

109TH CONGRESS  
2D SESSION

# S. 2724

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

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## IN THE SENATE OF THE UNITED STATES

MAY 4, 2006

Mr. CARPER (for himself, Mr. ALEXANDER, Mr. CHAFEE, Mr. GREGG, Mr. DODD, Mrs. FEINSTEIN, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## 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 2006”.

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. Air quality forecasts and warnings.  
 Sec. 7. 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) the Clean Air Act (42 U.S.C. 7401 et seq.)  
 13 regulates substances (including carbon dioxide)  
 14 that—

15 (A) are emitted into the ambient air; and

16 (B) affect the weather and the climate;

17 (4)(A) many electric generating facilities have  
 18 been exempt from the emission limitations applicable  
 19 to new units based on the expectation that over time  
 20 the units would be retired or updated with new pol-  
 21 lution control equipment; but

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

1           (5) pollution from existing electric generating  
2 facilities can be reduced through adoption of modern  
3 technologies and practices;

4           (6) the full benefits of competition will not be  
5 realized if the environmental impacts of generation  
6 of electricity are not uniformly internalized;

7           (7) the ability of owners of electric generating  
8 facilities to effectively plan for the future is impeded  
9 by the uncertainties surrounding future environ-  
10 mental regulatory requirements that are imposed in-  
11 efficiently on a piecemeal basis; and

12           (8) States and regions have increasingly adopt-  
13 ed programs to address carbon dioxide emissions  
14 from electric generating facilities, and Federal regu-  
15 lations relating to carbon dioxide emissions should  
16 take those programs into consideration.

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

18           (1) to protect and preserve the environment and  
19 safeguard public health by ensuring that substantial  
20 emission reductions are achieved at fossil fuel-fired  
21 electric generating facilities;

22           (2) to significantly reduce the quantities of  
23 mercury, carbon dioxide, sulfur dioxide, and nitrogen  
24 oxides that enter the environment as a result of the  
25 combustion of fossil fuels;

1           (3) to encourage the development and use of re-  
2       newable energy;

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

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

11          (6) to achieve emission reductions from electric  
12      generating facilities in a cost-effective manner.

13 **SEC. 3. INTEGRATED AIR QUALITY PLANNING FOR THE**  
14 **ELECTRIC GENERATING SECTOR.**

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

17 **“TITLE VII—INTEGRATED AIR**  
18 **QUALITY PLANNING FOR THE**  
19 **ELECTRIC GENERATING SEC-**  
20 **TOR**

“Sec. 701. Definitions.

“Sec. 702. National pollutant tonnage limitations.

“Sec. 703. Nitrogen oxide trading program.

“Sec. 704. Inlet mercury program.

“Sec. 705. Carbon dioxide allowance trading program.

21 **“SEC. 701. DEFINITIONS.**

22       “In this title:

23           “(1) AFFECTED UNIT.—

1           “(A) MERCURY.—The term ‘affected unit’,  
2           with respect to mercury, means a coal-fired  
3           electric generating facility (including a cogen-  
4           eration facility) that—

5                   “(i) has a nameplate capacity greater  
6                   than 25 megawatts; and

7                   “(ii) generates electricity for sale.

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

13                   “(i) has a nameplate capacity greater  
14                   than 25 megawatts; and

15                   “(ii) generates electricity for sale.

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

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

24          “(3) CLEAN COAL TECHNOLOGY.—The term  
25          ‘clean coal technology’ means—

1 “(A) an advanced pulverized coal tech-  
2 nology;

3 “(B) an atmospheric fluidized bed combus-  
4 tion technology;

5 “(C) a pressurized fluidized bed combus-  
6 tion technology;

7 “(D) a integrated gasification combined  
8 cycle technology; and

9 “(E) any other highly efficient and low-  
10 emitting technology for the production of elec-  
11 tricity using coal or coal-based fuels.

12 “(4) COGENERATION FACILITY.—The term ‘co-  
13 generation facility’ means a facility that—

14 “(A) cogenerates—

15 “(i) steam; and

16 “(ii) electricity; and

17 “(B) supplies, on a net annual basis, to  
18 any utility power distribution system for sale—

19 “(i) more than  $\frac{1}{3}$  of the potential  
20 electric output capacity of the facility; and

21 “(ii) more than 25 megawatts of elec-  
22 trical output of the facility.

23 “(5) COVERED UNIT.—The term ‘covered unit’  
24 means—

25 “(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                   “(6) 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                  “(7) INCREMENTAL NUCLEAR GENERATION.—

13                  The term ‘incremental nuclear generation’ means, as  
14                  determined by the Administrator and measured in  
15                  megawatt hours, the difference between—

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

19                  “(B) the quantity of electricity generated  
20                  by the nuclear generating unit in calendar year  
21                  1990.

22                  “(8) NEW RENEWABLE ENERGY UNIT.—The  
23                  term ‘new renewable energy unit’ means a renewable  
24                  energy unit that has operated for a period of not  
25                  more than 3 years.

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

4                   “(A) sulfur dioxide allowances under sec-  
5                   tion 417(b);

6                   “(B) nitrogen oxide allowances under sec-  
7                   tion 703(c)(2); or

8                   “(C) carbon dioxide allowances under sec-  
9                   tion 705(e).

10           “(10) NITROGEN OXIDE ALLOWANCE.—The  
11           term ‘nitrogen oxide allowance’ means an authoriza-  
12           tion allocated by the Administrator under this title  
13           to emit 1 ton of nitrogen oxides during or after a  
14           specified calendar year.

15           “(11) NUCLEAR GENERATING UNIT.—The term  
16           ‘nuclear generating unit’ means an electric gener-  
17           ating facility that—

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

20                   “(B) commenced operation in calendar  
21                   year 1990 or earlier.

22           “(12) RENEWABLE ENERGY.—The term ‘renew-  
23           able energy’ means electricity generated from—

24                   “(A) wind;



1           “(B) organic waste (excluding incinerated  
2           municipal solid waste);

3           “(C) biomass (including anaerobic diges-  
4           tion from farm systems and landfill gas recov-  
5           ery);

6           “(D) fuel cells; or

7           “(E) a hydroelectric, geothermal, solar  
8           thermal, photovoltaic, or other nonfossil fuel,  
9           nonnuclear source.

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

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

16               “(A) enhancing a natural carbon sink  
17               (such as through afforestation); or

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

20               “(ii)(I) storing the carbon in a geologic  
21               formation; or

22               “(II) converting the carbon to a benign  
23               solid material through a biological or chemical  
24               process.

1           “(15) SULFUR DIOXIDE ALLOWANCE.—The  
 2           term ‘sulfur dioxide allowance’ has the meaning  
 3           given the term ‘allowance’ in section 402.

