses exclusively renewable energy to
18 supply electricity to the electric power grid.

19 “(13) SEQUESTRATION.—The term ‘sequestra-
20 tion’ means the action of sequestering carbon by—

21 “(A) enhancing a natural carbon sink
22 (such as through afforestation); or

23 “(B)(i) capturing the carbon dioxide emit-
24 ted from a fossil fuel-based energy system; and

1 “(ii)(I) storing the carbon in a geologic
2 formation or in a deep area of an ocean; or

3 “(II) converting the carbon to a benign
4 solid material through a biological or chemical
5 process.

6 “(14) SULFUR DIOXIDE ALLOWANCE.—The
7 term ‘sulfur dioxide allowance’ has the meaning
8 given the term ‘allowance’ in section 402.

9 **“SEC. 702. NATIONAL POLLUTANT TONNAGE LIMITATIONS.**

10 “(a) SULFUR DIOXIDE.—The annual tonnage limita-
11 tion for emissions of sulfur dioxide from affected units in
12 the United States shall be equal to—

13 “(1) for each of calendar years 2009 through
14 2012, 4,500,000 tons;

15 “(2) for each of calendar years 2013 through
16 2015, 3,500,000 tons; and

17 “(3) for calendar year 2016 and each calendar
18 year thereafter, 2,250,000 tons.

19 “(b) NITROGEN OXIDES.—The annual tonnage limi-
20 tation for emissions of nitrogen oxides from affected units
21 in the United States shall be equal to—

22 “(1) for each of calendar years 2009 through
23 2012, 1,870,000 tons; and

24 “(2) for calendar year 2013 and each calendar
25 year thereafter, 1,700,000 tons.

1 “(c) MERCURY.—

2 “(1) IN GENERAL.—The annual tonnage limita-
3 tion for emissions of mercury from affected units in
4 the United States shall be equal to the following:

5 “(A) For each of calendar years 2009
6 through 2012, 24 tons.

7 “(B) For calendar year 2013 and each cal-
8 endar year thereafter, 10 tons.

9 “(2) MAXIMUM EMISSIONS OF MERCURY FROM
10 EACH AFFECTED UNIT.—

11 “(A) CALENDAR YEARS 2009 THROUGH
12 2012.—For each of calendar years 2009 through
13 2012, the emissions of mercury from each af-
14 fected unit shall not exceed either, at the option
15 of the operator of the affected unit—

16 “(i) 50 percent of the total quantity
17 of mercury present in the coal delivered to
18 the affected unit in the calendar year; or

19 “(ii) an annual output-based emission
20 rate for mercury that shall be determined
21 by the Administrator based on an input-
22 based rate of 4 pounds per trillion British
23 thermal units.

24 “(B) CALENDAR YEAR 2013 AND THERE-
25 AFTER.—For calendar year 2013 and each cal-

1 endar year thereafter, the emissions of mercury
2 from each affected unit shall not exceed—

3 “(i) 30 percent of the total quantity
4 of mercury present in the coal delivered to
5 the affected unit in the calendar year; or

6 “(ii) an annual output-based emission
7 rate for mercury that shall be determined
8 by the Administrator.

9 “(d) CARBON DIOXIDE.—Subject to section 704(d),
10 the annual tonnage limitation for emissions of carbon di-
11 oxide from covered units in the United States shall be
12 equal to—

13 “(1) for each of calendar years 2009 through
14 2012, the quantity of emissions projected to be emit-
15 ted from affected units in calendar year 2005, as de-
16 termined by the Energy Information Administration
17 of the Department of Energy based on the projec-
18 tions of the Administration the publication of which
19 most closely precedes the date of enactment of this
20 title; and

21 “(2) for calendar year 2013 and each calendar
22 year thereafter, the quantity of emissions emitted
23 from affected units in calendar year 2001, as deter-
24 mined by the Energy Information Administration of
25 the Department of Energy.

1 “(e) REVIEW OF ANNUAL TONNAGE LIMITATIONS.—

2 “(1) PERIOD OF EFFECTIVENESS.—The annual
3 tonnage limitations established under subsections (a)
4 through (d) shall remain in effect until the date that
5 is 20 years after the date of enactment of this title.

6 “(2) DETERMINATION BY ADMINISTRATOR.—
7 Not later than 15 years after the date of enactment
8 of this title, the Administrator, after considering im-
9 pacts on human health, the environment, the econ-
10 omy, and costs, shall determine whether 1 or more
11 of the annual tonnage limitations should be revised.

12 “(3) DETERMINATION NOT TO REVISE.—If the
13 Administrator determines under paragraph (2) that
14 none of the annual tonnage limitations should be re-
15 vised, the Administrator shall publish in the Federal
16 Register a notice of the determination and the rea-
17 sons for the determination.

18 “(4) DETERMINATION TO REVISE.—

19 “(A) IN GENERAL.—If the Administrator
20 determines under paragraph (2) that 1 or more
21 of the annual tonnage limitations should be re-
22 vised, the Administrator shall publish in the
23 Federal Register—

24 “(i) not later than 15 years and 180
25 days after the date of enactment of this

1 title, proposed regulations implementing
2 the revisions; and

3 “(ii) not later than 16 years and 180
4 days after the date of enactment of this
5 title, final regulations implementing the re-
6 visions.

7 “(B) EFFECTIVE DATE OF REVISIONS.—
8 Any revisions to the annual tonnage limitations
9 under subparagraph (A) shall take effect on the
10 date that is 20 years after the date of enact-
11 ment of this title.

12 “(f) REDUCTION OF EMISSIONS FROM SPECIFIED
13 AFFECTED UNITS.—Subject to the requirements of this
14 Act concerning national ambient air quality standards es-
15 tablished under part A of title I, notwithstanding the an-
16 nual tonnage limitations established under this section,
17 the Federal Government or a State government may re-
18 quire that emissions from a specified affected unit be re-
19 duced to address a local air quality problem.

20 **“SEC. 703. NITROGEN OXIDE AND MERCURY ALLOWANCE**
21 **TRADING PROGRAMS.**

22 “(a) REGULATIONS.—

23 “(1) PROMULGATION.—

24 “(A) IN GENERAL.—Not later than Janu-
25 ary 1, 2005, the Administrator shall promul-

1 gate regulations to establish for affected units
2 in the United States—

3 “(i) a nitrogen oxide allowance trad-
4 ing program; and

5 “(ii) a mercury allowance trading pro-
6 gram.

