

107TH CONGRESS  
2D SESSION

# S. 3135

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

OCTOBER 17, 2002

Mr. CARPER (for himself, Mr. CHAFEE, Mr. BREAUX, and Mr. BAUCUS) 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 2002”.

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 2008 through  
14 2011, 4,500,000 tons;

15 “(2) for each of calendar years 2012 through  
16 2014, 3,500,000 tons; and

17 “(3) for calendar year 2015 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 2008 through  
23 2011, 1,870,000 tons; and

24 “(2) for calendar year 2012 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—

5 “(A) for each of calendar years 2008  
6 through 2011, 24 tons; and

7 “(B) for calendar year 2012 and each cal-  
8 endar year thereafter, a percentage determined  
9 under paragraph (2) of the total quantity of  
10 mercury present in delivered coal in calendar  
11 year 1999 (as determined by the Adminis-  
12 trator).

13 “(2) DETERMINATION OF PERCENTAGE.—The  
14 percentage referred to in paragraph (1)(B) shall  
15 be—

16 “(A) not less than 7 nor more than 21 per-  
17 cent; and

18 “(B) determined by the Administrator not  
19 later than January 1, 2004, based on the best  
20 scientific data available concerning—

21 “(i) the reduction in emissions of mer-  
22 cury necessary to protect public health and  
23 the environment; and

24 “(ii) the cost and performance of mer-  
25 cury control technology.

1           “(3) MAXIMUM EMISSIONS OF MERCURY FROM  
2 EACH AFFECTED UNIT.—

3           “(A) CALENDAR YEARS 2008 THROUGH  
4 2011.—For each of calendar years 2008 through  
5 2011, the emissions of mercury from each af-  
6 fected unit shall not exceed either, at the option  
7 of the operator of the affected unit—

8           “(i) 50 percent of the total quantity  
9 of mercury present in the coal delivered to  
10 the affected unit in the calendar year; or

11           “(ii) an annual output-based emission  
12 rate for mercury that shall be determined  
13 by the Administrator based on an input-  
14 based rate of 4 pounds per trillion British  
15 thermal units.

16           “(B) CALENDAR YEAR 2012 AND THERE-  
17 AFTER.—For calendar year 2012 and each cal-  
18 endar year thereafter, the emissions of mercury  
19 from each affected unit shall not exceed—

20           “(i) 30 percent of the total quantity  
21 of mercury present in the coal delivered to  
22 the affected unit in the calendar year; or

23           “(ii) an annual output-based emission  
24 rate for mercury that shall be determined  
25 by the Administrator.

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

5           “(1) for each of calendar years 2008 through  
6 2011, the quantity of emissions projected to be emit-  
7 ted from affected units in calendar year 2005, as de-  
8 termined by the Energy Information Administration  
9 of the Department of Energy based on the projec-  
10 tions of the Administration the publication of which  
11 most closely precedes the date of enactment of this  
12 title; and

13           “(2) for calendar year 2012 and each calendar  
14 year thereafter, the quantity of emissions emitted  
15 from affected units in calendar year 2001, as deter-  
16 mined by the Energy Information Administration of  
17 the Department of Energy.

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

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

23           “(2) DETERMINATION BY ADMINISTRATOR.—  
24 Not later than 15 years after the date of enactment  
25 of this title, the Administrator, after considering im-

1       pacts on human health, the environment, the econ-  
 2       omy, and costs, shall determine whether 1 or more  
 3       of the annual tonnage limitations should be revised.

4           “(3) DETERMINATION NOT TO REVISE.—If the  
 5       Administrator determines under paragraph (2) that  
 6       none of the annual tonnage limitations should be re-  
 7       vised, the Administrator shall publish in the Federal  
 8       Register a notice of the determination and the rea-  
 9       sons for the determination.

10          “(4) DETERMINATION TO REVISE.—

11           “(A) IN GENERAL.—If the Administrator  
 12       determines under paragraph (2) that 1 or more  
 13       of the annual tonnage limitations should be re-  
 14       vised, the Administrator shall publish in the  
 15       Federal Register—

16           “(i) not later than 15 years and 180  
 17       days after the date of enactment of this  
 18       title, proposed regulations implementing  
 19       the revisions; and

20           “(ii) not later than 16 years and 180  
 21       days after the date of enactment of this  
 22       title, final regulations implementing the re-  
 23       visions.

24           “(B) EFFECTIVE DATE OF REVISIONS.—

25       Any revisions to the annual tonnage limitations

1 under subparagraph (A) shall take effect on the  
 2 date that is 20 years after the date of enact-  
 3 ment of this title.

4 “(f) REDUCTION OF EMISSIONS FROM SPECIFIED  
 5 AFFECTED UNITS.—Subject to the requirements of this  
 6 Act concerning national ambient air quality standards es-  
 7 tablished under part A of title I, notwithstanding the an-  
 8 nual tonnage limitations established under this section,  
 9 the Federal Government or a State government may re-  
 10 quire that emissions from a specified affected unit be re-  
 11 duced to address a local air quality problem.

