I

109TH CONGRESS
1ST SESSION

H. R. 1873

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2005

Mr. BASS (for himself, Mr. DAVIS of Florida, Mr. COOPER, and Mr. BRADLEY of New Hampshire) introduced the following bill; which was referred to the Committee on Energy and Commerce

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clean Air Planning Act of 2005''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) fossil fuel-fired electric generating facilities, consisting of facilities fueled by coal, fuel oil, and natural gas, produce nearly ⅔ of the electricity generated in the United States;

(2) fossil fuel-fired electric generating facilities produce approximately ⅔ of the total sulfur dioxide emissions, ⅓ of the total nitrogen oxides emissions, ⅓ of the total carbon dioxide emissions, and ⅓ of the total mercury emissions, in the United States;

(3)(A) many electric generating facilities have been exempt from the emission limitations applicable to new units based on the expectation that over time the units would be retired or updated with new pollution control equipment; but

(B) many of the exempted units continue to operate and emit pollutants at relatively high rates;

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

(5) the electric generating industry is being restructured with the objective of providing lower electricity rates and higher quality service to consumers;

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

(7) the ability of owners of electric generating facilities to effectively plan for the future is impeded by the uncertainties surrounding future environmental regulatory requirements that are imposed inefficiently on a piecemeal basis.

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

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

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

(3) to encourage the development and use of renewable energy;

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

(5) to ensure fair competition among participants in the competitive market in electricity that

will result from fully restructuring the electric generating industry;

(6) to provide a period of environmental regulatory stability for owners and operators of electric generating facilities so as to promote improved management of existing assets and new capital investments; and

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

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

The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"TITLE VII—INTEGRATED AIR QUALITY PLANNING FOR THE ELECTRIC GENERATING SECTOR

"SEC. 701. DEFINITIONS.

"In this title:

"(1) AFFECTED UNIT.—

"(A) MERCURY.—The term 'affected unit', with respect to mercury, means a coal-fired

electric generating facility (including a cogenerating facility) that—

"(i) has a nameplate capacity greater than 25 megawatts; and

"(ii) generates electricity for sale.

"(B) NITROGEN OXIDES AND CARBON DIOXIDE.—The term 'affected unit', with respect to nitrogen oxides and carbon dioxide, means a fossil fuel-fired electric generating facility (including a cogenerating facility) that—

"(i) has a nameplate capacity greater than 25 megawatts; and

"(ii) generates electricity for sale.

"(C) SULFUR DIOXIDE.—The term 'affected unit', with respect to sulfur dioxide, has the meaning given the term in section 402.

"(2) CARBON DIOXIDE ALLOWANCE.—The term 'carbon dioxide allowance' means an authorization allocated by the Administrator under this title to emit 1 ton of carbon dioxide during or after a specified calendar year.

"(3) COVERED UNIT.—The term 'covered unit' means—

"(A) an affected unit;

"(B) a nuclear generating unit with respect to incremental nuclear generation; and

"(C) a renewable energy unit.

"(4) GREENHOUSE GAS.—The term 'greenhouse gas' means—

"(A) carbon dioxide;

"(B) methane;

"(C) nitrous oxide;

"(D) hydrofluorocarbons;

"(E) perfluorocarbons; and

"(F) sulfur hexafluoride.

"(5) INCREMENTAL NUCLEAR GENERATION.—The term 'incremental nuclear generation' means the difference between—

"(A) the quantity of electricity generated by a nuclear generating unit in a calendar year; and

"(B) the quantity of electricity generated by the nuclear generating unit in calendar year 1990;

as determined by the Administrator and measured in megawatt hours.

"(6) MERCURY ALLOWANCE.—The term 'mercury allowance' means an authorization allocated by

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

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

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

''(A) sulfur dioxide allowances under section 417(b);

''(B) nitrogen oxide allowances or mercury allowances under section 703(c)(2); or

''(C) carbon dioxide allowances under section 704(c)(2).

''(9) NITROGEN OXIDE ALLOWANCE.—The term 'nitrogen oxide allowance' means an authorization allocated by the Administrator under this title to emit 1 ton of nitrogen oxides during or after a specified calendar year.