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

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

8           “(1) for each of calendar years 2010 through  
 9           2014, 4,500,000 tons; and

10          “(2) for calendar year 2015 and each calendar  
 11          year thereafter, 2,000,000 tons.

12          “(b) NITROGEN OXIDES.—

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

14               “(A) ZONE 1 STATE.—The term ‘Zone 1  
 15               State’ means the District of Columbia or any of  
 16               the States of Alabama, Arkansas, Connecticut,  
 17               Delaware, Florida, Georgia, Illinois, Indiana,  
 18               Iowa, Kentucky, Louisiana, Maine, Maryland,  
 19               Massachusetts, Michigan, Minnesota, Mis-  
 20               sissippi, Missouri, New Hampshire, New Jer-  
 21               sey, New York, North Carolina, Ohio, Pennsyl-  
 22               vania, Rhode Island, South Carolina, Ten-  
 23               nessee, Texas, Vermont, Virginia, West Vir-  
 24               ginia, and Wisconsin.

1           “(B) ZONE 2 STATE.—The term ‘Zone 2  
2           State’ means any State within the 48 contig-  
3           uous States that is not a Zone 1 State.

4           “(2) APPLICABILITY.—

5           “(A) ZONE 1 PROHIBITION.—

6           “(i) IN GENERAL.—Beginning on Jan-  
7           uary 1, 2009, it shall be unlawful for an  
8           affected unit in a Zone 1 State to emit a  
9           total amount of nitrogen oxides during a  
10          year in excess of the number of nitrogen  
11          oxide allowances held for the affected unit  
12          for that year by the owner or operator of  
13          the affected unit.

14          “(ii) LIMITATION.—Only nitrogen  
15          oxide allowances under paragraph (3)(A)  
16          shall be held in order to meet the require-  
17          ments of clause (i).

18          “(B) ZONE 2 PROHIBITION.—

19          “(i) IN GENERAL.—Beginning on Jan-  
20          uary 1, 2010, it shall be unlawful for an  
21          affected unit in a Zone 2 State to emit a  
22          total amount of nitrogen oxides during a  
23          year in excess of the number of nitrogen  
24          oxide allowances held for the affected unit

1 for that year by the owner or operator of  
2 the affected unit.

3 “(ii) LIMITATION.—Only nitrogen  
4 oxide allowances under paragraph (3)(B)  
5 shall be held in order to meet the require-  
6 ments of clause (i).

7 “(3) LIMITATIONS ON TOTAL EMISSIONS.—

8 “(A) ZONE 1 LIMITATIONS.—The Adminis-  
9 trator shall allocate an annual tonnage limita-  
10 tion for emissions of nitrogen oxides from af-  
11 fected units in the Zone 1 States in an amount  
12 equal to—

13 “(i) for each of calendar years 2009  
14 through 2014, 1,450,000 tons; and

15 “(ii) for calendar year 2015 and each  
16 calendar year thereafter, 1,300,000 tons.

17 “(B) ZONE 2 LIMITATIONS.—The Adminis-  
18 trator shall allocate an annual tonnage limita-  
19 tion for emissions of nitrogen oxides from af-  
20 fected units in the Zone 2 States in an amount  
21 equal to—

22 “(i) for each of calendar years 2010  
23 through 2014, 450,000 tons; and

24 “(ii) for calendar year 2015 and each  
25 calendar year thereafter, 320,000 tons.

1       “(c) MERCURY.—The emission of mercury from af-  
 2       fected units shall be limited in accordance with section  
 3       704.

4       “(d) CARBON DIOXIDE.—Subject to section 705(c),  
 5       the annual tonnage limitation for emissions of carbon di-  
 6       oxide from covered units in the United States shall be  
 7       equal to, as determined by the Administrator based on cer-  
 8       tified and quality-assured continuous emissions moni-  
 9       toring data for carbon dioxide reported to the Adminis-  
 10      trator by affected units in accordance with this Act—

11               “(1) for each of calendar years 2010 through  
 12              2014, the quantity of emissions projected to be emit-  
 13              ted from affected units in calendar year 2006; and

14               “(2) for calendar year 2015 and each calendar  
 15              year thereafter, the quantity of emissions emitted  
 16              from affected units in calendar year 2001.

17       “(e) REVIEW OF ANNUAL TONNAGE LIMITATIONS  
 18      AND MERCURY EMISSIONS REQUIREMENTS.—

19               “(1) DETERMINATION BY ADMINISTRATOR.—  
 20              Not later than 10 years after the date of enactment  
 21              of this title, the Administrator shall determine—

22                       “(A) after considering impacts on human  
 23                      health, the environment, the economy, and  
 24                      costs, whether 1 or more of the annual tonnage  
 25                      limitations should be revised; and

1           “(B) whether the mercury emission re-  
2           quirements under section 704 should be revised  
3           in accordance with the risk standards described  
4           in section 112(f)(2).

5           “(2) DETERMINATION NOT TO REVISE.—If the  
6           Administrator determines under paragraph (1) that  
7           none of the annual tonnage limitations or mercury  
8           emissions requirements should be revised, the Ad-  
9           ministrators shall publish in the Federal Register a  
10          notice of the determination and the reasons for the  
11          determination.

12          “(3) DETERMINATION TO REVISE.—If the Ad-  
13          ministrators determines under paragraph (1) that 1  
14          or more of the annual tonnage limitations or mer-  
15          cury emissions requirements should be revised, the  
16          Administrator shall publish in the Federal Reg-  
17          ister—

18               “(A) not later than 10 years and 180 days  
19               after the date of enactment of this title, pro-  
20               posed regulations implementing the revisions;  
21               and

22               “(B) not later than 11 years and 180 days  
23               after the date of enactment of this title, final  
24               regulations implementing the revisions.

1           “(4) ADMINISTRATION.—The duty of the Ad-  
 2           ministrator to make a determination under para-  
 3           graph (1) shall be—

4                   “(A) considered to be a nondiscretionary  
 5           duty;

6                   “(B) enforceable through a citizen suit  
 7           under section 304; and

8                   “(C) subject to rulemaking procedures and  
 9           judicial review under section 307.

10          “(f) REDUCTION OF EMISSIONS FROM SPECIFIED  
 11          AFFECTED UNITS.—Notwithstanding the annual tonnage  
 12          limitations and mercury emissions requirements estab-  
 13          lished under this section, the Federal Government or a  
 14          State government may require that emissions from a spec-  
 15          ified affected unit be reduced.

16          **“SEC. 703. NITROGEN OXIDE TRADING PROGRAM.**

17          “(a) REGULATIONS.—

18                   “(1) PROMULGATION.—

19                           “(A) IN GENERAL.—Not later than Janu-  
 20                   ary 1, 2007, the Administrator shall promul-  
 21                   gate regulations to establish for affected units  
 22                   in the United States a nitrogen oxide allowance  
 23                   trading program.