12 **“SEC. 703. NITROGEN OXIDE AND MERCURY ALLOWANCE**  
 13 **TRADING PROGRAMS.**

14 “(a) REGULATIONS.—

15 “(1) PROMULGATION.—

16 “(A) IN GENERAL.—Not later than Janu-  
 17 ary 1, 2004, the Administrator shall promul-  
 18 gate regulations to establish for affected units  
 19 in the United States—

20 “(i) a nitrogen oxide allowance trad-  
 21 ing program; and

22 “(ii) a mercury allowance trading pro-  
 23 gram.

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

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

“(i)(I) the generation, allocation, issuance, recording, tracking, transfer, and use of nitrogen oxide allowances and mercury 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 “(3) REPORT TO CONGRESS ON USE OF CAP-  
4 TURED OR RECOVERED MERCURY.—

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

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

12 “(ii) incorporated into products such  
13 as soil amendments and cement.

14 “(B) REQUIRED ELEMENTS.—The report  
15 shall—

16 “(i) review—

17 “(I) technologies, in use as of the  
18 date of the report, for incorporating  
19 mercury into products; and

20 “(II) potential technologies that  
21 might further minimize the release of  
22 mercury; and

23 “(ii)(I) address the adequacy of legal  
24 authorities and regulatory programs in ef-  
25 fect as of the date of the report to protect



1 public health and the environment from  
 2 mercury in products described in subpara-  
 3 graph (A)(ii); and

4 “(II) to the extent necessary, make  
 5 recommendations to improve those authori-  
 6 ties and programs.

7 “(b) NEW UNIT RESERVES.—

8 “(1) ESTABLISHMENT.—The Administrator  
 9 shall establish by regulation a reserve of nitrogen  
 10 oxide allowances and a reserve of mercury allow-  
 11 ances to be set aside for use by new 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—

16 “(A) not later than June 30, 2004, the  
 17 quantity of nitrogen oxide allowances and mer-  
 18 cury allowances required to be held in reserve  
 19 for new units for each of calendar years 2008  
 20 through 2012; and

21 “(B) not later than June 30 of each fifth  
 22 calendar year thereafter, the quantity of nitro-  
 23 gen oxide allowances and mercury allowances  
 24 required to be held in reserve for new units for  
 25 the following 5-calendar year period.

1       “(c) NITROGEN OXIDE AND MERCURY ALLOWANCE  
2 ALLOCATIONS.—

3               “(1) TIMING OF ALLOCATIONS.—The Adminis-  
4 trator shall allocate nitrogen oxide allowances and  
5 mercury allowances to affected units—

6                       “(A) not later than December 31, 2004,  
7 for calendar year 2008; and

8                       “(B) not later than December 31 of cal-  
9 endar year 2005 and each calendar year there-  
10 after, for the fourth calendar year that begins  
11 after that December 31.

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

14                       “(A) QUANTITY OF NITROGEN OXIDE AL-  
15 LOWANCES ALLOCATED.—The Administrator  
16 shall allocate to each affected unit that is not  
17 a new unit a quantity of nitrogen oxide allow-  
18 ances that is equal to the product obtained by  
19 multiplying—

20                               “(i) 1.5 pounds of nitrogen oxides per  
21 megawatt hour; and

22                               “(ii) the quotient obtained by divid-  
23 ing—

24                                       “(I) the average annual net  
25 quantity of electricity generated by

the affected unit during the most recent 3-calendar year period for which data are available, measured in megawatt hours; by

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

“(B) QUANTITY OF MERCURY ALLOWANCES ALLOCATED.—The Administrator shall allocate to each affected unit that is not a new unit a quantity of mercury allowances that is equal to the product obtained by multiplying—

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

“(ii) the average annual net quantity of electricity generated by the affected unit during the most recent 3-calendar year period for which data are available, measured in megawatt hours.

“(C) ADJUSTMENT OF ALLOCATIONS.—

“(i) IN GENERAL.—If, for any calendar year, the total quantity of allowances allocated under subparagraph (A) or (B) is not equal to the applicable quantity determined under clause (ii), the Administrator shall adjust the quantity of allowances allo-

1 cated to affected units that are not new  
 2 units on a pro-rata basis so that the quan-  
 3 tity is equal to the applicable quantity de-  
 4 termined under clause (ii).

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

8 “(I) the applicable annual ton-  
 9 nage limitation for emissions from af-  
 10 fected units specified in subsection (b)  
 11 or (c) of section 702 for the calendar  
 12 year; and

13 “(II) the quantity of nitrogen  
 14 oxide allowances or mercury allow-  
 15 ances, respectively, placed in the ap-  
 16 plicable new unit reserve established  
 17 under subsection (b) for the calendar  
 18 year.

19 “(3) ALLOCATION TO NEW UNITS.—

20 “(A) METHODOLOGY.—The Administrator  
 21 shall promulgate regulations to establish a  
 22 methodology for allocating nitrogen oxide allow-  
 23 ances and mercury allowances to new units.

24 “(B) QUANTITY OF NITROGEN OXIDE AL-  
 25 LOWANCES AND MERCURY ALLOWANCES ALLO-

1           CATED.—The Administrator shall determine the  
 2           quantity of nitrogen oxide allowances and mer-  
 3           cury allowances to be allocated to each new unit  
 4           based on the projected emissions from the new  
 5           unit.