''(10) NUCLEAR GENERATING UNIT.—The term 'nuclear generating unit' means an electric generating facility that—

''(A) uses nuclear energy to supply electricity to the electric power grid; and

''(B) commenced operation in calendar year 1990 or earlier.

''(11) RENEWABLE ENERGY.—The term 'renewable energy' means electricity generated from—

''(A) wind;

''(B) organic waste (excluding incinerated municipal solid waste);

''(C) biomass (including anaerobic digestion from farm systems and landfill gas recovery);

''(D) fuel cells; or

''(E) a hydroelectric, geothermal, solar thermal, photovoltaic, or other nonfossil fuel, nonnuclear source.

''(12) RENEWABLE ENERGY UNIT.—The term 'renewable energy unit' means an electric generating facility that uses exclusively renewable energy to supply electricity to the electric power grid.

''(13) SEQUESTRATION.—The term 'sequestration' means the action of sequestering carbon by—

''(A) enhancing a natural carbon sink (such as through afforestation); or

''(B) (i) capturing the carbon dioxide emitted from a fossil fuel-based energy system; and

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

''(II) converting the carbon to a benign solid material through a biological or chemical process.

''(14) SULFUR DIOXIDE ALLOWANCE.—The term 'sulfur dioxide allowance' has the meaning given the term 'allowance' in section 402.

"SEC. 702. NATIONAL POLLUTANT TONNAGE LIMITATIONS.

''(a) SULFUR DIOXIDE.—The annual tonnage limitation for emissions of sulfur dioxide from affected units in the United States shall be equal to—

''(1) for each of calendar years 2010 through 2013, 4,500,000 tons;

''(2) for each of calendar years 2014 through 2016, 3,500,000 tons; and

''(3) for calendar year 2017 and each calendar year thereafter, 2,250,000 tons.

''(b) NITROGEN OXIDES.—The annual tonnage limitation for emissions of nitrogen oxides from affected units in the United States shall be equal to—

''(1) for each of calendar years 2009 through 2014, 1,870,000 tons; and

''(2) for calendar year 2015 and each calendar year thereafter, 1,700,000 tons.

''(c) MERCURY.—

''(1) IN GENERAL.—The annual tonnage limitation for emissions of mercury from affected units in the United States shall be equal to the following:

''(A) For each of calendar years 2010 through 2014, 24 tons.

''(B) For calendar year 2015 and each calendar year thereafter, 10 tons.

''(2) MAXIMUM EMISSIONS OF MERCURY FROM EACH AFFECTED UNIT.—

''(A) CALENDAR YEARS 2010 THROUGH 2014.—For each of calendar years 2010 through 2014, the emissions of mercury from each affected unit shall not exceed either, at the option of the operator of the affected unit—

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

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

''(B) CALENDAR YEAR 2015 AND THEREAFTER.—For calendar year 2015 and each cal-

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

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

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

"(d) CARBON DIOXIDE.—Subject to section 704(d), the annual tonnage limitation for emissions of carbon dioxide from covered units in the United States shall be equal to—

"(1) for each of calendar years 2010 through 2014, the quantity of emissions project to be emitted from affected units in calendar year 2006, as determined by the Energy Information Administration of the Department of Energy based on the projections of the Administration the publication of which most closely precedes the date of enactment of this title; and

"(2) for calendar year 2015 and each calendar year thereafter, the quantity of emissions emitted from affected units in calendar year 2001, as determined by the Energy Information Administration of the Department of Energy.

''(e) REVIEW OF ANNUAL TONNAGE LIMITATIONS.—

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

''(2) DETERMINATION BY ADMINISTRATOR.—Not later than 15 years after the date of enactment of this title, the Administrator, after considering impacts on human health, the environment, the economy, and costs, shall determine whether 1 or more of the annual tonnage limitations should be revised.

''(3) DETERMINATION NOT TO REVISE.—If the Administrator determines under paragraph (2) that none of the annual tonnage limitations should be revised, the Administrator shall publish in the Federal Register a notice of the determination and the reasons for the determination.