7 “(B) REQUIREMENTS.—Regulations pro-
8 mulgated under subparagraph (A) shall estab-
9 lish requirements for the allowance trading pro-
10 grams under this section, including require-
11 ments concerning—

12 “(i)(I) the generation, allocation,
13 issuance, recording, tracking, transfer, and
14 use of nitrogen oxide allowances and mer-
15 cury allowances; and

16 “(II) the public availability of all in-
17 formation concerning the activities de-
18 scribed in subclause (I) that is not con-
19 fidential;

20 “(ii) compliance with subsection
21 (e)(1);

22 “(iii) the monitoring and reporting of
23 emissions under paragraphs (2) and (3) of
24 subsection (e); and

1 “(iv) excess emission penalties under
2 subsection (e)(4).

3 “(2) MIXED FUEL, CO-GENERATION FACILITIES
4 AND COMBINED HEAT AND POWER FACILITIES.—
5 The Administrator shall promulgate such regulations
6 as are necessary to ensure the equitable issuance of
7 allowances to—

8 “(A) facilities that use more than 1 energy
9 source to produce electricity; and

10 “(B) facilities that produce electricity in
11 addition to another service or product.

12 “(3) REPORT TO CONGRESS ON USE OF CAP-
13 TURED OR RECOVERED MERCURY.—

14 “(A) IN GENERAL.—Not later than 18
15 months after the date of enactment of this title,
16 the Administrator shall submit to Congress a
17 report on the public health and environmental
18 impacts from mercury that is or may be—

19 “(i) captured or recovered by air pol-
20 lution control technology; and

21 “(ii) incorporated into products such
22 as soil amendments and cement.

23 “(B) REQUIRED ELEMENTS.—The report
24 shall—

25 “(i) review—

1 “(I) technologies, in use as of the
2 date of the report, for incorporating
3 mercury into products; and

4 “(II) potential technologies that
5 might further minimize the release of
6 mercury; and

7 “(ii)(I) address the adequacy of legal
8 authorities and regulatory programs in ef-
9 fect as of the date of the report to protect
10 public health and the environment from
11 mercury in products described in subpara-
12 graph (A)(ii); and

13 “(II) to the extent necessary, make
14 recommendations to improve those authori-
15 ties and programs.

16 “(b) NEW UNIT RESERVES.—

17 “(1) ESTABLISHMENT.—The Administrator
18 shall establish by regulation a reserve of nitrogen
19 oxide allowances and a reserve of mercury allow-
20 ances to be set aside for use by new units.

21 “(2) DETERMINATION OF QUANTITY.—The Ad-
22 ministrator, in consultation with the Secretary of
23 Energy, shall determine, based on projections of
24 electricity output for new units—

1 “(A) not later than June 30, 2005, the
2 quantity of nitrogen oxide allowances and mer-
3 cury allowances required to be held in reserve
4 for new units for each of calendar years 2009
5 through 2013; and

6 “(B) not later than June 30 of each fifth
7 calendar year thereafter, the quantity of nitro-
8 gen oxide allowances and mercury allowances
9 required to be held in reserve for new units for
10 the following 5-calendar year period.

11 “(c) NITROGEN OXIDE AND MERCURY ALLOWANCE
12 ALLOCATIONS.—

13 “(1) TIMING OF ALLOCATIONS.—The Adminis-
14 trator shall allocate nitrogen oxide allowances and
15 mercury allowances to affected units—

16 “(A) not later than December 31, 2005,
17 for calendar year 2009; and

18 “(B) not later than December 31 of cal-
19 endar year 2006 and each calendar year there-
20 after, for the fourth calendar year that begins
21 after that December 31.

22 “(2) ALLOCATIONS TO AFFECTED UNITS THAT
23 ARE NOT NEW UNITS.—

24 “(A) QUANTITY OF NITROGEN OXIDE AL-
25 LOWANCES ALLOCATED.—The Administrator

1 shall allocate to each affected unit that is not
2 a new unit a quantity of nitrogen oxide allow-
3 ances that is equal to the product obtained by
4 multiplying—

5 “(i) 1.5 pounds of nitrogen oxides per
6 megawatt hour; and

7 “(ii) the quotient obtained by divid-
8 ing—

9 “(I) the average annual net
10 quantity of electricity generated by
11 the affected unit during the most re-
12 cent 3-calendar year period for which
13 data are available, measured in mega-
14 watt hours; by

15 “(II) 2,000 pounds of nitrogen
16 oxides per ton.

17 “(B) QUANTITY OF MERCURY ALLOW-
18 ANCES ALLOCATED.—The Administrator shall
19 allocate to each affected unit that is not a new
20 unit a quantity of mercury allowances that is
21 equal to the product obtained by multiplying—

22 “(i) 0.0000227 pounds of mercury per
23 megawatt hour; and

24 “(ii) the average annual net quantity
25 of electricity generated by the affected unit

1 during the most recent 3-calendar year pe-
2 riod for which data are available, measured
3 in megawatt hours.

4 “(C) ADJUSTMENT OF ALLOCATIONS.—

5 “(i) IN GENERAL.—If, for any cal-
6 endar year, the total quantity of allowances
7 allocated under subparagraph (A) or (B) is
8 not equal to the applicable quantity deter-
9 mined under clause (ii), the Administrator
10 shall adjust the quantity of allowances allo-
11 cated to affected units that are not new
12 units on a pro-rata basis so that the quan-
13 tity is equal to the applicable quantity de-
14 termined under clause (ii).

15 “(ii) APPLICABLE QUANTITY.—The
16 applicable quantity referred to in clause (i)
17 is the difference between—

18 “(I) the applicable annual ton-
19 nage limitation for emissions from af-
20 fected units specified in subsection (b)
21 or (c) of section 702 for the calendar
22 year; and

23 “(II) the quantity of nitrogen
24 oxide allowances or mercury allow-
25 ances, respectively, placed in the ap-

1 plicable new unit reserve established
2 under subsection (b) for the calendar
3 year.

4 “(3) ALLOCATION TO NEW UNITS.—

5 “(A) METHODOLOGY.—The Administrator
6 shall promulgate regulations to establish a
7 methodology for allocating nitrogen oxide allow-
8 ances and mercury allowances to new units.

9 “(B) QUANTITY OF NITROGEN OXIDE AL-
10 LOWANCES AND MERCURY ALLOWANCES ALLO-
11 CATED.—The Administrator shall determine the
12 quantity of nitrogen oxide allowances and mer-
13 cury allowances to be allocated to each new unit
14 based on the projected emissions from the new
15 unit.