24                           “(B) REQUIREMENTS.—Regulations pro-  
 25                   mulgated under subparagraph (A) shall estab-

lish requirements for the allowance trading program under this section, including requirements concerning—

“(i)(I) the generation, allocation, issuance, recording, tracking, transfer, and use of nitrogen oxide allowances; and

“(II) the public availability of all information concerning the activities described in subclause (I) that is not confidential;

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

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

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

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

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



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

3                   “(b) NEW UNIT RESERVES.—

4                   “(1) ESTABLISHMENT.—For each calendar  
5                   year, based on projections of electricity output from  
6                   new units, the Administrator, in consultation with  
7                   the Secretary of Energy, shall establish by regula-  
8                   tion a reserve of nitrogen oxide allowances to be set  
9                   aside for use by new units that is not less than 5  
10                  percent of the total allowances allocated to affected  
11                  units for the calendar year.

12                  “(2) UNUSED ALLOWANCES.—For each cal-  
13                  endar year, the Administrator shall reallocate, to all  
14                  affected units, any unused nitrogen oxide allowances  
15                  from the new unit reserve established under para-  
16                  graph (1) in the proportion that—

17                         “(A) the number of allowances allocated to  
18                         each affected unit for the calendar year; bears  
19                         to

20                         “(B) the number of allowances allocated to  
21                         all affected units for the calendar year.

22                  “(c) NITROGEN OXIDE ALLOCATIONS.—

23                         “(1) TIMING OF ALLOCATIONS.—The Adminis-  
24                         trator shall allocate nitrogen oxide allowances to af-  
25                         fected units—

1 “(A)(i) not later than December 31, 2007,  
 2 for calendar year 2009 for all Zone 1 States;  
 3 and

4 “(ii) not later than December 31, 2007,  
 5 for calendar year 2010 for all Zone 2 States;  
 6 and

7 “(B) not later than December 31 of cal-  
 8 endar year 2008 and each calendar year there-  
 9 after, for the fourth calendar year that begins  
 10 after that December 31.

11 “(2) ALLOCATIONS TO AFFECTED UNITS THAT  
 12 ARE NOT NEW UNITS.—

13 “(A) QUANTITY OF ALLOWANCES.—

14 “(i) ZONE 1 STATES.—The Adminis-  
 15 trator shall allocate to each affected unit  
 16 in a Zone 1 State that is not a new unit  
 17 a quantity of nitrogen oxide allowances in  
 18 the proportion that—

19 “(I) the number of megawatt  
 20 hours of electric power generated by  
 21 the affected unit in the Zone 1 State;  
 22 bears to

23 “(II) the number of megawatt  
 24 hours of electric power generated by  
 25 all affected units in all Zone 1 States.

1           “(ii) ZONE 2 STATES.—The Adminis-  
 2           trator shall allocate to each affected unit  
 3           in a Zone 2 State that is not a new unit  
 4           a quantity of nitrogen oxide allowances in  
 5           the proportion that—

6                       “(I) the number of megawatt  
 7                       hours of electric power generated by  
 8                       the affected unit in the Zone 2 State;  
 9                       bears to

10                      “(II) the number of megawatt  
 11                      hours of electric power generated by  
 12                      all affected units in all Zone 2 States.

13           “(iii) FACTORS FOR CONSIDER-  
 14           ATION.—In allocating allowances under  
 15           clauses (i) and (ii), the Administrator shall  
 16           take into consideration the average mega-  
 17           watt hours of an affected unit, calculated  
 18           for the most recent 3-calendar year period  
 19           for which data are available and updated  
 20           each calendar year.

21           “(B) ADJUSTMENT OF ALLOCATIONS.—

22                      “(i) IN GENERAL.—If, for any cal-  
 23                      endar year, the total quantity of allowances  
 24                      allocated under subparagraph (A) is not  
 25                      equal to the applicable quantity determined

under clause (ii), the Administrator shall adjust the quantity of allowances allocated to affected units that are not new units on a pro-rata basis so that the quantity is equal to the applicable quantity determined under clause (ii).

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

“(I) the applicable annual tonnage limitation for emissions from affected units specified in section 702(b) for the calendar year; and

“(II) the quantity of nitrogen oxide allowances placed in the applicable new unit reserve established under subsection (b) for the calendar year.

“(3) ALLOCATION TO NEW UNITS.—

“(A) METHODOLOGY.—The Administrator shall promulgate regulations to establish a methodology for allocating nitrogen oxide allowances to new units.

“(B) QUANTITY OF NITROGEN OXIDE ALLOWANCES ALLOCATED.—The Administrator shall determine the quantity of nitrogen oxide

1 allowances to be allocated to each new unit  
 2 based on the projected emissions from the new  
 3 unit.

4 “(4) ALLOWANCE NOT A PROPERTY RIGHT.—A  
 5 nitrogen oxide allowance—

6 “(A) is not a property right; and

7 “(B) may be terminated or limited by the  
 8 Administrator.

9 “(5) NO JUDICIAL REVIEW.—An allocation of  
 10 nitrogen allowances by the Administrator under this  
 11 subsection shall not be subject to judicial review.

12 “(d) NITROGEN OXIDE ALLOWANCE TRANSFER SYS-  
 13 TEM.—

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

16 “(A) prohibit the use (but not the transfer  
 17 in accordance with paragraph (3)) of any nitro-  
 18 gen oxide allowance before the calendar year for  
 19 which the allowance is allocated;

20 “(B) provide that unused nitrogen oxide  
 21 allowances may be carried forward and added  
 22 to nitrogen oxide allowances allocated for subse-  
 23 quent years; and

24 “(C) provide that unused nitrogen oxide al-  
 25 lowances may be transferred by—

1 “(i) the person to which the allow-  
2 ances are allocated; or

3 “(ii) any person to which the allow-  
4 ances are transferred.

5 “(2) USE BY PERSONS TO WHICH ALLOWANCES  
6 ARE TRANSFERRED.—Any person to which nitrogen  
7 oxide allowances are transferred under paragraph  
8 (1)(C)—

9 “(A) may use the nitrogen oxide allow-  
10 ances in the calendar year for which the nitro-  
11 gen oxide allowances were allocated, or in a  
12 subsequent calendar year, to demonstrate com-  
13 pliance with subsection (e)(1); or

14 “(B) may transfer the nitrogen oxide al-  
15 lowances to any other person for the purpose of  
16 demonstration of that compliance.

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

23 “(4) PERMIT REQUIREMENTS.—An allocation  
24 or transfer of nitrogen oxide allowances to an af-  
25 fected unit shall, after recording by the Adminis-

1 trator, be considered to be part of the federally en-  
2 forceable permit of the affected unit under this Act,  
3 without a requirement for any further review or revi-  
4 sion of the permit.