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

8                   “(A) is not a property right; and

9                   “(B) may be terminated or limited by the  
 10           Administrator.

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

15           “(d) NITROGEN OXIDE ALLOWANCE AND MERCURY  
 16           ALLOWANCE TRANSFER SYSTEM.—

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

19                   “(A) prohibit the use (but not the transfer  
 20                   in accordance with paragraph (3)) of any nitro-  
 21                   gen oxide allowance or mercury allowance be-  
 22                   fore the calendar year for which the allowance  
 23                   is allocated;

24                   “(B) provide that unused nitrogen oxide  
 25                   allowances and mercury allowances may be car-

ried forward and added to nitrogen oxide allowances and mercury allowances, respectively, allocated for subsequent years; and

“(C) provide that unused nitrogen oxide allowances and mercury allowances may be transferred by—

“(i) the person to which the allowances are allocated; or

“(ii) any person to which the allowances are transferred.

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

“(A) may use the nitrogen oxide allowances or mercury allowances in the calendar year for which the nitrogen oxide allowances or mercury allowances were allocated, or in a subsequent calendar year, to demonstrate compliance with subsection (e)(1); or

“(B) may transfer the nitrogen oxide allowances or mercury allowances to any other person for the purpose of demonstration of that compliance.

1           “(3) CERTIFICATION OF TRANSFER.—A trans-  
2           fer of a nitrogen oxide allowance or mercury allow-  
3           ance shall not take effect until a written certification  
4           of the transfer, authorized by a responsible official  
5           of the person making the transfer, is received and  
6           recorded by the Administrator.

7           “(4) PERMIT REQUIREMENTS.—An allocation  
8           or transfer of nitrogen oxide allowances or mercury  
9           allowances to an affected unit shall, after recording  
10          by the Administrator, be considered to be part of the  
11          federally enforceable permit of the affected unit  
12          under this Act, without a requirement for any fur-  
13          ther review or revision of the permit.

14          “(e) COMPLIANCE AND ENFORCEMENT.—

15               “(1) IN GENERAL.—For calendar year 2008  
16               and each calendar year thereafter, the operator of  
17               each affected unit shall surrender to the Adminis-  
18               trator—

19                       “(A) a quantity of nitrogen oxide allow-  
20                       ances that is equal to the total tons of nitrogen  
21                       oxides emitted by the affected unit during the  
22                       calendar year; and

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

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

5           “(3) REPORTING.—

6                   “(A) IN GENERAL.—Not less often than  
7                   quarterly, the owner or operator of an affected  
8                   unit shall submit to the Administrator a report  
9                   on the monitoring of emissions of nitrogen ox-  
10                  ides and mercury carried out by the owner or  
11                  operator in accordance with the regulations pro-  
12                  mulgated 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 affected  
16                   unit, who shall certify the accuracy of the re-  
17                   port.

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

24           “(4) EXCESS EMISSIONS.—



1           “(A) IN GENERAL.—The owner or operator  
2 of an affected unit that emits nitrogen oxides or  
3 mercury in excess of the nitrogen oxide allow-  
4 ances or mercury allowances that the owner or  
5 operator holds for use for the affected unit for  
6 the calendar year shall—

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

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

13           “(B) DETERMINATION OF EXCESS EMIS-  
14 SIONS PENALTY.—

15           “(i) NITROGEN OXIDES.—The excess  
16 emissions penalty for nitrogen oxides shall  
17 be equal to the product obtained by multi-  
18 plying—

19           “(I) the number of tons of nitro-  
20 gen oxides emitted in excess of the  
21 total quantity of nitrogen oxide allow-  
22 ances held; and

23           “(II) \$5,000, adjusted (in ac-  
24 cordance with regulations promul-  
25 gated by the Administrator) for

1 changes in the Consumer Price Index  
 2 for All-Urban Consumers published by  
 3 the Department of Labor.

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

7 “(I) the number of pounds of  
 8 mercury emitted in excess of the total  
 9 quantity of mercury allowances held;  
 10 and

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

17 **“SEC. 704. CARBON DIOXIDE ALLOWANCE TRADING PRO-**  
 18 **GRAM.**

19 “(a) REGULATIONS.—

20 “(1) IN GENERAL.—Not later than January 1,  
 21 2004, the Administrator shall promulgate regula-  
 22 tions to establish a carbon dioxide allowance trading  
 23 program for covered units in the United States.

24 “(2) REQUIRED ELEMENTS.—Regulations pro-  
 25 mulgated under paragraph (1) shall establish re-

quirements for the carbon dioxide allowance trading program under this section, including requirements concerning—

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

“(ii) the public availability of all information concerning the activities described in clause (i) that is not confidential;

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

“(C) the monitoring and reporting of emissions under paragraphs (2) and (3) of subsection (f);

“(D) excess emission penalties under subsection (f)(4); and

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

“(b) NEW UNIT RESERVE.—

“(1) ESTABLISHMENT.—The Administrator shall establish by regulation a reserve of carbon dioxide allowances to be set aside for use by new units and new renewable energy units.