16 “(4) ALLOWANCE NOT A PROPERTY RIGHT.—A
17 nitrogen oxide allowance or mercury allowance—

18 “(A) is not a property right; and

19 “(B) may be terminated or limited by the
20 Administrator.

21 “(5) NO JUDICIAL REVIEW.—An allocation of
22 nitrogen allowances or mercury allowances by the
23 Administrator under this subsection shall not be
24 subject to judicial review.

1 “(d) NITROGEN OXIDE ALLOWANCE AND MERCURY
2 ALLOWANCE TRANSFER SYSTEM.—

3 “(1) USE OF ALLOWANCES.—The regulations
4 promulgated under subsection (a)(1)(A) shall—

5 “(A) prohibit the use (but not the transfer
6 in accordance with paragraph (3)) of any nitro-
7 gen oxide allowance or mercury allowance be-
8 fore the calendar year for which the allowance
9 is allocated;

10 “(B) provide that unused nitrogen oxide
11 allowances and mercury allowances may be car-
12 ried forward and added to nitrogen oxide allow-
13 ances and mercury allowances, respectively, al-
14 located for subsequent years; and

15 “(C) provide that unused nitrogen oxide al-
16 lowances and mercury allowances may be trans-
17 ferred by—

18 “(i) the person to which the allow-
19 ances are allocated; or

20 “(ii) any person to which the allow-
21 ances are transferred.

22 “(2) USE BY PERSONS TO WHICH ALLOWANCES
23 ARE TRANSFERRED.—Any person to which nitrogen
24 oxide allowances or mercury allowances are trans-
25 ferred under paragraph (1)(C)—

1 “(A) may use the nitrogen oxide allow-
2 ances or mercury allowances in the calendar
3 year for which the nitrogen oxide allowances or
4 mercury allowances were allocated, or in a sub-
5 sequent calendar year, to demonstrate compli-
6 ance with subsection (e)(1); or

7 “(B) may transfer the nitrogen oxide al-
8 lowances or mercury allowances to any other
9 person for the purpose of demonstration of that
10 compliance.

11 “(3) CERTIFICATION OF TRANSFER.—A trans-
12 fer of a nitrogen oxide allowance or mercury allow-
13 ance shall not take effect until a written certification
14 of the transfer, authorized by a responsible official
15 of the person making the transfer, is received and
16 recorded by the Administrator.

17 “(4) PERMIT REQUIREMENTS.—An allocation
18 or transfer of nitrogen oxide allowances or mercury
19 allowances to an affected unit shall, after recording
20 by the Administrator, be considered to be part of the
21 federally enforceable permit of the affected unit
22 under this Act, without a requirement for any fur-
23 ther review or revision of the permit.

24 “(e) COMPLIANCE AND ENFORCEMENT.—

1 “(1) IN GENERAL.—For calendar year 2009
2 and each calendar year thereafter, the operator of
3 each affected unit shall surrender to the Adminis-
4 trator—

5 “(A) a quantity of nitrogen oxide allow-
6 ances that is equal to the total tons of nitrogen
7 oxides emitted by the affected unit during the
8 calendar year; and

9 “(B) a quantity of mercury allowances that
10 is equal to the total pounds of mercury emitted
11 by the affected unit during the calendar year.

12 “(2) MONITORING SYSTEM.—The Administrator
13 shall promulgate regulations requiring the accurate
14 monitoring of the quantities of nitrogen oxides and
15 mercury that are emitted at each affected unit.

16 “(3) REPORTING.—

17 “(A) IN GENERAL.—Not less often than
18 quarterly, the owner or operator of an affected
19 unit shall submit to the Administrator a report
20 on the monitoring of emissions of nitrogen ox-
21 ides and mercury carried out by the owner or
22 operator in accordance with the regulations pro-
23 mulgated under paragraph (2).

24 “(B) AUTHORIZATION.—Each report sub-
25 mitted under subparagraph (A) shall be author-

1 ized by a responsible official of the affected
2 unit, who shall certify the accuracy of the re-
3 port.

4 “(C) PUBLIC REPORTING.—The Adminis-
5 trator shall make available to the public,
6 through 1 or more published reports and 1 or
7 more forms of electronic media, data concerning
8 the emissions of nitrogen oxides and mercury
9 from each affected unit.

10 “(4) EXCESS EMISSIONS.—

11 “(A) IN GENERAL.—The owner or operator
12 of an affected unit that emits nitrogen oxides or
13 mercury in excess of the nitrogen oxide allow-
14 ances or mercury allowances that the owner or
15 operator holds for use for the affected unit for
16 the calendar year shall—

17 “(i) pay an excess emissions penalty
18 determined under subparagraph (B); and

19 “(ii) offset the excess emissions by an
20 equal quantity in the following calendar
21 year or such other period as the Adminis-
22 trator shall prescribe.

23 “(B) DETERMINATION OF EXCESS EMIS-
24 SIONS PENALTY.—

1 “(i) NITROGEN OXIDES.—The excess
2 emissions penalty for nitrogen oxides shall
3 be equal to the product obtained by multi-
4 plying—

5 “(I) the number of tons of nitro-
6 gen oxides emitted in excess of the
7 total quantity of nitrogen oxide allow-
8 ances held; and

9 “(II) \$5,000, adjusted (in ac-
10 cordance with regulations promul-
11 gated by the Administrator) for
12 changes in the Consumer Price Index
13 for All-Urban Consumers published by
14 the Department of Labor.

15 “(ii) MERCURY.—The excess emis-
16 sions penalty for mercury shall be equal to
17 the product obtained by multiplying—

18 “(I) the number of pounds of
19 mercury emitted in excess of the total
20 quantity of mercury allowances held;
21 and

22 “(II) \$10,000, adjusted (in ac-
23 cordance with regulations promul-
24 gated by the Administrator) for
25 changes in the Consumer Price Index

1 for All-Urban Consumers published by
2 the Department of Labor.

3 **“SEC. 704. CARBON DIOXIDE ALLOWANCE TRADING PRO-**
4 **GRAM.**

5 “(a) REGULATIONS.—

6 “(1) IN GENERAL.—Not later than January 1,
7 2005, the Administrator shall promulgate regula-
8 tions to establish a carbon dioxide allowance trading
9 program for covered units in the United States.