''(4) DETERMINATION TO REVISE.—

''(A) IN GENERAL.—If the Administrator determines under paragraph (2) that 1 or more of the annual tonnage limitations should be revised, the Administrator shall publish in the Federal Register—

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

title, proposed regulations implementing the revisions; and

"(ii) not later than 16 years and 180 days after the date of enactment of this title, final regulations implementing the revisions.

"(B) EFFECTIVE DATE OF REVISIONS.—Any revisions to the annual tonnage limitations under subparagraph (A) shall take effect on the date that is 20 years after the date of enactment of this title.

"(f) REDUCTION OF EMISSIONS FROM SPECIFIED AFFECTED UNITS.—Subject to the requirements of this Act concerning national ambient air quality standards established under part A of title I, notwithstanding the annual tonnage limitations established under this section, the Federal Government or a State government may require that emissions from a specified affected unit be reduced to address a local air quality problem.

"SEC. 703. NITROGEN OXIDE AND MERCURY ALLOWANCE TRADING PROGRAMS.

"(a) REGULATIONS.—

"(1) PROMULGATION.—

"(A) IN GENERAL.—Not later than 180 days after enactment of this section, the Ad-

ministrator shall promulgate regulations to establish for affected units in the United States—

"(i) a nitrogen oxide allowance trading program; and

"(ii) a mercury allowance trading program.

"(B) REQUIREMENTS.—Regulations promulgated under subparagraph (A) shall establish 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

''(B) facilities that produce electricity in addition to another service or product.

''(3) REPORT TO CONGRESS ON USE OF CAPTURED OR RECOVERED MERCURY.—

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

''(i) captured or recovered by air pollution control technology; and

''(ii) incorporated into products such as soil amendments and cement.

''(B) REQUIRED ELEMENTS.—The report shall—

''(i) review—

''(I) technologies, in use as of the date of the report, for incorporating mercury into products; and

''(II) potential technologies that might further minimize the release of mercury; and

''(ii)(I) address the adequacy of legal authorities and regulatory programs in effect as of the date of the report to protect public health and the environment from mercury in products described in subparagraph (A)(ii); and

''(II) to the extent necessary, make recommendations to improve those authorities and programs.

''(b) NEW UNIT RESERVES.—

''(1) ESTABLISHMENT.—The Administrator shall establish by regulation a reserve of nitrogen oxide allowances and a reserve of mercury allowances to be set aside for use by new units.

''(2) DETERMINATION OF QUANTITY.—The Administrator, in consultation with the Secretary of Energy, shall determine, based on projections of electricity output for new units—

''(A) not later than June 30, 2006, the quantity of nitrogen oxide allowances and mercury allowances required to be held in reserve for new units for each of calendar years 2009 through 2014; and

''(B) not later than June 30 of each fifth calendar year thereafter, the quantity of nitrogen oxide allowances and mercury allowances required to be held in reserve for new units for the following 5-calendar year period.

''(c) NITROGEN OXIDE AND MERCURY ALLOWANCE ALLOCATIONS.—

''(1) TIMING OF ALLOCATIONS.—The Administrator shall allocate nitrogen oxide allowances and mercury allowances to affected units—

''(A) not later than December 31, 2006, for calendar year 2010; and

''(B) not later than December 31 of calendar year 2007 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

''(2) ALLOCATIONS TO AFFECTED UNITS THAT ARE NOT NEW UNITS.—

''(A) QUANTITY OF NITROGEN OXIDE ALLOWANCES ALLOCATED.—The Administrator

shall allocate to each affected unit that is not a new unit a quantity of nitrogen oxide allowances that is equal to the product obtained by multiplying—

"(i) 1.5 pounds of nitrogen oxides per megawatt hour; and

"(ii) the quotient obtained by dividing—

"(I) 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; 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 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 subsection (b) or (c) of section 702 for the calendar year; and

''(II) the quantity of nitrogen oxide allowances or mercury allowances, respectively, placed in the ap-

plicable 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 and mercury allowances to new units.