5 “(e) COMPLIANCE AND ENFORCEMENT.—

6 “(1) IN GENERAL.—For calendar year 2009  
7 and each calendar year thereafter for Zone 1 States,  
8 and for calendar year 2010 and each calendar year  
9 thereafter for Zone 2 States, the operator of each  
10 affected unit shall surrender to the Administrator a  
11 quantity of nitrogen oxide allowances that is equal  
12 to the total tons of nitrogen oxides emitted by the  
13 affected unit during the calendar year.

14 “(2) MONITORING SYSTEM.—The Administrator  
15 shall promulgate regulations requiring the accurate  
16 monitoring of the quantities of nitrogen oxides that  
17 are emitted from each affected unit.

18 “(3) REPORTING.—

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

“(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be authorized by a responsible official of the affected unit, who shall certify the accuracy of the report.

“(C) PUBLIC REPORTING.—The Administrator shall make available to the public, through 1 or more published reports and 1 or more forms of electronic media, data concerning the emissions of nitrogen oxides from each affected unit.

“(4) EXCESS EMISSIONS.—

“(A) IN GENERAL.—The owner or operator of an affected unit that emits nitrogen oxides in excess of the nitrogen oxide allowances that the owner or operator holds for use for the affected unit for the calendar year shall—

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

“(ii) offset the excess emissions by an equal quantity in the following calendar year or such other period as the Administrator shall prescribe.

“(B) DETERMINATION OF EXCESS EMISSIONS PENALTY.—The excess emissions penalty



1           for nitrogen oxides shall be equal to the product  
2           obtained by multiplying—

3                   “(i) the number of tons of nitrogen  
4                   oxides emitted in excess of the total quan-  
5                   tity of nitrogen oxide allowances held; and

6                   “(ii) 2 times the average price of a ni-  
7                   trogen oxides allowance for the Zone and  
8                   calendar year in which the excess emissions  
9                   occurred, as determined by the Adminis-  
10                  trator.

11          “(f) TREATMENT OF EXISTING PROGRAMS.—

12                  “(1) SEASONAL CAP AND TRADING PROGRAM.—

13          The provisions of the rule of the Administrator enti-  
14          tled the ‘Clean Air Interstate Rule’ (70 Fed. Reg.  
15          25,162) (May 12, 2005) providing for the establish-  
16          ment of a seasonal emissions cap and ozone trading  
17          program for oxides of nitrogen shall remain in full  
18          force and effect.

19                  “(2) ANNUAL CAP AND TRADING PROGRAM.—

20          The provisions of the rule referred to in paragraph  
21          (1) providing for the establishment of an annual  
22          emissions cap and trading program for oxides of ni-  
23          trogen shall terminate on the later of—

24                   “(A) the effective date of the regulations  
25                   promulgated under this section; and

1 “(B) January 1, 2009.

2 **“SEC. 704. MERCURY PROGRAM.**

3 “(a) DEFINITION OF INLET MERCURY.—In this sec-  
4 tion, the term ‘inlet mercury’ means the quantity of mer-  
5 cury found—

6 “(1) in the as-fired coal of an affected unit; or

7 “(2) for an affected unit using coal that is sub-  
8 jected to an advanced coal cleaning technology, in  
9 the as-mined coal of the affected unit.

10 “(b) ANNUAL LIMITATION FOR NEW UNITS.—An af-  
11 fected unit that commences operation during the 1-year  
12 period beginning on the date of enactment of this title  
13 shall be subject to the less stringent of the following emis-  
14 sions limitations on an annual calendar year basis with  
15 respect to inlet mercury:

16 “(1) 90 percent capture of inlet mercury.

17 “(2) An emission rate of 0.0060 lbs/GWh.

18 “(c) ANNUAL LIMITATION FOR EXISTING UNITS.—  
19 An affected unit in operation on the date of enactment  
20 of this title shall be subject to the following emissions limi-  
21 tations on an annual calendar year basis with respect to  
22 inlet mercury:

23 “(1) CALENDAR YEARS 2010 THROUGH 2014.—

24 For the period beginning January 1, 2010, and end-

1       ing December 31, 2014, the less stringent limitation  
2       of—

3               “(A) 60 percent capture of inlet mercury;  
4               and

5               “(B) an emission rate of 0.02 lbs/GWh.

6               “(2) CALENDAR YEAR 2015 AND THERE-  
7       AFTER.—Beginning January 1, 2015, the less strin-  
8       gent limitation of—

9               “(A) 90 percent capture of inlet mercury;  
10              and

11              “(B) an emission rate of 0.0060 lbs/GWh.

12       “(d) AVERAGING ACROSS UNITS.—An owner or oper-  
13   ator of an affected unit may demonstrate compliance with  
14   the annual limitations under subsections (b) and (c) by  
15   averaging emissions from all affected units at a single fa-  
16   cility in operation on the date of enactment of this title.

17       “(e) MONITORING SYSTEM.—The Administrator shall  
18   promulgate regulations requiring—

19              “(1) operation, reporting, and certification of  
20       continuous emissions monitoring systems to accu-  
21       rately measure the quantity of mercury that is emit-  
22       ted from each affected unit; and

23              “(2) verification and reporting of inlet mercury  
24       at each affected unit.

25       “(f) REPORTING.—

1           “(1) IN GENERAL.—Not less often than quar-  
 2           terly, the owner or operator of an affected unit shall  
 3           submit to the Administrator a report on the moni-  
 4           toring of emissions of inlet mercury carried out by  
 5           the owner or operator in accordance with the regula-  
 6           tions promulgated under subsection (e).

7           “(2) AUTHORIZATION.—Each report submitted  
 8           under paragraph (1) shall be authorized by a re-  
 9           sponsible official of the affected unit, who shall cer-  
 10          tify the accuracy of the report.

11          “(3) PUBLIC REPORTING.—The Administrator  
 12          shall make available to the public, through 1 or  
 13          more published reports and 1 or more forms of elec-  
 14          tronic media, data concerning the emission of inlet  
 15          mercury from each affected unit.

16          “(g) EXCESS EMISSIONS.—

17               “(1) IN GENERAL.—The owner or operator of  
 18               an affected unit that emits inlet mercury in excess  
 19               of the emission limitation described in subsection (b)  
 20               shall pay an excess emissions penalty determined  
 21               under paragraph (2).

22               “(2) DETERMINATION OF EXCESS EMISSIONS  
 23               PENALTY.—The excess emissions penalty for inlet  
 24               mercury shall be an amount equal to \$50,000 per  
 25               day for each pound of inlet mercury emitted in ex-

1       cess of the emission limitations for inlet mercury de-  
2       scribed in subsections (b) and (c).