10 “(2) REQUIRED ELEMENTS.—Regulations pro-
11 mulgated under paragraph (1) shall establish re-
12 quirements for the carbon dioxide allowance trading
13 program under this section, including requirements
14 concerning—

15 “(A)(i) the generation, allocation, issuance,
16 recording, tracking, transfer, and use of carbon
17 dioxide allowances; and

18 “(ii) the public availability of all informa-
19 tion concerning the activities described in clause
20 (i) that is not confidential;

21 “(B) compliance with subsection (f)(1);

22 “(C) the monitoring and reporting of emis-
23 sions under paragraphs (2) and (3) of sub-
24 section (f);

1 “(D) excess emission penalties under sub-
2 section (f)(4); and

3 “(E) standards, guidelines, and procedures
4 concerning the generation, certification, and use
5 of additional carbon dioxide allowances made
6 available under subsection (d).

7 “(b) NEW UNIT RESERVE.—

8 “(1) ESTABLISHMENT.—The Administrator
9 shall establish by regulation a reserve of carbon di-
10 oxide allowances to be set aside for use by new units
11 and new renewable energy units.

12 “(2) DETERMINATION OF QUANTITY.—The Ad-
13 ministrator, in consultation with the Secretary of
14 Energy, shall determine, based on projections of
15 electricity output for new units and new renewable
16 energy units—

17 “(A) not later than June 30, 2005, the
18 quantity of carbon dioxide allowances required
19 to be held in reserve for new units and new re-
20 newable energy units for each of calendar years
21 2009 through 2013; and

22 “(B) not later than June 30 of each fifth
23 calendar year thereafter, the quantity of carbon
24 dioxide allowances required to be held in reserve

1 for new units and renewable energy units for
2 the following 5-calendar year period.

3 “(c) CARBON DIOXIDE ALLOWANCE ALLOCATION.—

4 “(1) TIMING OF ALLOCATIONS.—The Adminis-
5 trator shall allocate carbon dioxide allowances to
6 covered units—

7 “(A) not later than December 31, 2005,
8 for calendar year 2009; and

9 “(B) not later than December 31 of cal-
10 endar year 2006 and each calendar year there-
11 after, for the fourth calendar year that begins
12 after that December 31.

13 “(2) ALLOCATIONS TO COVERED UNITS THAT
14 ARE NOT NEW UNITS.—

15 “(A) IN GENERAL.—The Administrator
16 shall allocate to each affected unit that is not
17 a new unit, to each nuclear generating unit
18 with respect to incremental nuclear generation,
19 and to each renewable energy unit that is not
20 a new renewable energy unit, a quantity of car-
21 bon dioxide allowances that is equal to the
22 product obtained by multiplying—

23 “(i) the quantity of carbon dioxide al-
24 lowances available for allocation under sub-
25 paragraph (B); and

1 “(ii) the quotient obtained by divid-
2 ing—

3 “(I) the average net quantity of
4 electricity generated by the unit in a
5 calendar year during the most recent
6 3-calendar year period for which data
7 are available, measured in megawatt
8 hours; and

9 “(II) the total of the average net
10 quantities described in subclause (I)
11 with respect to all such units.

12 “(B) QUANTITY TO BE ALLOCATED.—For
13 each calendar year, the quantity of carbon diox-
14 ide allowances allocated under subparagraph
15 (A) shall be equal to the difference between—

16 “(i) the annual tonnage limitation for
17 emissions of carbon dioxide from affected
18 units specified in section 702(d) for the
19 calendar year; and

20 “(ii) the quantity of carbon dioxide al-
21 lowances placed in the new unit reserve es-
22 tablished under subsection (b) for the cal-
23 endar year.

24 “(3) ALLOCATION TO NEW UNITS AND NEW RE-
25 NEWABLE ENERGY UNITS.—

1 “(A) METHODOLOGY.—The Administrator
2 shall promulgate regulations to establish a
3 methodology for allocating carbon dioxide allow-
4 ances to new units and new renewable energy
5 units.

6 “(B) QUANTITY OF CARBON DIOXIDE AL-
7 LOWANCES ALLOCATED.—The Administrator
8 shall determine the quantity of carbon dioxide
9 allowances to be allocated to each new unit and
10 each new renewable energy unit based on the
11 unit’s projected share of the total electric power
12 generation attributable to covered units.

13 “(d) ISSUANCE AND USE OF ADDITIONAL CARBON
14 DIOXIDE ALLOWANCES.—

15 “(1) IN GENERAL.—

16 “(A) ALLOWANCES FOR PROJECTS CER-
17 TIFIED BY INDEPENDENT REVIEW BOARD.—In
18 addition to carbon dioxide allowances allocated
19 under subsection (c), the Administrator shall
20 make carbon dioxide allowances available to
21 projects that are certified, in accordance with
22 paragraph (3), by the independent review board
23 established under paragraph (2) as eligible to
24 receive the carbon dioxide allowances.

1 “(B) ALLOWANCES OBTAINED UNDER
2 OTHER PROGRAMS.—The regulations promul-
3 gated under subsection (a)(1) shall—

4 “(i) allow covered units to comply
5 with subsection (f)(1) by purchasing and
6 using carbon dioxide allowances that are
7 traded under any other United States or
8 internationally recognized carbon dioxide
9 reduction program that is specified under
10 clause (ii);

11 “(ii) specify, for the purpose of clause
12 (i), programs that meet the goals of this
13 section; and

14 “(iii) apply such conditions to the use
15 of carbon dioxide allowances traded under
16 programs specified under clause (ii) as are
17 necessary to achieve the goals of this sec-
18 tion.

19 “(2) INDEPENDENT REVIEW BOARD.—

20 “(A) IN GENERAL.—

21 “(i) ESTABLISHMENT.—The Adminis-
22 trator shall establish an independent re-
23 view board to assist the Administrator in
24 certifying projects as eligible for carbon di-

1 oxide allowances made available under
2 paragraph (1)(A).

3 “(ii) REVIEW AND APPROVAL.—Each
4 certification by the independent review
5 board of a project shall be subject to the
6 review and approval of the Administrator.

7 “(iii) REQUIREMENTS.—Subject to
8 this subsection, requirements relating to
9 the creation, composition, duties, respon-
10 sibilities, and other aspects of the inde-
11 pendent review board shall be included in
12 the regulations promulgated by the Admin-
13 istrator under subsection (a).

14 “(B) MEMBERSHIP.—The independent re-
15 view board shall be composed of 12 members,
16 of whom—

17 “(i) 10 members shall be appointed by
18 the Administrator, of whom—

19 “(I) 1 member shall represent
20 the Environmental Protection Agency
21 (who shall serve as chairperson of the
22 independent review board);

23 “(II) 3 members shall represent
24 State governments;

1 “(III) 3 members shall represent
2 the electric generating sector; and

3 “(IV) 3 members shall represent
4 environmental organizations;

5 “(ii) 1 member shall be appointed by
6 the Secretary of Energy to represent the
7 Department of Energy; and

8 “(iii) 1 member shall be appointed by
9 the Secretary of Agriculture to represent
10 the Department of Agriculture.