''(B) QUANTITY OF NITROGEN OXIDE ALLOWANCES AND MERCURY ALLOWANCES ALLOCATED.—The Administrator shall determine the quantity of nitrogen oxide allowances and mercury allowances to be allocated to each new unit based on the projected emissions from the new unit.

''(4) ALLOWANCE NOT A PROPERTY RIGHT.—A nitrogen oxide allowance or mercury allowance—

''(A) is not a property right; and

''(B) may be terminated or limited by the Administrator.

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

"(d) NITROGEN OXIDE ALLOWANCE AND MERCURY ALLOWANCE TRANSFER SYSTEM.—

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

"(A) prohibit the use (but not the transfer in accordance with paragraph (3)) of any nitrogen oxide allowance or mercury allowance before the calendar year for which the allowance is allocated;

"(B) provide that unused nitrogen oxide allowances and mercury allowances may be carried 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.

''(3) CERTIFICATION OF TRANSFER.—A transfer of a nitrogen oxide allowance or mercury allowance shall not take effect until a written certification of the transfer, authorized by a responsible official of the person making the transfer, is received and recorded by the Administrator.

''(4) PERMIT REQUIREMENTS.—An allocation or transfer of nitrogen oxide allowances or mercury allowances to an affected unit shall, after recording by the Administrator, be considered to be part of the federally enforceable permit of the affected unit under this Act, without a requirement for any further review or revision of the permit.

''(e) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2009 and each calendar year thereafter, the operator of each affected unit shall surrender to the Administrator—

''(A) a quantity of nitrogen oxide allowances that is equal to the total tons of nitrogen oxides emitted by the affected unit during the calendar year; and

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

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

''(3) REPORTING.—

''(A) IN GENERAL.—Not less often than quarterly, the owner or operator of an affected unit shall submit to the Administrator a report on the monitoring of emissions of nitrogen oxides and mercury carried out by the owner or operator in accordance with the regulations promulgated under paragraph (2).

''(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be author-

ized 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 and mercury from each affected unit.

''(4) EXCESS EMISSIONS.—

''(A) IN GENERAL.—The owner or operator of an affected unit that emits nitrogen oxides or mercury in excess of the nitrogen oxide allowances or mercury 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.—

"(i) NITROGEN OXIDES.—The excess emissions penalty for nitrogen oxides shall be equal to the product obtained by multiplying—

"(I) the number of tons of nitrogen oxides emitted in excess of the total quantity of nitrogen oxide allowances held; and

"(II) $5,000, adjusted (in accordance with regulations promulgated by the Administrator) for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

"(ii) MERCURY.—The excess emissions penalty for mercury shall be equal to the product obtained by multiplying—

"(I) the number of pounds of mercury emitted in excess of the total quantity of mercury allowances held; and

"(II) $10,000, adjusted (in accordance with regulations promulgated by the Administrator) for changes in the Consumer Price Index

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

"SEC. 704. CARBON DIOXIDE ALLOWANCE TRADING PROGRAM.

"(a) REGULATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the enactment of this section, the Administrator shall promulgate regulations to establish a carbon dioxide allowance trading program for covered units in the United States.

"(2) REQUIRED ELEMENTS.—Regulations promulgated under paragraph (1) shall establish requirements 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.

''(2) DETERMINATION OF QUANTITY.—The Administrator, in consultation with the Secretary of Energy, shall determine, based on projections of electricity output for new units and new renewable energy units—

''(A) not later than June 30, 2006, the quantity of carbon dioxide allowances required to be held in reserve for new units and new renewable energy units for each of calendar years 2010 through 2013; and

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

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

''(c) CARBON DIOXIDE ALLOWANCE ALLOCATION.—

''(1) TIMING OF ALLOCATIONS.—The Administrator shall allocate carbon dioxide allowances to covered units—

''(A) not later than December 31, 2006, for calendar year 2010; and

''(B) not later than December 31 of calendar year 2007 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

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

''(A) IN GENERAL.—The Administrator shall allocate to each affected unit that is not a new unit, to each nuclear generating unit with respect to incremental nuclear generation, and to each renewable energy unit that is not a new renewable energy unit, a quantity of carbon dioxide allowances that is equal to the product obtained by multiplying—

''(i) the quantity of carbon dioxide allowances available for allocation under subparagraph (B); and

''(ii) the quotient obtained by dividing—

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

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

''(B) QUANTITY TO BE ALLOCATED.—For each calendar year, the quantity of carbon dioxide allowances allocated under subparagraph (A) shall be equal to the difference between—

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

''(ii) the quantity of carbon dioxide allowances placed in the new unit reserve established under subsection (b) for the calendar year.