1           “(2) DETERMINATION OF QUANTITY.—The Ad-  
 2           ministrators, in consultation with the Secretary of  
 3           Energy, shall determine, based on projections of  
 4           electricity output for new units and new renewable  
 5           energy units—

6                   “(A) not later than June 30, 2004, the  
 7                   quantity of carbon dioxide allowances required  
 8                   to be held in reserve for new units and new re-  
 9                   newable energy units for each of calendar years  
 10                  2008 through 2012; and

11                   “(B) not later than June 30 of each fifth  
 12                   calendar year thereafter, the quantity of carbon  
 13                   dioxide allowances required to be held in reserve  
 14                   for new units and renewable energy units for  
 15                   the following 5-calendar year period.

16           “(c) CARBON DIOXIDE ALLOWANCE ALLOCATION.—

17                   “(1) TIMING OF ALLOCATIONS.—The Adminis-  
 18                   trator shall allocate carbon dioxide allowances to  
 19                   covered units—

20                   “(A) not later than December 31, 2004,  
 21                   for calendar year 2008; and

22                   “(B) not later than December 31 of cal-  
 23                   endar year 2005 and each calendar year there-  
 24                   after, for the fourth calendar year that begins  
 25                   after that December 31.

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

3           “(A) IN GENERAL.—The Administrator  
4 shall allocate to each affected unit that is not  
5 a new unit, to each nuclear generating unit  
6 with respect to incremental nuclear generation,  
7 and to each renewable energy unit that is not  
8 a new renewable energy unit, a quantity of car-  
9 bon dioxide allowances that is equal to the  
10 product obtained by multiplying—

11           “(i) the quantity of carbon dioxide al-  
12 lowances available for allocation under sub-  
13 paragraph (B); and

14           “(ii) the quotient obtained by divid-  
15 ing—

16           “(I) the average net quantity of  
17 electricity generated by the unit in a  
18 calendar year during the most recent  
19 3-calendar year period for which data  
20 are available, measured in megawatt  
21 hours; and

22           “(II) the total of the average net  
23 quantities described in subclause (I)  
24 with respect to all such units.

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

5                   “(i) the annual tonnage limitation for  
 6                   emissions of carbon dioxide from affected  
 7                   units specified in section 702(d) for the  
 8                   calendar year; and

9                   “(ii) the quantity of carbon dioxide al-  
 10                  lowances placed in the new unit reserve es-  
 11                  tablished under subsection (b) for the cal-  
 12                  endar year.

13           “(3) ALLOCATION TO NEW UNITS AND NEW RE-  
 14           NEWABLE ENERGY UNITS.—

15                  “(A) METHODOLOGY.—The Administrator  
 16                  shall promulgate regulations to establish a  
 17                  methodology for allocating carbon dioxide allow-  
 18                  ances to new units and new renewable energy  
 19                  units.

20                  “(B) QUANTITY OF CARBON DIOXIDE AL-  
 21                  LOWANCES ALLOCATED.—The Administrator  
 22                  shall determine the quantity of carbon dioxide  
 23                  allowances to be allocated to each new unit and  
 24                  each new renewable energy unit based on the

1           unit’s projected share of the total electric power  
2           generation attributable to covered units.

3           “(d) ISSUANCE AND USE OF ADDITIONAL CARBON  
4   DIOXIDE ALLOWANCES.—

5           “(1) IN GENERAL.—

6                   “(A) ALLOWANCES FOR PROJECTS CER-  
7           TIFIED BY INDEPENDENT REVIEW BOARD.—In  
8           addition to carbon dioxide allowances allocated  
9           under subsection (c), the Administrator shall  
10          make carbon dioxide allowances available to  
11          projects that are certified, in accordance with  
12          paragraph (3), by the independent review board  
13          established under paragraph (2) as eligible to  
14          receive the carbon dioxide allowances.

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

18                          “(i) allow covered units to comply  
19                          with subsection (f)(1) by purchasing and  
20                          using carbon dioxide allowances that are  
21                          traded under any other United States or  
22                          internationally recognized carbon dioxide  
23                          reduction program that is specified under  
24                          clause (ii);

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

“(iii) apply such conditions to the use of carbon dioxide allowances traded under programs specified under clause (ii) as are necessary to achieve the goals of this section.

“(2) INDEPENDENT REVIEW BOARD.—

“(A) IN GENERAL.—

“(i) ESTABLISHMENT.—The Administrator shall establish an independent review board to assist the Administrator in certifying projects as eligible for carbon dioxide allowances made available under paragraph (1)(A).

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

“(iii) REQUIREMENTS.—Subject to this subsection, requirements relating to the creation, composition, duties, responsibilities, and other aspects of the independent review board shall be included in



1 the regulations promulgated by the Admin-  
 2 istrator under subsection (a).