11 “(C) STAFF AND OTHER RESOURCES.—
12 The Administrator shall provide such staff and
13 other resources to the independent review board
14 as the Administrator determines to be nec-
15 essary.

16 “(D) DEVELOPMENT OF GUIDELINES.—

17 “(i) IN GENERAL.—The independent
18 review board shall develop guidelines for
19 certifying projects in accordance with para-
20 graph (3), including—

21 “(I) criteria that address the va-
22 lidity of claims that projects result in
23 the generation of carbon dioxide al-
24 lowances;

1 “(II) guidelines for certifying in-
2 cremental carbon sequestration in ac-
3 cordance with clause (ii); and

4 “(III) guidelines for certifying
5 geological sequestration of carbon di-
6 oxide in accordance with clause (iii).

7 “(ii) GUIDELINES FOR CERTIFYING
8 INCREMENTAL CARBON SEQUESTRATION.—
9 The guidelines for certifying incremental
10 carbon sequestration in forests, agricul-
11 tural soil, rangeland, or grassland shall in-
12 clude development, reporting, monitoring,
13 and verification guidelines, to be used in
14 quantifying net carbon sequestration from
15 land use projects, that are based on—

16 “(I) measurement of increases in
17 carbon storage in excess of the carbon
18 storage that would have occurred in
19 the absence of such a project;

20 “(II) comprehensive carbon ac-
21 counting that—

22 “(aa) reflects net increases
23 in carbon reservoirs; and

24 “(bb) takes into account any
25 carbon emissions resulting from

1 disturbance of carbon reservoirs
2 in existence as of the date of
3 commencement of the project;

4 “(III) adjustments to account
5 for—

6 “(aa) emissions of carbon
7 that may result at other locations
8 as a result of the impact of the
9 project on timber supplies; or

10 “(bb) potential displacement
11 of carbon emissions to other land
12 owned by the entity that carries
13 out the project; and

14 “(IV) adjustments to reflect the
15 expected carbon storage over various
16 time periods, taking into account the
17 likely duration of the storage of the
18 carbon stored in a carbon reservoir.

19 “(iii) GUIDELINES FOR CERTIFYING
20 GEOLOGICAL SEQUESTRATION OF CARBON
21 DIOXIDE.—The guidelines for certifying
22 geological sequestration of carbon dioxide
23 produced by a covered unit shall—

24 “(I) provide that a project shall
25 be certified only to the extent that the

1 geological sequestration of carbon di-
2 oxide produced by a covered unit is in
3 addition to any carbon dioxide used by
4 the covered unit in 2009 for enhanced
5 oil recovery; and

6 “(II) include requirements for de-
7 velopment, reporting, monitoring, and
8 verification for quantifying net carbon
9 sequestration—

10 “(aa) to ensure the perma-
11 nence of the sequestration; and

12 “(bb) to ensure that the se-
13 questration will not cause or con-
14 tribute to significant adverse ef-
15 fects on the environment.

16 “(iv) DEADLINES FOR DEVELOP-
17 MENT.—The guidelines under clause (i)
18 shall be developed—

19 “(I) with respect to projects de-
20 scribed in paragraph (3)(A), not later
21 than January 1, 2005; and

22 “(II) with respect to projects de-
23 scribed in paragraph (3)(B), not later
24 than January 1, 2006.

1 “(v) UPDATING OF GUIDELINES.—

2 The independent review board shall peri-
3 odically update the guidelines as the inde-
4 pendent review board determines to be ap-
5 propriate.

6 “(E) CERTIFICATION OF PROJECTS.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), subparagraph (A)(ii), and paragraph
9 (3), the independent review board shall
10 certify projects as eligible for additional
11 carbon dioxide allowances.

12 “(ii) LIMITATION.—The independent
13 review board shall not certify a project
14 under this subsection if the carbon dioxide
15 emission reductions achieved by the project
16 will be used to satisfy any requirement im-
17 posed on any foreign country or any indus-
18 trial sector to reduce the quantity of green-
19 house gases emitted by the foreign country
20 or industrial sector.

21 “(3) PROJECTS ELIGIBLE FOR ADDITIONAL
22 CARBON DIOXIDE ALLOWANCES.—

23 “(A) PROJECTS CARRIED OUT IN CAL-
24 ENDAR YEARS 1990 THROUGH 2008.—

1 “(i) IN GENERAL.—The independent
2 review board may certify as eligible for
3 carbon dioxide allowances a project that—

4 “(I) is carried out on or after
5 January 1, 1990, and before January
6 1, 2009; and

7 “(II) consists of—

8 “(aa) a carbon sequestration
9 project carried out in the United
10 States or a foreign country;

11 “(bb) a project reported
12 under section 1605(b) of the En-
13 ergy Policy Act of 1992 (42
14 U.S.C. 13385(b)); or

15 “(cc) any other project to
16 reduce emissions of greenhouse
17 gases that is carried out in the
18 United States or a foreign coun-
19 try.

20 “(ii) MAXIMUM QUANTITY OF ADDI-
21 TIONAL CARBON DIOXIDE ALLOWANCES.—

22 The Administrator may make available to
23 projects certified under clause (i) a quan-
24 tity of allowances that is not greater than
25 10 percent of the tonnage limitation for

1 calendar year 2009 for emissions of carbon
2 dioxide from affected units specified in sec-
3 tion 702(d)(1).

4 “(iii) USE OF ALLOWANCES.—Allow-
5 ances made available under clause (ii) may
6 be used to comply with subsection (f)(1) in
7 calendar year 2009 or any calendar year
8 thereafter.

9 “(B) PROJECTS CARRIED OUT IN CAL-
10 ENDAR YEAR 2009 AND THEREAFTER.—The
11 independent review board may certify as eligible
12 for carbon dioxide allowances a project that—

13 “(i) is carried out on or after January
14 1, 2009; and

15 “(ii) consists of—

16 “(I) a carbon sequestration
17 project carried out in the United
18 States or a foreign country; or

19 “(II) a project to reduce the
20 greenhouse gas emissions (on a car-
21 bon dioxide equivalency basis deter-
22 mined by the independent review
23 board) of a source of greenhouse
24 gases that is not an affected unit.