''(3) ALLOCATION TO NEW UNITS AND NEW RENEWABLE ENERGY UNITS.—

''(A) METHODOLOGY.—The Administrator shall promulgate regulations to establish a methodology for allocating carbon dioxide allowances to new units and new renewable energy units.

''(B) QUANTITY OF CARBON DIOXIDE ALLOWANCES ALLOCATED.—The Administrator shall determine the quantity of carbon dioxide allowances to be allocated to each new unit and each new renewable energy unit based on the unit's projected share of the total electric power generation attributable to covered units.

''(d) ISSUANCE AND USE OF ADDITIONAL CARBON DIOXIDE ALLOWANCES.—

''(1) IN GENERAL.—

''(A) ALLOWANCES FOR PROJECTS CERTIFIED BY INDEPENDENT REVIEW BOARD.—In addition to carbon dioxide allowances allocated under subsection (c), the Administrator shall make carbon dioxide allowances available to projects that are certified, in accordance with paragraph (3), by the independent review board established under paragraph (2) as eligible to receive the carbon dioxide allowances.

"(B) ALLOWANCES OBTAINED UNDER OTHER PROGRAMS.—The regulations promulgated under subsection (a)(1) shall—

"(i) allow covered units to comply with subsection (f)(1) by purchasing and using carbon dioxide allowances that are traded under any other United States or internationally recognized carbon dioxide reduction program that is specified under 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 di-

oxide 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 the regulations promulgated by the Administrator under subsection (a).

"(B) MEMBERSHIP.—The independent review board shall be composed of 12 members, of whom—

"(i) 10 members shall be appointed by the Administrator, of whom—

"(I) 1 member shall represent the Environmental Protection Agency (who shall serve as chairperson of the independent review board);

"(II) 3 members shall represent State governments;

''(III) 3 members shall represent the electric generating sector; and

''(IV) 3 members shall represent environmental organizations;

''(ii) 1 member shall be appointed by the Secretary of Energy to represent the Department of Energy; and

''(iii) 1 member shall be appointed by the Secretary of Agriculture to represent the Department of Agriculture.

''(C) STAFF AND OTHER RESOURCES.—The Administrator shall provide such staff and other resources to the independent review board as the Administrator determines to be necessary.

''(D) DEVELOPMENT OF GUIDELINES.—

''(i) IN GENERAL.—The independent review board shall develop guidelines for certifying projects in accordance with paragraph (3), including—

''(I) criteria that address the validity of claims that projects result in the generation of carbon dioxide allowances;

''(II) guidelines for certifying incremental carbon sequestration in accordance with clause (ii); and

''(III) guidelines for certifying geological sequestration of carbon dioxide in accordance with clause (iii).

''(ii) GUIDELINES FOR CERTIFYING INCREMENTAL CARBON SEQUESTRATION.—The guidelines for certifying incremental carbon sequestration in forests, agricultural soil, rangeland, or grassland shall include development, reporting, monitoring, and verification guidelines, to be used in quantifying net carbon sequestration from land use projects, that are based on—

''(I) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project;

''(II) comprehensive carbon accounting that—

''(aa) reflects net increases in carbon reservoirs; and

''(bb) takes into account any carbon emissions resulting from

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

"(III) adjustments to account for—

"(aa) emissions of carbon that may result at other locations as a result of the impact of the project on timber supplies; or

"(bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and

"(IV) adjustments to reflect the expected carbon storage over various time periods, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir.