3       “(h) PREVIOUSLY REQUIRED REDUCTIONS.—For  
4       calendar year 2015 and each calendar year thereafter, in  
5       evaluating the quantity of inlet mercury emitted from an  
6       affected unit and determining whether to impose a penalty  
7       under subsection (g), the Administrator shall—

8               “(1) take into consideration any reduction in  
9       inlet mercury emissions at the affected unit during  
10      the preceding calendar year pursuant to any other  
11      Federal regulation or any State regulation; and

12              “(2) adjust each applicable penalty accordingly.

13   **“SEC. 705. CARBON DIOXIDE ALLOWANCE TRADING PRO-**  
14       **GRAM.**

15       “(a) DEFINITIONS.—In this section:

16              “(1) ALLOWANCE.—The term ‘allowance’  
17      means—

18                      “(A) a carbon dioxide allowance;

19                      “(B) an offset allowance; or

20                      “(C) an early reduction allowance.

21              “(2) EARLY REDUCTION ALLOWANCE.—The  
22      term ‘early reduction allowance’ means a carbon di-  
23      oxide allowance issued under subsection (h) for a  
24      project in the United States to reduce emissions of  
25      greenhouse gases or to sequester greenhouse gases

1 that is carried out in calendar years 2000 through  
2 2010.

3 “(3) OFFSET ALLOWANCE.—The term ‘offset  
4 allowance’ means a carbon dioxide allowance issued  
5 under subsection (g) for a project to reduce emis-  
6 sions of greenhouse gases or to sequester greenhouse  
7 gases.

8 “(b) REGULATIONS.—

9 “(1) IN GENERAL.—Not later than January 1,  
10 2008, the Administrator shall promulgate regula-  
11 tions to establish an allowance trading program for  
12 covered units in the United States.

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

18 “(A) the allocation, issuance, and use of  
19 carbon dioxide allowances;

20 “(B) the issuance, certification, and use of  
21 offset allowances;

22 “(C) the issuance, certification, and use of  
23 early reduction allowances;

24 “(D) the transfer of allowances;

1                   “(E) the monitoring, tracking, and report-  
2                   ing of carbon dioxide emissions;

3                   “(F) the public availability of carbon diox-  
4                   ide emissions information;

5                   “(G) compliance and enforcement; and

6                   “(H) the reserve and allocation of carbon  
7                   dioxide allowances for new units and new re-  
8                   newable energy units.

9                   “(3) INTERACTION WITH DEPARTMENT OF AG-  
10                  RICULTURE.—

11                   “(A) IN GENERAL.—Except as provided in  
12                   subparagraph (B), the Administrator shall pro-  
13                   mulgate all regulations relating to offsets under  
14                   this title.

15                   “(B) OFFSETS.—The Administrator, in  
16                   consultation with the Secretary of Agriculture,  
17                   shall promulgate regulations relating to offsets  
18                   produced by agricultural sequestration prac-  
19                   tices.

20                   “(c) CARBON DIOXIDE TONNAGE LIMITATION.—The  
21                   annual tonnage limitation for emissions of carbon dioxide  
22                   from affected units in the United States shall be equal  
23                   to—

24                   “(1) for each of calendar years 2010 through  
25                   2014, the quantity of emissions projected to be emit-

1       ted from affected units in calendar year 2006, as de-  
2       termined by the Administrator based on certified  
3       and quality-assured continuous emissions monitoring  
4       data for carbon dioxide or based on data that the  
5       Administrator determines to be of similar reliability  
6       for units without continuous monitoring systems, re-  
7       ported to the Administrator by affected units in ac-  
8       cordance with this Act; and

9               “(2) for calendar year 2015 and each calendar  
10       year thereafter, the quantity of emissions emitted  
11       from affected units in calendar year 2001, as deter-  
12       mined by the Administrator based on certified and  
13       quality-assured continuous emissions monitoring  
14       data for carbon dioxide or based on data that the  
15       Administrator determines to be of similar reliability  
16       for units without continuous monitoring systems, re-  
17       ported to the Administrator by affected units in ac-  
18       cordance with this Act.

19       “(d) NEW UNIT RESERVE.—

20               “(1) ESTABLISHMENT.—For each calendar  
21       year, based on projections of electricity output from  
22       new units, the Administrator, in consultation with  
23       the Secretary of Energy, shall establish by regula-  
24       tion a reserve of carbon dioxide allowances to be al-  
25       located—



1 “(A) to new affected units for the calendar  
2 year; and

3 “(B) to the clean coal technology reserve  
4 under subsection (e).

5 “(2) LIMITATION.—The number of allowances  
6 allocated under paragraph (1) during a calendar  
7 year shall be not more than 7 percent of the total  
8 number of allowances allocated to affected units for  
9 the calendar year.

10 “(3) UNUSED ALLOWANCES.—For each cal-  
11 endar year, the Administrator shall reallocate, to all  
12 affected units, any unused carbon dioxide allowances  
13 from the new unit reserve established under para-  
14 graph (1) in the proportion that—

15 “(A) the number of allowances allocated to  
16 each affected unit for the calendar year; bears  
17 to

18 “(B) the number of allowances allocated to  
19 all affected units for the calendar year.

20 “(e) INCENTIVES FOR CLEAN COAL TECHNOLOGY.—

21 “(1) ESTABLISHMENT.—The Administrator  
22 shall establish by regulation a reserve of carbon di-  
23 oxide allowances to be set aside during a calendar  
24 year to encourage the deployment of clean coal tech-  
25 nologies.

1           “(2) DEFINING QUALIFYING ADVANCED CLEAN  
2 COAL TECHNOLOGIES.—

3           “(A) IN GENERAL.—Not later than July 1,  
4 2008, the Administrator, by regulation, shall  
5 establish criteria and standards to define the  
6 term ‘qualifying advanced clean coal tech-  
7 nologies’ with respect to electric power genera-  
8 tion.

9           “(B) REQUIREMENT.—In establishing cri-  
10 teria and standards under subparagraph (A),  
11 the Administrator shall ensure that the quali-  
12 fying advanced clean coal technologies represent  
13 an advance in available technology, taking into  
14 consideration—

15                   “(i) net thermal efficiency;

16                   “(ii) measures to capture and seques-  
17 ter carbon dioxide; and

18                   “(iii) output-based emission rates  
19 for—

20                           “(I) carbon dioxide;

21                           “(II) sulfur dioxide;

22                           “(III) oxides of nitrogen;

23                           “(IV) filterable and condensable  
24 particulate matter; and

25                           “(V) mercury.

1 “(C) REVIEW AND REVISION.—

2 “(i) IN GENERAL.—Not later than  
3 July 1, 2009, and each July 1 thereafter  
4 through July 1, 2014, the Administrator  
5 shall review and, if appropriate, revise the  
6 criteria and standards under subparagraph  
7 (A) based on technological advances during  
8 the preceding calendar year.