1 “(e) CARBON DIOXIDE ALLOWANCE TRANSFER SYS-
2 TEM.—

3 “(1) USE OF ALLOWANCES.—The regulations
4 promulgated under subsection (a)(1) shall—

5 “(A) prohibit the use (but not the transfer
6 in accordance with paragraph (3)) of any car-
7 bon dioxide allowance before the calendar year
8 for which the carbon dioxide allowance is allo-
9 cated;

10 “(B) provide that unused carbon dioxide
11 allowances may be carried forward and added
12 to carbon dioxide allowances allocated for sub-
13 sequent years;

14 “(C) provide that unused carbon dioxide
15 allowances may be transferred by—

16 “(i) the person to which the carbon
17 dioxide allowances are allocated; or

18 “(ii) any person to which the carbon
19 dioxide allowances are transferred; and

20 “(D) provide that carbon dioxide allow-
21 ances allocated and transferred under this sec-
22 tion may be transferred into any other market-
23 based carbon dioxide emission trading program
24 that is—

25 “(i) approved by the President; and

1 “(ii) implemented in accordance with
2 regulations developed by the Administrator
3 or the head of any other Federal agency.

4 “(2) USE BY PERSONS TO WHICH CARBON DI-
5 OXIDE ALLOWANCES ARE TRANSFERRED.—Any per-
6 son to which carbon dioxide allowances are trans-
7 ferred under paragraph (1)(C)—

8 “(A) may use the carbon dioxide allow-
9 ances in the calendar year for which the carbon
10 dioxide allowances were allocated, or in a subse-
11 quent calendar year, to demonstrate compliance
12 with subsection (f)(1); or

13 “(B) may transfer the carbon dioxide al-
14 lowances to any other person for the purpose of
15 demonstration of that compliance.

16 “(3) CERTIFICATION OF TRANSFER.—A trans-
17 fer of a carbon dioxide allowance shall not take ef-
18 fect until a written certification of the transfer, au-
19 thorized by a responsible official of the person mak-
20 ing the transfer, is received and recorded by the Ad-
21 ministrator.

22 “(4) PERMIT REQUIREMENTS.—An allocation
23 or transfer of carbon dioxide allowances to a covered
24 unit, or for a project carried out on behalf of a cov-
25 ered unit, under subsection (c) or (d) shall, after re-

1 cording by the Administrator, be considered to be
2 part of the federally enforceable permit of the cov-
3 ered unit under this Act, without a requirement for
4 any further review or revision of the permit.

5 “(f) COMPLIANCE AND ENFORCEMENT.—

6 “(1) IN GENERAL.—For calendar year 2009
7 and each calendar year thereafter—

8 “(A) the operator of each affected unit and
9 each renewable energy unit shall surrender to
10 the Administrator a quantity of carbon dioxide
11 allowances that is equal to the total tons of car-
12 bon dioxide emitted by the affected unit or re-
13 newable energy unit during the calendar year;
14 and

15 “(B) the operator of each nuclear gener-
16 ating unit that has incremental nuclear genera-
17 tion shall surrender to the Administrator a
18 quantity of carbon dioxide allowances that is
19 equal to the total tons of carbon dioxide emitted
20 by the nuclear generating unit during the cal-
21 endar year from incremental nuclear genera-
22 tion.

23 “(2) MONITORING SYSTEM.—The Administrator
24 shall promulgate regulations requiring the accurate

1 monitoring of the quantity of carbon dioxide that is
2 emitted at each covered unit.

3 “(3) REPORTING.—

4 “(A) IN GENERAL.—Not less often than
5 quarterly, the owner or operator of a covered
6 unit, or a person that carries out a project cer-
7 tified under subsection (d) on behalf of a cov-
8 ered unit, shall submit to the Administrator a
9 report on the monitoring of carbon dioxide
10 emissions carried out at the covered unit in ac-
11 cordance with the regulations promulgated
12 under paragraph (2).

13 “(B) AUTHORIZATION.—Each report sub-
14 mitted under subparagraph (A) shall be author-
15 ized by a responsible official of the covered unit,
16 who shall certify the accuracy of the report.

17 “(C) PUBLIC REPORTING.—The Adminis-
18 trator shall make available to the public,
19 through 1 or more published reports and 1 or
20 more forms of electronic media, data concerning
21 the emissions of carbon dioxide from each cov-
22 ered unit.

23 “(4) EXCESS EMISSIONS.—

24 “(A) IN GENERAL.—The owner or operator
25 of a covered unit that emits carbon dioxide in

1 excess of the carbon dioxide allowances that the
2 owner or operator holds for use for the covered
3 unit for the calendar year shall—

4 “(i) pay an excess emissions penalty
5 determined under subparagraph (B); and

6 “(ii) offset the excess emissions by an
7 equal quantity in the following calendar
8 year or such other period as the Adminis-
9 trator shall prescribe.

10 “(B) DETERMINATION OF EXCESS EMIS-
11 SIONS PENALTY.—The excess emissions penalty
12 shall be equal to the product obtained by multi-
13 plying—

14 “(i) the number of tons of carbon di-
15 oxide emitted in excess of the total quan-
16 tity of carbon dioxide allowances held; and

17 “(ii) \$100, adjusted (in accordance
18 with regulations promulgated by the Ad-
19 ministrator) for changes in the Consumer
20 Price Index for All-Urban Consumers pub-
21 lished by the Department of Labor.

22 “(g) ALLOWANCE NOT A PROPERTY RIGHT.—A car-
23 bon dioxide allowance—

24 “(1) is not a property right; and

1 “(2) may be terminated or limited by the Ad-
2 ministrator.

3 “(h) NO JUDICIAL REVIEW.—An allocation of carbon
4 dioxide allowances by the Administrator under subsection
5 (c) or (d) shall not be subject to judicial review.”.

6 **SEC. 4. NEW SOURCE REVIEW PROGRAM.**

7 Section 165 of the Clean Air Act (42 U.S.C. 7475)
8 is amended by adding at the end the following:

9 “(f) REVISIONS TO NEW SOURCE REVIEW PRO-
10 GRAM.—

11 “(1) DEFINITIONS.—In this subsection:

12 “(A) COVERED UNIT.—The term ‘covered
13 unit’ has the meaning given the term in section
14 701.

15 “(B) NEW SOURCE REVIEW PROGRAM.—
16 The term ‘new source review program’ means
17 the program to carry out section 111 and this
18 part.

19 “(2) REGULATIONS.—In accordance with this
20 subsection, the Administrator shall promulgate revi-
21 sions to the new source review program.