3 “(B) MEMBERSHIP.—The independent re-  
 4 view board shall be composed of 12 members,  
 5 of whom—

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

8 “(I) 1 member shall represent  
 9 the Environmental Protection Agency  
 10 (who shall serve as chairperson of the  
 11 independent review board);

12 “(II) 3 members shall represent  
 13 State governments;

14 “(III) 3 members shall represent  
 15 the electric generating sector; and

16 “(IV) 3 members shall represent  
 17 environmental organizations;

18 “(ii) 1 member shall be appointed by  
 19 the Secretary of Energy to represent the  
 20 Department of Energy; and

21 “(iii) 1 member shall be appointed by  
 22 the Secretary of Agriculture to represent  
 23 the Department of Agriculture.

24 “(C) STAFF AND OTHER RESOURCES.—  
 25 The Administrator shall provide such staff and

1 other resources to the independent review board  
2 as the Administrator determines to be nec-  
3 essary.

4 “(D) DEVELOPMENT OF GUIDELINES.—

5 “(i) IN GENERAL.—The independent  
6 review board shall develop guidelines for  
7 certifying projects in accordance with para-  
8 graph (3), including—

9 “(I) criteria that address the va-  
10 lidity of claims that projects result in  
11 the generation of carbon dioxide al-  
12 lowances;

13 “(II) guidelines for certifying in-  
14 cremental carbon sequestration in ac-  
15 cordance with clause (ii); and

16 “(III) guidelines for certifying  
17 geological sequestration of carbon di-  
18 oxide in accordance with clause (iii).

19 “(ii) GUIDELINES FOR CERTIFYING  
20 INCREMENTAL CARBON SEQUESTRATION.—

21 The guidelines for certifying incremental  
22 carbon sequestration in forests, agricul-  
23 tural soil, rangeland, or grassland shall in-  
24 clude development, reporting, monitoring,  
25 and verification guidelines, to be used in

1 quantifying net carbon sequestration from  
2 land use projects, that are based on—

3 “(I) measurement of increases in  
4 carbon storage in excess of the carbon  
5 storage that would have occurred in  
6 the absence of such a project;

7 “(II) comprehensive carbon ac-  
8 counting that—

9 “(aa) reflects net increases  
10 in carbon reservoirs; and

11 “(bb) takes into account any  
12 carbon emissions resulting from  
13 disturbance of carbon reservoirs  
14 in existence as of the date of  
15 commencement of the project;

16 “(III) adjustments to account  
17 for—

18 “(aa) emissions of carbon  
19 that may result at other locations  
20 as a result of the impact of the  
21 project on timber supplies; or

22 “(bb) potential displacement  
23 of carbon emissions to other land  
24 owned by the entity that carries  
25 out the project; and

1 “(IV) adjustments to reflect the  
2 expected carbon storage over various  
3 time periods, taking into account the  
4 likely duration of the storage of the  
5 carbon stored in a carbon reservoir.

6 “(iii) GUIDELINES FOR CERTIFYING  
7 GEOLOGICAL SEQUESTRATION OF CARBON  
8 DIOXIDE.—The guidelines for certifying  
9 geological sequestration of carbon dioxide  
10 produced by a covered unit shall—

11 “(I) provide that a project shall  
12 be certified only to the extent that the  
13 geological sequestration of carbon di-  
14 oxide produced by a covered unit is in  
15 addition to any carbon dioxide used by  
16 the covered unit in 2008 for enhanced  
17 oil recovery; and

18 “(II) include requirements for de-  
19 velopment, reporting, monitoring, and  
20 verification for quantifying net carbon  
21 sequestration—

22 “(aa) to ensure the perma-  
23 nence of the sequestration; and

24 “(bb) to ensure that the se-  
25 questration will not cause or con-

1                   tribute to significant adverse ef-  
2                   fects on the environment.

3                   “(iv) DEADLINES FOR DEVELOP-  
4                   MENT.—The guidelines under clause (i)  
5                   shall be developed—

6                   “(I) with respect to projects de-  
7                   scribed in paragraph (3)(A), not later  
8                   than January 1, 2004; and

9                   “(II) with respect to projects de-  
10                  scribed in paragraph (3)(B), not later  
11                  than January 1, 2005.

12                  “(v) UPDATING OF GUIDELINES.—  
13                  The independent review board shall peri-  
14                  odically update the guidelines as the inde-  
15                  pendent review board determines to be ap-  
16                  propriate.

17                  “(E) CERTIFICATION OF PROJECTS.—

18                  “(i) IN GENERAL.—Subject to clause  
19                  (ii), subparagraph (A)(ii), and paragraph  
20                  (3), the independent review board shall  
21                  certify projects as eligible for additional  
22                  carbon dioxide allowances.

23                  “(ii) LIMITATION.—The independent  
24                  review board shall not certify a project  
25                  under this subsection if the carbon dioxide

1 emission reductions achieved by the project  
 2 will be used to satisfy any requirement im-  
 3 posed on any foreign country or any indus-  
 4 trial sector to reduce the quantity of green-  
 5 house gases emitted by the foreign country  
 6 or industrial sector.