9 “(ii) NOTICE AND COMMENT NOT RE-  
10 QUIRED.—Subject to clause (iii), after the  
11 initial criteria and standards are estab-  
12 lished under subparagraph (A), no subse-  
13 quent review or revision under this sub-  
14 paragraph shall be subject to the notice  
15 and comment provisions of section 553 of  
16 title 5, United States Code.

17 “(iii) EFFECT.—Nothing in clause (ii)  
18 precludes the application of the notice and  
19 comment provisions of section 553 of title  
20 5, United States Code, as the Adminis-  
21 trator determines to be practicable.

22 “(3) TREATMENT OF CORRESPONDENCE.—The  
23 correspondence of the Office of Air Quality Planning  
24 and Standards addressing best available control  
25 technology requirements for proposed coal-fired

1 power plant projects and dated December 13,  
2 2005—

3 “(A) shall be considered to be inconsistent  
4 with section 169(3); and

5 “(B) shall be treated as void and of no ef-  
6 fect as of the date of issuance of the cor-  
7 respondence.

8 “(f) CARBON DIOXIDE ALLOWANCE ALLOCATION TO  
9 COVERED UNITS THAT ARE NOT NEW UNITS OR NEW  
10 RENEWABLE ENERGY UNITS.—

11 “(1) TIMING OF ALLOCATIONS.—The Adminis-  
12 trator shall allocate carbon dioxide allowances to  
13 covered units that are not new units or new renew-  
14 able energy units—

15 “(A) not later than December 31, 2007,  
16 for calendar year 2010; and

17 “(B) not later than December 31 of cal-  
18 endar year 2008 and each calendar year there-  
19 after, for the fourth calendar year that begins  
20 after that December 31.

21 “(2) ALLOCATIONS.—

22 “(A) IN GENERAL.—The Administrator  
23 shall allocate to each covered unit that is not a  
24 new unit or a new renewable energy unit, a

1 quantity of carbon dioxide allowances that is  
2 equal to the product obtained by multiplying—

3 “(i) the quantity of carbon dioxide al-  
4 lowances available for allocation under sub-  
5 paragraph (B); and

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

8 “(I) the annual average quantity  
9 of electricity generated by the unit  
10 during the most recent 3-calendar  
11 year period for which data are avail-  
12 able, updated each calendar year and  
13 measured in megawatt hours; and

14 “(II) the total of the average  
15 quantities described in subclause (I)  
16 with respect to all such units.

17 “(B) QUANTITY TO BE ALLOCATED.—For  
18 each calendar year, the quantity of carbon diox-  
19 ide allowances allocated under subparagraph  
20 (A) to covered units that are not new units or  
21 new renewable energy units shall be equal to  
22 the difference between—

23 “(i) the annual tonnage limitation for  
24 emissions of carbon dioxide from covered

1 units specified in section 702(d) for the  
2 calendar year; and

3 “(ii) the sum of—

4 “(I) the quantity of carbon diox-  
5 ide allowances placed in the new unit  
6 reserve established under subsection  
7 (d) for the calendar year; and

8 “(II) the quantity of carbon diox-  
9 ide allowances reserved to provide in-  
10 centives for advanced clean coal tech-  
11 nologies under subsection (e) for the  
12 calendar year.

13 “(g) OFFSET ALLOWANCES.—

14 “(1) IN GENERAL.—Not later than January 1,  
15 2008, the Administrator shall promulgate regula-  
16 tions that provide for the issuance, certification, and  
17 use of offset allowances for greenhouse gas reduction  
18 or sequestration projects carried out in the United  
19 States or any other country.

20 “(2) REQUIRED ELEMENTS.—Regulations pro-  
21 mulgated under paragraph (1) shall establish re-  
22 quirements for the issuance, certification, and use of  
23 offset allowances for greenhouse gas reduction or se-  
24 questration projects, including requirements—

1           “(A) that projects not cause or contribute  
2           to adverse effects on human health or the envi-  
3           ronment;

4           “(B) that projects result in greenhouse gas  
5           reductions that are real, surplus, enforceable,  
6           verifiable, permanent, and not used more than  
7           once, as determined by the Administrator;

8           “(C) for methodology for calculating the  
9           carbon dioxide equivalent reductions attrib-  
10          utable to projects;

11          “(D) for the monitoring, reporting, and  
12          verification of the greenhouse gas reductions  
13          from projects;

14          “(E) for accounting principles used to  
15          quantify the greenhouse gas reductions of  
16          projects that require—

17                 “(i) the consideration of all green-  
18                 house gas impacts of a project;

19                 “(ii) the consistent application of ac-  
20                 counting principles;

21                 “(iii) transparency;

22                 “(iv) to the maximum extent prac-  
23                 ticable, accuracy; and

1 “(v) the use of conservative assump-  
 2 tions in cases in which uncertainties re-  
 3 quire the use of assumptions; and

4 “(F) for conditions under which allowances  
 5 traded under any other United States or inter-  
 6 nationally recognized carbon dioxide reduction  
 7 program may be used.

8 “(3) STATE OFFSET ALLOWANCES.—In promul-  
 9 gating regulations under paragraph (1), the Admin-  
 10 istrator shall take into consideration offset allow-  
 11 ances issued by California or any other State pursu-  
 12 ant to the Regional Greenhouse Gas Initiative or a  
 13 similar regulatory program with a comparable offset  
 14 provision.

15 “(h) EARLY REDUCTION ALLOWANCES.—

16 “(1) IN GENERAL.—Not later than January 1,  
 17 2008, the Administrator shall promulgate regula-  
 18 tions that provide for the issuance, certification, and  
 19 use of early reduction allowances for greenhouse gas  
 20 reduction or sequestration projects carried out dur-  
 21 ing calendar years 2000 through 2010.

22 “(2) ELIGIBLE PROJECTS.—A greenhouse gas  
 23 reduction or sequestration project shall be eligible  
 24 for early reduction allowances if the project—

25 “(A) is carried out in the United States;



1           “(B) meets the regulations promulgated by  
2           the Administrator under paragraph (1) that the  
3           Administrator determines to be applicable to  
4           the project; and

5           “(C) was reported—

6                   “(i) under section 1605(b) of the En-  
7                   ergy Policy Act of 1992 (42 U.S.C.  
8                   13385(b)); or

9                   “(ii) to a State or regional greenhouse  
10                  gas registry.

11           “(3) LIMITATION.—The quantity of early re-  
12           duction allowances available for greenhouse gas re-  
13           duction or sequestration projects in calendar years  
14           2000 through 2010 shall not exceed 10 percent of  
15           the tonnage limitation for calendar year 2011 for  
16           emissions of carbon dioxide from affected units  
17           under subsection (c).