22 “(3) APPLICABILITY CRITERIA.—Beginning
23 January 1, 2009, the new source review program
24 shall apply only to—

1 “(A) construction of a new covered unit,
2 which shall include the replacement of an exist-
3 ing boiler; and

4 “(B) activities that result in any increase
5 in the maximum hourly rate of emissions from
6 a covered unit of air pollutants regulated under
7 the new source review program (measured in
8 pounds per megawatt hour), after netting
9 among covered units at a source.

10 “(4) PERFORMANCE STANDARDS.—Beginning
11 in 2020, all affected units, as that term is defined
12 under section 701 for nitrogen oxides and carbon di-
13 oxide, on which construction commenced before Au-
14 gust 17, 1971, shall meet the following performance
15 standards:

16 “(A) 4.5 lbs/MWh for sulfur dioxide; and

17 “(B) 2.5 lbs/MWh for nitrogen oxides.

18 “(5) BI-ANNUAL DEFINITION OF BEST AVAIL-
19 ABLE CONTROL TECHNOLOGY AND LOWEST ACHIEV-
20 ABLE EMISSION RATE.—The definitions of ‘best
21 available control technology’ under section 169 and
22 of ‘lowest achievable emission rate’ under section
23 171 shall be revised to require the Administrator to
24 define on a bi-annual basis best available control

1 technology and lowest achievable emission rate as
2 those terms apply to covered units.

3 “(6) LOWEST ACHIEVABLE EMISSION RATE.—

4 The regulations shall revise the definition of ‘lowest
5 achievable emission rate’ under section 171, with re-
6 spect to technology required to be installed by the
7 electric generating sector, to allow costs to be con-
8 sidered in the determination of the lowest achievable
9 emission rate, so that, beginning January 1, 2009,
10 a covered unit (as defined in section 701) shall not
11 be required to install technology required to meet a
12 lowest achievable emission rate if the cost of the
13 technology exceeds a maximum amount (in dollars
14 per ton) that is determined by the Administrator. In
15 no event shall such cost be more than twice the
16 amount of the applicable cost guideline for best
17 available control technology.

18 “(7) EMISSION OFFSETS.—No source within
19 the electric generating sector that locates in a non-
20 attainment area after December 31, 2008, shall be
21 required to obtain offsets for emissions of air pollut-
22 ants.

23 “(8) NO EFFECT ON OTHER REQUIREMENTS.—

24 Nothing in this subsection affects the obligation of
25 any State or local government to comply with the re-

1 requirements established under this section con-
2 cerning—

3 “(A) national ambient air quality stand-
4 ards;

5 “(B) maximum allowable air pollutant in-
6 creases or maximum allowable air pollutant
7 concentrations; or

8 “(C) protection of visibility and other air
9 quality-related values in areas designated as
10 class I areas under part C of title I. Addition-
11 ally, States are required to identify areas with
12 adverse local air quality impacts and to impose
13 such facility-specific and other measures as are
14 necessary to remedy such impacts in light of
15 the national pollutant tonnage limitations in
16 section 702.”.

17 **SEC. 5. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PRO-**
18 **GRAM.**

19 (a) IN GENERAL.—Title IV of the Clean Air Act (re-
20 lating to acid deposition control) (42 U.S.C. 7651 et seq.)
21 is amended by adding at the end the following:

1 **“SEC. 417. REVISIONS TO SULFUR DIOXIDE ALLOWANCE**
2 **PROGRAM.**

3 “(a) DEFINITIONS.—In this section, the terms ‘af-
4 fected unit’ and ‘new unit’ have the meanings given the
5 terms in section 701.

6 “(b) REGULATIONS.—Not later than January 1,
7 2004, the Administrator shall promulgate such revisions
8 to the regulations to implement this title as the Adminis-
9 trator determines to be necessary to implement section
10 702(a).

11 “(c) NEW UNIT RESERVE.—

12 “(1) ESTABLISHMENT.—Subject to the annual
13 tonnage limitation for emissions of sulfur dioxide
14 from affected units specified in section 702(a), the
15 Administrator shall establish by regulation a reserve
16 of allowances to be set aside for use by new units.

17 “(2) DETERMINATION OF QUANTITY.—The Ad-
18 ministrator, in consultation with the Secretary of
19 Energy, shall determine, based on projections of
20 electricity output for new units—

21 “(A) not later than June 30, 2005, the
22 quantity of allowances required to be held in re-
23 serve for new units for each of calendar years
24 2009 through 2013; and

25 “(B) not later than June 30 of each fifth
26 calendar year thereafter, the quantity of allow-

1 ances required to be held in reserve for new
2 units for the following 5-calendar year period.

3 “(3) ALLOCATION.—

4 “(A) REGULATIONS.—The Administrator
5 shall promulgate regulations to establish a
6 methodology for allocating allowances to new
7 units.

8 “(B) NO JUDICIAL REVIEW.—An allocation
9 of allowances by the Administrator under this
10 subsection shall not be subject to judicial re-
11 view.

12 “(d) EXISTING UNITS.—

13 “(1) ALLOCATION.—

14 “(A) REGULATIONS.—Subject to the an-
15 nual tonnage limitation for emissions of sulfur
16 dioxide from affected units specified in section
17 702(a), and subject to the reserve of allowances
18 for new units under subsection (c), the Admin-
19 istrator shall promulgate regulations to govern
20 the allocation of allowances to affected units
21 that are not new units.

22 “(B) REQUIRED ELEMENTS.—The regula-
23 tions shall provide for—

24 “(i) the allocation of allowances on a
25 fair and equitable basis between affected

1 units that received allowances under sec-
2 tion 405 and affected units that are not
3 new units and that did not receive allow-
4 ances under that section, using for both
5 categories of units the same or similar allo-
6 cation methodology as was used under sec-
7 tion 405; and

8 “(ii) the pro-rata distribution of allow-
9 ances to all units described in clause (i),
10 subject to the annual tonnage limitation
11 for emissions of sulfur dioxide from af-
12 fected units specified in section 702(a).

13 “(2) TIMING OF ALLOCATIONS.—The Adminis-
14 trator shall allocate allowances to affected units—

15 “(A) not later than December 31, 2005,
16 for calendar year 2009; and

17 “(B) not later than December 31 of cal-
18 endar year 2006 and each calendar year there-
19 after, for the fourth calendar year that begins
20 after that December 31.

21 “(3) NO JUDICIAL REVIEW.—An allocation of
22 allowances by the Administrator under this sub-
23 section shall not be subject to judicial review.