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

"(I) provide that a project shall be certified only to the extent that the

geological sequestration of carbon dioxide produced by a covered unit is in addition to any carbon dioxide used by the covered unit in 2010 for enhanced oil recovery; and

''(II) include requirements for development, reporting, monitoring, and verification for quantifying net carbon sequestration—

''(aa) to ensure the permanence of the sequestration; and

''(bb) to ensure that the sequestration will not cause or contribute to significant adverse effects on the environment.

''(iv) DEADLINES FOR DEVELOPMENT.—The guidelines under clause (i) shall be developed—

''(I) with respect to projects described in paragraph (3)(A), not later than January 1, 2006; and

''(II) with respect to projects described in paragraph (3)(B), not later than January 1, 2007.

"(v) UPDATING OF GUIDELINES.—The independent review board shall periodically update the guidelines as the independent review board determines to be appropriate.

"(E) CERTIFICATION OF PROJECTS.—

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

"(ii) LIMITATION.—The independent review board shall not certify a project under this subsection if the carbon dioxide emission reductions achieved by the project will be used to satisfy any requirement imposed on any foreign country or any industrial sector to reduce the quantity of greenhouse gases emitted by the foreign country or industrial sector.

"(3) PROJECTS ELIGIBLE FOR ADDITIONAL CARBON DIOXIDE ALLOWANCES.—

"(A) PROJECTS CARRIED OUT IN CALENDAR YEARS 1990 THROUGH 2009.—

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

"(I) is carried out on or after January 1, 1990, and before January 1, 2010; and

"(II) consists of—

"(aa) a carbon sequestration project carried out in the United States or a foreign country;

"(bb) a project reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

"(cc) any other project to reduce emissions of greenhouse gases that is carried out in the United States or a foreign country.

"(ii) MAXIMUM QUANTITY OF ADDITIONAL CARBON DIOXIDE ALLOWANCES.—The Administrator may make available to projects certified under clause (i) a quantity of allowances that is not greater than 10 percent of the tonnage limitation for

calendar year 2010 for emissions of carbon dioxide from affected units specified in section 702(d)(1).

''(iii) USE OF ALLOWANCES.—Allowances made available under clause (ii) may be used to comply with subsection (f)(1) in calendar year 2010 or any calendar year thereafter.

''(B) PROJECTS CARRIED OUT IN CALENDAR YEAR 2010 AND THEREAFTER.—The independent review board may certify as eligible for carbon dioxide allowances a project that—

''(i) is carried out on or after January 1, 2010; and

''(ii) consists of—

''(I) a carbon sequestration project carried out in the United States or a foreign country; or

''(II) a project to reduce the greenhouse gas emissions (on a carbon dioxide equivalency basis determined by the independent review board) of a source of greenhouse gases that is not an affected unit.

''(e) CARBON DIOXIDE ALLOWANCE TRANSFER SYSTEM.—

''(1) USE OF ALLOWANCES.—The regulations promulgated under subsection (a)(1) shall—

''(A) prohibit the use (but not the transfer in accordance with paragraph (3)) of any carbon dioxide allowance before the calendar year for which the carbon dioxide allowance is allocated;

''(B) provide that unused carbon dioxide allowances may be carried forward and added to carbon dioxide allowances allocated for subsequent years;

''(C) provide that unused carbon dioxide allowances may be transferred by—

''(i) the person to which the carbon dioxide allowances are allocated; or

''(ii) any person to which the carbon dioxide allowances are transferred; and

''(D) provide that carbon dioxide allowances allocated and transferred under this section may be transferred into any other market-based carbon dioxide emission trading program that is—

''(i) approved by the President; and

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

''(2) USE BY PERSONS TO WHICH CARBON DIOXIDE ALLOWANCES ARE TRANSFERRED.—Any person to which carbon dioxide allowances are transferred under paragraph (1)(C)—

''(A) may use the carbon dioxide allowances in the calendar year for which the carbon dioxide allowances were allocated, or in a subsequent calendar year, to demonstrate compliance with subsection (f)(1); or

''(B) may transfer the carbon dioxide allowances to any other person for the purpose of demonstration of that compliance.

''(3) CERTIFICATION OF TRANSFER.—A transfer of a carbon dioxide allowance shall not take effect until a written certification of the transfer, authorized by a responsible official of the person making the transfer, is received and recorded by the Administrator.