18           “(i) USE AND TRANSFER OF ALLOWANCES.—

19                   “(1) USE IN OTHER CARBON DIOXIDE ALLOW-  
20                   ANCE TRADING PROGRAMS.—Allowances may be  
21                   used in any other carbon dioxide allowance trading  
22                   program that is approved by the Administrator for  
23                   use of the allowances.

1           “(2) USE BEFORE APPLICABLE CALENDAR  
2 YEAR.—Allowances may not be used before the cal-  
3 endar year for which the allowance was allocated.

4           “(3) TRANSFER.—

5               “(A) IN GENERAL.—Notwithstanding para-  
6 graph (2), allowances may be transferred before  
7 the calendar year for which the allowances were  
8 allocated.

9               “(B) LIMITATION.—The transfer of an al-  
10 lowance shall not take effect until receipt and  
11 recording by the Administrator of a written cer-  
12 tification of the transfer, which is executed by  
13 an authorized official of the person making the  
14 transfer.

15           “(4) USE BY PERSONS TO WHICH CARBON DI-  
16 OXIDE ALLOWANCES ARE TRANSFERRED.—Any per-  
17 son to which carbon dioxide allowances are trans-  
18 ferred under paragraph (3)(A) may use the carbon  
19 dioxide allowances in the calendar year for which the  
20 carbon dioxide allowances were allocated, or in a  
21 subsequent calendar year, to demonstrate compli-  
22 ance with subsection (j)(1).

23           “(5) PERMIT REQUIREMENTS.—An allocation  
24 or transfer of allowances to an affected unit shall be  
25 considered to be part of the federally enforceable

1 permit of the affected unit under this Act, without  
 2 a requirement for further review or revision of the  
 3 permit.

4 “(j) COMPLIANCE AND ENFORCEMENT.—

5 “(1) IN GENERAL.—For calendar year 2011  
 6 and each calendar year thereafter, the owner of each  
 7 affected unit shall surrender to the Administrator a  
 8 quantity of allowances that is equal to the total tons  
 9 of carbon dioxide emitted by the affected unit during  
 10 the calendar year.

11 “(2) PENALTY.—The owner of an affected unit  
 12 that emits carbon dioxide in excess of the allowances  
 13 that the owner holds for use for the affected unit for  
 14 the calendar year shall pay an excess emissions pen-  
 15 alty equal to the product obtained by multiplying—

16 “(A) the number of tons of carbon dioxide  
 17 emitted in excess of the total quantity of allow-  
 18 ances held; and

19 “(B) \$100, adjusted for changes in the  
 20 Consumer Price Index for All-Urban Consumers  
 21 published by the Department of Labor.

22 “(k) ALLOWANCE NOT A PROPERTY RIGHT.—An al-  
 23 lowance—

24 “(1) is not a property right; and

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

3           “(1) NO JUDICIAL REVIEW.—An allocation or  
4       issuance of an allowance by the Administrator shall not  
5       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) AFFECTED UNIT; COVERED UNIT.—

13           The terms ‘affected unit’ and ‘covered unit’  
14           have the meanings given the terms in section  
15           701.

16           “(B) NEW SOURCE REVIEW PROGRAM.—

17           The term ‘new source review program’ means  
18           the program to carry out this part and part D.

19           “(2) PERFORMANCE STANDARDS.—

20           “(A) IN GENERAL.—Except as provided in  
21           subparagraph (B), beginning January 1, 2020,  
22           and on each January 1 thereafter, each affected  
23           unit that has been in operation 50 or more  
24           years as of that January 1 shall meet perform-  
25           ance standards of—

1 “(i) 2 lbs/MWh for sulfur dioxide; and

2 “(ii) 1 lbs/MWh for nitrogen oxides.

3 “(B) EXCEPTION.—

4 “(i) IN GENERAL.—Notwithstanding  
5 subparagraph (A), an affected unit that, as  
6 of January 1, 2020, is required to meet a  
7 more stringent performance standard than  
8 the applicable standard under subpara-  
9 graph (A) shall continue to meet the more  
10 stringent standard.

11 “(ii) MODIFICATION OF AFFECTED  
12 UNITS.—The requirements of this section  
13 shall not affect in any way any require-  
14 ment under section 111(a)(4), this part, or  
15 part D governing modifications of major  
16 stationary sources.

17 “(3) NO EFFECT ON OTHER REQUIREMENTS  
18 AND RETENTION OF STATE AUTHORITY.—Nothing in  
19 this subsection affects—

20 “(A) any State authority under section  
21 116; or

22 “(B) the obligation of any State or local  
23 government or any major emitting facility to  
24 comply with the requirements of this section.”.

1 **SEC. 5. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PRO-**  
 2 **GRAM.**

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

6 **“SEC. 417. REVISIONS TO SULFUR DIOXIDE ALLOWANCE**  
 7 **PROGRAM.**

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

11 “(b) REGULATIONS.—Not later than January 1,  
 12 2007, the Administrator shall promulgate such revisions  
 13 to the regulations to implement this title as the Adminis-  
 14 trator determines to be necessary to implement section  
 15 702(a).

16 “(c) NEW UNIT RESERVE.—

17 “(1) ESTABLISHMENT.—Subject to the annual  
 18 tonnage limitation for emissions of sulfur dioxide  
 19 from affected units specified in section 702(a), the  
 20 Administrator shall establish by regulation a reserve  
 21 of allowances to be set aside for use by new units.

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

1           “(A) not later than June 30, 2007, the  
2           quantity of allowances required to be held in re-  
3           serve for new units for each of calendar years  
4           2011 through 2015; and

5           “(B) not later than June 30 of each fifth  
6           calendar year thereafter, the quantity of allow-  
7           ances required to be held in reserve for new  
8           units for the following 5-calendar year period.

9           “(3) ALLOCATION.—

10           “(A) REGULATIONS.—The Administrator  
11           shall promulgate regulations to establish a  
12           methodology for allocating allowances to new  
13           units.

14           “(B) NO JUDICIAL REVIEW.—An allocation  
15           of allowances by the Administrator under this  
16           subsection shall not be subject to judicial re-  
17           view.

18           “(d) EXISTING UNITS.—

19           “(1) ALLOCATION.—

20           “(A) REGULATIONS.—Subject to the an-  
21           nual tonnage limitation for emissions of sulfur  
22           dioxide from affected units specified in section  
23           702(a), and subject to the reserve of allowances  
24           for new units under subsection (c), the Admin-  
25           istrator shall promulgate regulations to govern

1 the allocation of allowances to affected units  
 2 that are not new units.