7 “(3) PROJECTS ELIGIBLE FOR ADDITIONAL  
 8 CARBON DIOXIDE ALLOWANCES.—

9 “(A) PROJECTS CARRIED OUT IN CAL-  
 10 ENDAR YEARS 1990 THROUGH 2007.—

11 “(i) IN GENERAL.—The independent  
 12 review board may certify as eligible for  
 13 carbon dioxide allowances a project that—

14 “(I) is carried out on or after  
 15 January 1, 1990, and before January  
 16 1, 2008; and

17 “(II) consists of—

18 “(aa) a carbon sequestration  
 19 project carried out in the United  
 20 States or a foreign country;

21 “(bb) a project reported  
 22 under section 1605(b) of the En-  
 23 ergy Policy Act of 1992 (42  
 24 U.S.C. 13385(b)); or

1                   “(cc) any other project to  
 2                   reduce emissions of greenhouse  
 3                   gases that is carried out in the  
 4                   United States or a foreign coun-  
 5                   try.

6                   “(ii) MAXIMUM QUANTITY OF ADDI-  
 7                   TIONAL CARBON DIOXIDE ALLOWANCES.—  
 8                   The Administrator may make available to  
 9                   projects certified under clause (i) a quan-  
 10                  tity of allowances that is not greater than  
 11                  10 percent of the tonnage limitation for  
 12                  calendar year 2008 for emissions of carbon  
 13                  dioxide from affected units specified in sec-  
 14                  tion 702(d)(1).

15                  “(iii) USE OF ALLOWANCES.—Allow-  
 16                  ances made available under clause (ii) may  
 17                  be used to comply with subsection (f)(1) in  
 18                  calendar year 2008 or any calendar year  
 19                  thereafter.

20                  “(B) PROJECTS CARRIED OUT IN CAL-  
 21                  ENDAR YEAR 2008 AND THEREAFTER.—The  
 22                  independent review board may certify as eligible  
 23                  for carbon dioxide allowances a project that—

24                         “(i) is carried out on or after January  
 25                         1, 2008; and

1 “(ii) consists of—

2 “(I) a carbon sequestration  
3 project carried out in the United  
4 States or a foreign country; or

5 “(II) a project to reduce the  
6 greenhouse gas emissions (on a car-  
7 bon dioxide equivalency basis deter-  
8 mined by the independent review  
9 board) of a source of greenhouse  
10 gases that is not an affected unit.

11 “(e) CARBON DIOXIDE ALLOWANCE TRANSFER SYS-  
12 TEM.—

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

15 “(A) prohibit the use (but not the transfer  
16 in accordance with paragraph (3)) of any car-  
17 bon dioxide allowance before the calendar year  
18 for which the carbon dioxide allowance is allo-  
19 cated;

20 “(B) provide that unused carbon dioxide  
21 allowances may be carried forward and added  
22 to carbon dioxide allowances allocated for sub-  
23 sequent years;

24 “(C) provide that unused carbon dioxide  
25 allowances may be transferred by—



1 “(i) the person to which the carbon  
2 dioxide allowances are allocated; or

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

5 “(D) provide that carbon dioxide allow-  
6 ances allocated and transferred under this sec-  
7 tion may be transferred into any other market-  
8 based carbon dioxide emission trading program  
9 that is—

10 “(i) approved by the President; and

11 “(ii) implemented in accordance with  
12 regulations developed by the Administrator  
13 or the head of any other Federal agency.

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

18 “(A) may use the carbon dioxide allow-  
19 ances in the calendar year for which the carbon  
20 dioxide allowances were allocated, or in a subse-  
21 quent calendar year, to demonstrate compliance  
22 with subsection (f)(1); or

23 “(B) may transfer the carbon dioxide al-  
24 lowances to any other person for the purpose of  
25 demonstration of that compliance.

1           “(3) CERTIFICATION OF TRANSFER.—A trans-  
 2       fer of a carbon dioxide allowance shall not take ef-  
 3       fect until a written certification of the transfer, au-  
 4       thorized by a responsible official of the person mak-  
 5       ing the transfer, is received and recorded by the Ad-  
 6       ministrator.

7           “(4) PERMIT REQUIREMENTS.—An allocation  
 8       or transfer of carbon dioxide allowances to a covered  
 9       unit, or for a project carried out on behalf of a cov-  
 10      ered unit, under subsection (c) or (d) shall, after re-  
 11      cording by the Administrator, be considered to be  
 12      part of the federally enforceable permit of the cov-  
 13      ered unit under this Act, without a requirement for  
 14      any further review or revision of the permit.

15       “(f) COMPLIANCE AND ENFORCEMENT.—

16           “(1) IN GENERAL.—For calendar year 2008  
 17      and each calendar year thereafter—

18           “(A) the operator of each affected unit and  
 19       each renewable energy unit shall surrender to  
 20       the Administrator a quantity of carbon dioxide  
 21       allowances that is equal to the total tons of car-  
 22       bon dioxide emitted by the affected unit or re-  
 23       newable energy unit during the calendar year;  
 24       and

1           “(B) the operator of each nuclear gener-  
2           ating unit that has incremental nuclear genera-  
3           tion shall surrender to the Administrator a  
4           quantity of carbon dioxide allowances that is  
5           equal to the total tons of carbon dioxide emitted  
6           by the nuclear generating unit during the cal-  
7           endar year from incremental nuclear genera-  
8           tion.