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

cording by the Administrator, be considered to be part of the federally enforceable permit of the covered unit under this Act, without a requirement for any further review or revision of the permit.

''(f) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2010 and each calendar year thereafter—

''(A) the operator of each affected unit and each renewable energy unit shall surrender to the Administrator a quantity of carbon dioxide allowances that is equal to the total tons of carbon dioxide emitted by the affected unit or renewable energy unit during the calendar year; and

''(B) the operator of each nuclear generating unit that has incremental nuclear generation shall surrender to the Administrator a quantity of carbon dioxide allowances that is equal to the total tons of carbon dioxide emitted by the nuclear generating unit during the calendar year from incremental nuclear generation.

''(2) MONITORING SYSTEM.—The Administrator shall promulgate regulations requiring the accurate

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

''(3) REPORTING.—

''(A) IN GENERAL.—Not less often than quarterly, the owner or operator of a covered unit, or a person that carries out a project certified under subsection (d) on behalf of a covered unit, shall submit to the Administrator a report on the monitoring of carbon dioxide emissions carried out at the covered unit in accordance with the regulations promulgated under paragraph (2).

''(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be authorized by a responsible official of the covered 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 carbon dioxide from each covered unit.

''(4) EXCESS EMISSIONS.—

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

excess of the carbon dioxide allowances that the owner or operator holds for use for the covered 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 shall be equal to the product obtained by multiplying—

"(i) the number of tons of carbon dioxide emitted in excess of the total quantity of carbon dioxide allowances held; and

"(ii) $100, adjusted (in accordance with regulations promulgated by the Administrator) for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

"(g) ALLOWANCE NOT A PROPERTY RIGHT.—A carbon dioxide allowance—

"(1) is not a property right; and

''(2) may be terminated or limited by the Administrator.

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

SEC. 4. NEW SOURCE REVIEW PROGRAM.

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

''(f) REVISIONS TO NEW SOURCE REVIEW PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) COVERED UNIT.—The term 'covered unit' has the meaning given the term in section 701.

''(B) NEW SOURCE REVIEW PROGRAM.—The term 'new source review program' means the program to carry out section 111 and this part.

''(2) REGULATIONS.—In accordance with this subsection, the Administrator shall promulgate revisions to the new source review program.

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

"(A) construction of a new covered unit, which shall include the replacement of an existing boiler; and

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

"(4) PERFORMANCE STANDARDS.—Beginning in 2020, all affected units, as that term is defined under section 701 for nitrogen oxides and carbon dioxide, on which construction commenced before August 17, 1971, shall meet the following performance standards:

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

"(B) 2.5 lbs/MWh for nitrogen oxides.

"(5) BI-ANNUAL DEFINITION OF BEST AVAILABLE CONTROL TECHNOLOGY AND LOWEST ACHIEVABLE EMISSION RATE.—The definitions of 'best available control technology' under section 169 and of 'lowest achievable emission rate' under section 171 shall be revised to require the Administrator to define on a bi-annual basis best available control

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

''(6) LOWEST ACHIEVABLE EMISSION RATE.—The regulations shall revise the definition of 'lowest achievable emission rate' under section 171, with respect to technology required to be installed by the electric generating sector, to allow costs to be considered in the determination of the lowest achievable emission rate, so that, beginning January 1, 2010, a covered unit (as defined in section 701) shall not be required to install technology required to meet a lowest achievable emission rate if the cost of the technology exceeds a maximum amount (in dollars per ton) that is determined by the Administrator. In no event shall such cost be more than twice the amount of the applicable cost guideline for best available control technology.

''(7) EMISSION OFFSETS.—No source within the electric generating sector that locates in a nonattainment area after December 31, 2009, shall be required to obtain offsets for emissions of air pollutants.

''(8) NO EFFECT ON OTHER REQUIREMENTS.—Nothing in this subsection affects the obligation of any State or local government to comply with the re-

quirements established under this section concerning—

"(A) national ambient air quality standards;

"(B) maximum allowable air pollutant increases or maximum allowable air pollutant concentrations; or

"(C) protection of visibility and other air quality-related values in areas designated as class I areas under part C of title I. Additionally, States are required to identify areas with adverse local air quality impacts and to impose such facility-specific and other measures as are necessary to remedy such impacts in light of the national pollutant tonnage limitations in section 702.".