3 “(B) REQUIRED ELEMENTS.—The regula-  
 4 tions shall provide for—

5 “(i) the allocation of allowances on a  
 6 fair and equitable basis between affected  
 7 units that received allowances under sec-  
 8 tion 405 and affected units that are not  
 9 new units and that did not receive allow-  
 10 ances under that section, using for both  
 11 categories of units the same or similar allo-  
 12 cation methodology as was used under sec-  
 13 tion 405; and

14 “(ii) the pro-rata distribution of allow-  
 15 ances to all units described in clause (i),  
 16 subject to the annual tonnage limitation  
 17 for emissions of sulfur dioxide from af-  
 18 fected units specified in section 702(a).

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

21 “(A) not later than December 31, 2007,  
 22 for calendar year 2011; and

23 “(B) not later than December 31 of cal-  
 24 endar year 2008 and each calendar year there-



1           after, for the fourth calendar year that begins  
2           after that December 31.

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

6           (b) DEFINITION OF ALLOWANCE.—Section 402 of  
7           the Clean Air Act (relating to acid deposition control) (42  
8           U.S.C. 7651a) is amended by striking paragraph (3) and  
9           inserting the following:

10           “(3) ALLOWANCE.—The term ‘allowance’  
11           means an authorization, allocated by the Adminis-  
12           trator to an affected unit under this title, to emit,  
13           during or after a specified calendar year, a quantity  
14           of sulfur dioxide determined by the Administrator  
15           and specified in the regulations promulgated under  
16           section 417(b).”.

17           (c) TECHNICAL AMENDMENTS.—

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

20                   (A) is amended by redesignating sections  
21                   401 through 403 as sections 801 through 803,  
22                   respectively; and

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

1           (2) The table of contents for title IV of the  
 2       Clean Air Act (relating to acid deposition control)  
 3       (42 U.S.C. prec. 7651) is amended by adding at the  
 4       end the following:

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

5   **SEC. 6. AIR QUALITY FORECASTS AND WARNINGS.**

6       (a) REQUIREMENT FOR FORECASTS AND WARN-  
 7       INGS.—The Secretary of Commerce, acting through the  
 8       Administrator of the National Oceanic and Atmospheric  
 9       Administration, in cooperation with the Administrator of  
 10      the Environmental Protection Agency, shall issue air qual-  
 11      ity forecasts and air quality warnings as part of the mis-  
 12      sion of the Department of Commerce.

13      (b) REGIONAL WARNINGS.—In carrying out sub-  
 14      section (a), the Secretary of Commerce shall establish  
 15      within the National Oceanic and Atmospheric Administra-  
 16      tion a program to provide region-oriented forecasts and  
 17      warnings regarding air quality for each of the following  
 18      regions of the United States:

19           (1) The Northeast, composed of Connecticut,  
 20      Maine, Massachusetts, New Hampshire, New York,  
 21      Rhode Island, and Vermont.

22           (2) The Mid-Atlantic, composed of Delaware,  
 23      the District of Columbia, Maryland, New Jersey,  
 24      Pennsylvania, Virginia, and West Virginia.

1           (3) The Southeast, composed of Alabama, Flor-  
2           ida, Georgia, North Carolina, and South Carolina.

3           (4) The South, composed of Arkansas, Lou-  
4           isiana, Mississippi, Oklahoma, Tennessee, and  
5           Texas.

6           (5) The Midwest, composed of Illinois, Indiana,  
7           Iowa, Kentucky, Michigan, Minnesota, Missouri,  
8           Ohio, and Wisconsin.

9           (6) The High Plains, composed of Kansas, Ne-  
10          braska, North Dakota, and South Dakota.

11          (7) The Northwest, composed of Idaho, Mon-  
12          tana, Oregon, Washington, and Wyoming.

13          (8) The Southwest, composed of Arizona, Cali-  
14          fornia, Colorado, New Mexico, Nevada, and Utah.

15          (9) Alaska.

16          (10) Hawaii.

17          (c) PRIORITY AREA.—In establishing the program  
18          described in subsection (a), the Secretary of Commerce  
19          and the Administrator shall identify and expand, to the  
20          maximum extent practicable, Federal air quality forecast  
21          and warning programs in effect as of the date of establish-  
22          ment of the program.

23          (d) AUTHORIZATION OF APPROPRIATIONS.—There  
24          are authorized to be appropriated such sums as are nec-  
25          essary to carry out this section.

1 **SEC. 7. RELATIONSHIP TO OTHER LAW.**

2 (a) REGULATION OF HAZARDOUS AIR POLLUT-  
 3 ANTS.—Section 112(n)(1) of the Clean Air Act (42 U.S.C.  
 4 7412(n)(1)) is amended by striking subparagraph (A) and  
 5 inserting the following:

6 “(A) REGULATIONS.—

7 “(i) IN GENERAL.—Not later than 18  
 8 months after the date of enactment of the  
 9 Clean Air Planning Act of 2006, the Ad-  
 10 ministrator shall promulgate regulations  
 11 under this section limiting the emission  
 12 from electric utility steam generating units  
 13 of hazardous air pollutants, other than  
 14 mercury, as the Administrator determines  
 15 to be appropriate and necessary in accord-  
 16 ance with the standards under subsection  
 17 (b)(2).

18 “(ii) REQUIREMENTS.—The regula-  
 19 tions under clause (i) shall—

20 “(I) require compliance with ap-  
 21 plicable standards as expeditiously as  
 22 practicable, but not later than 3 years  
 23 after the effective date of the regula-  
 24 tions; and

1 “(II) be in accordance with other  
2 applicable requirements under this  
3 section.

4 “(iii) EFFECTIVE DATE.—The regula-  
5 tions under clause (i) shall be effective on  
6 the date of promulgation of the regula-  
7 tions.”.

8 (b) NO EFFECT ON OTHER FEDERAL AND STATE  
9 REQUIREMENTS.—Except as otherwise specifically pro-  
10 vided in this Act, nothing in this Act or an amendment  
11 made by this Act—

12 (1) affects any permitting, monitoring, or en-  
13 forcement obligation of the Administrator of the En-  
14 vironmental Protection Agency under the Clean Air  
15 Act (42 U.S.C. 7401 et seq.) or any remedy pro-  
16 vided under that Act;

17 (2) affects any requirement applicable to, or li-  
18 ability of, an electric generating facility under that  
19 Act;

20 (3) requires a change in, affects, or limits any  
21 State law that regulates electric utility rates or  
22 charges, including prudence review under State law;  
23 or

24 (4) precludes a State or political subdivision of  
25 a State from adopting and enforcing any require-

1        ment for the control or abatement of air pollution,  
2        except that a State or political subdivision may not  
3        adopt or enforce any emission standard or limitation  
4        that is less stringent than the requirements imposed  
5        under that Act.

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