9           “(2) MONITORING SYSTEM.—The Administrator  
10          shall promulgate regulations requiring the accurate  
11          monitoring of the quantity of carbon dioxide that is  
12          emitted at each covered unit.

13          “(3) REPORTING.—

14                 “(A) IN GENERAL.—Not less often than  
15                 quarterly, the owner or operator of a covered  
16                 unit, or a person that carries out a project cer-  
17                 tified under subsection (d) on behalf of a cov-  
18                 ered unit, shall submit to the Administrator a  
19                 report on the monitoring of carbon dioxide  
20                 emissions carried out at the covered unit in ac-  
21                 cordance with the regulations promulgated  
22                 under paragraph (2).

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

1            ized by a responsible official of the covered unit,  
 2            who shall certify the accuracy of the report.

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

9            “(4) EXCESS EMISSIONS.—

10           “(A) IN GENERAL.—The owner or operator  
 11           of a covered unit that emits carbon dioxide in  
 12           excess of the carbon dioxide allowances that the  
 13           owner or operator holds for use for the covered  
 14           unit for the calendar year shall—

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

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

21           “(B) DETERMINATION OF EXCESS EMIS-  
 22           SIONS PENALTY.—The excess emissions penalty  
 23           shall be equal to the product obtained by multi-  
 24           plying—

1 “(i) the number of tons of carbon di-  
 2 oxide emitted in excess of the total quan-  
 3 tity of carbon dioxide allowances held; and

4 “(ii) \$100, adjusted (in accordance  
 5 with regulations promulgated by the Ad-  
 6 ministrator) for changes in the Consumer  
 7 Price Index for All-Urban Consumers pub-  
 8 lished by the Department of Labor.

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

11 “(1) is not a property right; and

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

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

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

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

20 “(f) REVISIONS TO NEW SOURCE REVIEW PRO-  
 21 GRAM.—

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

23 “(A) COVERED UNIT.—The term ‘covered  
 24 unit’ has the meaning given the term in section  
 25 701.

1           “(B) NEW SOURCE REVIEW PROGRAM.—

2           The term ‘new source review program’ means  
3           the program to carry out section 111 and this  
4           part.

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

8           “(3) APPLICABILITY CRITERIA.—The regula-  
9           tions shall revise the applicability criteria under the  
10          new source review program for covered units so that,  
11          beginning January 1, 2008, a physical change or a  
12          change in the method of operation at a covered unit  
13          shall be subject to the regulations under the new  
14          source review program and subject to approval by  
15          the Administrator only if—

16               “(A)(i) the change involves the replace-  
17               ment of 1 or more components of the covered  
18               unit; and

19               “(ii) the amount of the fixed capital costs  
20               of the replacement exceeds 50 percent of the  
21               amount of the fixed capital costs of construc-  
22               tion of a comparable new covered unit; or

23               “(B) the change results in any increase in  
24               the rate of emissions from the covered unit of  
25               air pollutants regulated under the new source

1 review program (measured in pounds per mega-  
2 watt hour).

3 “(4) 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, 2008,  
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—

15 “(A) is determined by the Administrator;

16 but

17 “(B) does not exceed twice the amount of  
18 the cost guideline for best available control  
19 technology established under subsection (a)(4).

20 “(5) EMISSION OFFSETS.—A new source within  
21 the electric generating sector that locates in a non-  
22 attainment area after December 31, 2007, shall not  
23 be required to obtain offsets for emissions of air pol-  
24 lutants.

1           “(6) NO EFFECT ON OTHER REQUIREMENTS.—  
 2       Nothing in this subsection affects the obligation of  
 3       any State or local government to comply with the re-  
 4       quirements established under this section con-  
 5       cerning—

6           “(A) national ambient air quality stand-  
 7       ards;

8           “(B) maximum allowable air pollutant in-  
 9       creases or maximum allowable air pollutant  
 10      concentrations; or

11          “(C) protection of visibility and other air  
 12      quality-related values in areas designated as  
 13      class I areas under part C of title I.”.

14   **SEC. 5. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PRO-**  
 15           **GRAM.**

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

19   **“SEC. 417. REVISIONS TO SULFUR DIOXIDE ALLOWANCE**  
 20           **PROGRAM.**

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

24      “(b) REGULATIONS.—Not later than January 1,  
 25      2004, the Administrator shall promulgate such revisions



1 to the regulations to implement this title as the Adminis-  
 2 trator determines to be necessary to implement section  
 3 702(a).

4 “(c) NEW UNIT RESERVE.—

5 “(1) ESTABLISHMENT.—Subject to the annual  
 6 tonnage limitation for emissions of sulfur dioxide  
 7 from affected units specified in section 702(a), the  
 8 Administrator shall establish by regulation a reserve  
 9 of allowances to be set aside for use by new units.

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

14 “(A) not later than June 30, 2004, the  
 15 quantity of allowances required to be held in re-  
 16 serve for new units for each of calendar years  
 17 2008 through 2012; and

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

22 “(3) ALLOCATION.—

23 “(A) REGULATIONS.—The Administrator  
 24 shall promulgate regulations to establish a

1 methodology for allocating allowances to new  
2 units.