24 “(e) WESTERN REGIONAL AIR PARTNERSHIP.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) COVERED STATE.—The term ‘covered
2 State’ means each of the States of Arizona,
3 California, Colorado, Idaho, Nevada, New Mex-
4 ico, Oregon, Utah, and Wyoming.

5 “(B) COVERED YEAR.—The term ‘covered
6 year’ means—

7 “(i)(I)(aa) the third calendar year
8 after the first calendar year in which the
9 Administrator determines by regulation
10 that the total of the annual emissions of
11 sulfur dioxide from all affected units in the
12 covered States is projected to exceed
13 271,000 tons in calendar year 2018 or any
14 calendar year thereafter; but

15 “(bb) not earlier than calendar year
16 2016; or

17 “(II) if the Administrator does not
18 make the determination described in sub-
19 clause (I)(aa)—

20 “(aa) the third calendar year
21 after the first calendar year with re-
22 spect to which the total of the annual
23 emissions of sulfur dioxide from all af-
24 fected units in the covered States first
25 exceeds 271,000 tons; but

1 “(bb) not earlier than calendar
2 year 2021; and

3 “(ii) each calendar year after the cal-
4 endar year determined under clause (i).

5 “(2) MAXIMUM EMISSIONS OF SULFUR DIOXIDE
6 FROM EACH AFFECTED UNIT.—In each covered year,
7 the emissions of sulfur dioxide from each affected
8 unit in a covered State shall not exceed the number
9 of allowances that are allocated under paragraph (3)
10 and held by the affected unit for the covered year.

11 “(3) ALLOCATION OF ALLOWANCES.—

12 “(A) IN GENERAL.—Not later than Janu-
13 ary 1, 2013, the Administrator shall promul-
14 gate regulations to establish—

15 “(i) a methodology for allocating al-
16 lowances to affected units in covered
17 States under this subsection; and

18 “(ii) the timing of the allocations.

19 “(B) NO JUDICIAL REVIEW.—An allocation
20 of allowances by the Administrator under this
21 paragraph shall not be subject to judicial re-
22 view.”.

23 (b) DEFINITION OF ALLOWANCE.—Section 402 of
24 the Clean Air Act (relating to acid deposition control) (42

1 U.S.C. 7651a) is amended by striking paragraph (3) and
2 inserting the following:

3 “(3) ALLOWANCE.—The term ‘allowance’
4 means an authorization, allocated by the Adminis-
5 trator to an affected unit under this title, to emit,
6 during or after a specified calendar year, a quantity
7 of sulfur dioxide determined by the Administrator
8 and specified in the regulations promulgated under
9 section 417(b).”.

10 (c) TECHNICAL AMENDMENTS.—

11 (1) Title IV of the Clean Air Act (relating to
12 noise pollution) (42 U.S.C. 7641 et seq.)—

13 (A) is amended by redesignating sections
14 401 through 403 as sections 801 through 803,
15 respectively; and

16 (B) is redesignated as title VIII and moved
17 to appear at the end of that Act.

18 (2) The table of contents for title IV of the
19 Clean Air Act (relating to acid deposition control)
20 (42 U.S.C. prec. 7651) is amended by adding at the
21 end the following:

“417. Revisions to sulfur dioxide allowance program.”.

22 **SEC. 6. RELATIONSHIP TO OTHER LAW.**

23 (a) EXEMPTION FROM HAZARDOUS AIR POLLUTANT
24 REQUIREMENTS RELATING TO MERCURY.—Section 112
25 of the Clean Air Act (42 U.S.C. 7412) is amended—

1 (1) in subsection (f), by adding at the end the
2 following:

3 “(7) MERCURY EMITTED FROM CERTAIN AF-
4 FECTED UNITS.—Not later than 8 years after the
5 date of enactment of this paragraph, the Adminis-
6 trator shall carry out the duties of the Administrator
7 under this subsection with respect to mercury emit-
8 ted from affected units (as defined in section 701).”;
9 and

10 (2) in subsection (n)(1)(A)—

11 (A) by striking “(A) The Administrator”
12 and inserting the following:

13 “(A) STUDY, REPORT, AND REGULA-
14 TIONS.—

15 “(i) STUDY AND REPORT TO CON-
16 GRESS.—The Administrator”;

17 (B) by striking “The Administrator” in
18 the fourth sentence and inserting the following:

19 “(ii) REGULATIONS.—

20 “(I) IN GENERAL.—The Admin-
21 istrator”;

22 (C) in clause (ii) (as designated by sub-
23 paragraph (B)), by adding at the end the fol-
24 lowing:

1 “(II) EXEMPTION FOR CERTAIN
2 AFFECTED UNITS RELATING TO MER-
3 CURY.—An affected unit (as defined
4 in section 701) that would otherwise
5 be subject to mercury emission stand-
6 ards under subclause (I) shall not be
7 subject to mercury emission standards
8 under subclause (I) or subsection
9 (c).”.

10 (b) TEMPORARY EXEMPTION FROM VISIBILITY PRO-
11 TECTION REQUIREMENTS.—Section 169A(c) of the Clean
12 Air Act (42 U.S.C. 7491(c)) is amended—

13 (1) in paragraph (3), by striking “this sub-
14 section” and inserting “paragraph (1)”; and

15 (2) by adding at the end the following:

16 “(4) TEMPORARY EXEMPTION FOR CERTAIN AF-
17 FECTED UNITS.—An affected unit (as defined in sec-
18 tion 701) shall not be subject to subsection
19 (b)(2)(A) during the period—

20 “(A) beginning on the date of enactment of
21 this paragraph; and

22 “(B) ending on the date that is 20 years
23 after the date of enactment of this paragraph.”.

24 (c) NO EFFECT ON OTHER FEDERAL AND STATE
25 REQUIREMENTS.—Except as otherwise specifically pro-

1 vided in this Act, nothing in this Act or an amendment
2 made by this Act—

3 (1) affects any permitting, monitoring, or en-
4 forcement obligation of the Administrator of the En-
5 vironmental Protection Agency under the Clean Air
6 Act (42 U.S.C. 7401 et seq.) or any remedy pro-
7 vided under that Act;

8 (2) affects any requirement applicable to, or li-
9 ability of, an electric generating facility under that
10 Act;

11 (3) requires a change in, affects, or limits any
12 State law that regulates electric utility rates or
13 charges, including prudency review under State law;
14 or

15 (4) precludes a State or political subdivision of
16 a State from adopting and enforcing any require-
17 ment for the control or abatement of air pollution,
18 except that a State or political subdivision may not
19 adopt or enforce any emission standard or limitation
20 that is less stringent than the requirements imposed
21 under that Act.

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