3 “(B) NO JUDICIAL REVIEW.—An allocation  
4 of allowances by the Administrator under this  
5 subsection shall not be subject to judicial re-  
6 view.

7 “(d) EXISTING UNITS.—

8 “(1) ALLOCATION.—

9 “(A) REGULATIONS.—Subject to the an-  
10 nual tonnage limitation for emissions of sulfur  
11 dioxide from affected units specified in section  
12 702(a), and subject to the reserve of allowances  
13 for new units under subsection (c), the Admin-  
14 istrator shall promulgate regulations to govern  
15 the allocation of allowances to affected units  
16 that are not new units.

17 “(B) REQUIRED ELEMENTS.—The regula-  
18 tions shall provide for—

19 “(i) the allocation of allowances on a  
20 fair and equitable basis between affected  
21 units that received allowances under sec-  
22 tion 405 and affected units that are not  
23 new units and that did not receive allow-  
24 ances under that section, using for both  
25 categories of units the same or similar allo-

1 cation methodology as was used under sec-  
 2 tion 405; and

3 “(ii) the pro-rata distribution of allow-  
 4 ances to all units described in clause (i),  
 5 subject to the annual tonnage limitation  
 6 for emissions of sulfur dioxide from af-  
 7 fected units specified in section 702(a).

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

10 “(A) not later than December 31, 2004,  
 11 for calendar year 2008; and

12 “(B) not later than December 31 of cal-  
 13 endar year 2005 and each calendar year there-  
 14 after, for the fourth calendar year that begins  
 15 after that December 31.

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

19 “(e) WESTERN REGIONAL AIR PARTNERSHIP.—

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

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

1 “(B) COVERED YEAR.—The term ‘covered  
2 year’ means—

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

11 “(bb) not earlier than calendar year  
12 2016; or

13 “(II) if the Administrator does not  
14 make the determination described in sub-  
15 clause (I)(aa)—

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

22 “(bb) not earlier than calendar  
23 year 2021; and

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

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

7           “(3) ALLOCATION OF ALLOWANCES.—

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

11                           “(i) a methodology for allocating al-  
 12                           lowances to affected units in covered  
 13                           States under this subsection; and

14                           “(ii) the timing of the allocations.

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

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

23                   “(3) ALLOWANCE.—The term ‘allowance’  
 24                   means an authorization, allocated by the Adminis-  
 25                   trator to an affected unit under this title, to emit,

1 during or after a specified calendar year, a quantity  
 2 of sulfur dioxide determined by the Administrator  
 3 and specified in the regulations promulgated under  
 4 section 417(b).”.

5 (c) TECHNICAL AMENDMENTS.—

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

8 (A) is amended by redesignating sections  
 9 401 through 403 as sections 801 through 803,  
 10 respectively; and

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

13 (2) The table of contents for title IV of the  
 14 Clean Air Act (relating to acid deposition control)  
 15 (42 U.S.C. prec. 7651) is amended by adding at the  
 16 end the following:

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

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

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

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

23 “(7) MERCURY EMITTED FROM CERTAIN AF-  
 24 FECTED UNITS.—Not later than 8 years after the  
 25 date of enactment of this paragraph, the Adminis-

1 trator shall carry out the duties of the Administrator  
 2 under this subsection with respect to mercury emit-  
 3 ted from affected units (as defined in section 701).”;  
 4 and

5 (2) in subsection (n)(1)(A)—

6 (A) by striking “(A) The Administrator”  
 7 and inserting the following:

8 “(A) STUDY, REPORT, AND REGULA-  
 9 TIONS.—

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

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

14 “(ii) REGULATIONS.—

15 “(I) IN GENERAL.—The Admin-  
 16 istrator”; and

17 (C) in clause (ii) (as designated by sub-  
 18 paragraph (B)), by adding at the end the fol-  
 19 lowing:

20 “(II) EXEMPTION FOR CERTAIN  
 21 AFFECTED UNITS RELATING TO MER-  
 22 CURY.—An affected unit (as defined  
 23 in section 701) that would otherwise  
 24 be subject to mercury emission stand-  
 25 ards under subclause (I) shall not be

1                   subject to mercury emission standards  
 2                   under subclause (I) or subsection  
 3                   (c).”.

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

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

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

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

14                           “(A) beginning on the date of enactment of  
 15                           this paragraph; and

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

18           (c) NO EFFECT ON OTHER FEDERAL AND STATE  
 19   REQUIREMENTS.—Except as otherwise specifically pro-  
 20   vided in this Act, nothing in this Act or an amendment  
 21   made by this Act—

22                   (1) affects any permitting, monitoring, or en-  
 23                   forcement obligation of the Administrator of the En-  
 24                   vironmental Protection Agency under the Clean Air



1 Act (42 U.S.C. 7401 et seq.) or any remedy pro-  
2 vided under that Act;

3 (2) affects any requirement applicable to, or li-  
4 ability of, an electric generating facility under that  
5 Act;

6 (3) requires a change in, affects, or limits any  
7 State law that regulates electric utility rates or  
8 charges, including prudence review under State law;  
9 or

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

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