SEC. 5. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PROGRAM.

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

"SEC. 417. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PROGRAM.

''(a) DEFINITIONS.—In this section, the terms 'affected unit' and 'new unit' have the meanings given the terms in section 701.

''(b) REGULATIONS.—Not later than January 1, 2006, the Administrator shall promulgate such revisions to the regulations to implement this title as the Administrator determines to be necessary to implement section 702(a).

''(c) NEW UNIT RESERVE.—

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

''(2) DETERMINATION OF QUANTITY.—The Administrator, in consultation with the Secretary of Energy, shall determine, based on projections of electricity output for new units—

''(A) not later than June 30, 2006, the quantity of allowances required to be held in reserve for new units for each of calendar years 2010 through 2014; and

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

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

''(3) ALLOCATION.—

''(A) REGULATIONS.—The Administrator shall promulgate regulations to establish a methodology for allocating allowances to new units.

''(B) NO JUDICIAL REVIEW.—An allocation of allowances by the Administrator under this subsection shall not be subject to judicial review.

''(d) EXISTING UNITS.—

''(1) ALLOCATION.—

''(A) REGULATIONS.—Subject to the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in section 702(a), and subject to the reserve of allowances for new units under subsection (c), the Administrator shall promulgate regulations to govern the allocation of allowances to affected units that are not new units.

''(B) REQUIRED ELEMENTS.—The regulations shall provide for—

''(i) the allocation of allowances on a fair and equitable basis between affected

units that received allowances under section 405 and affected units that are not new units and that did not receive allowances under that section, using for both categories of units the same or similar allocation methodology as was used under section 405; and

''(ii) the pro-rata distribution of allowances to all units described in clause (i), subject to the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in section 702(a).

''(2) TIMING OF ALLOCATIONS.—The Administrator shall allocate allowances to affected units—

''(A) not later than December 31, 2006, for calendar year 2010; and

''(B) not later than December 31 of calendar year 2007 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

''(3) NO JUDICIAL REVIEW.—An allocation of allowances by the Administrator under this subsection shall not be subject to judicial review.

''(e) WESTERN REGIONAL AIR PARTNERSHIP.—

''(1) DEFINITIONS.—In this subsection:

''(A) COVERED STATE.—The term 'covered State' means each of the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

''(B) COVERED YEAR.—The term 'covered year' means—

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

''(bb) not earlier than calendar year 2016; or

''(II) if the Administrator does not make the determination described in subclause (I)(aa)—

''(aa) the third calendar year after the first calendar year with respect to which the total of the annual emissions of sulfur dioxide from all affected units in the covered States first exceeds 271,000 tons; but

''(bb) not earlier than calendar year 2021; and

''(ii) each calendar year after the calendar year determined under clause (i).

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

''(3) ALLOCATION OF ALLOWANCES.—

''(A) IN GENERAL.—Not later than January 1, 2015, the Administrator shall promulgate regulations to establish—

''(i) a methodology for allocating allowances to affected units in covered States under this subsection; and

''(ii) the timing of the allocations.

''(B) NO JUDICIAL REVIEW.—An allocation of allowances by the Administrator under this paragraph shall not be subject to judicial review.''.

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

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

"(3) ALLOWANCE.—The term 'allowance' means an authorization, allocated by the Administrator to an affected unit under this title, to emit, during or after a specified calendar year, a quantity of sulfur dioxide determined by the Administrator and specified in the regulations promulgated under section 417(b).".

(c) TECHNICAL AMENDMENTS.—

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

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

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

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

"417. Revisions to sulfur dioxide allowance program.".

SEC. 6. RELATIONSHIP TO OTHER LAW.

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

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

''(7) MERCURY EMITTED FROM CERTAIN AFFECTED UNITS.—Not later than 8 years after the date of enactment of this paragraph, the Administrator shall carry out the duties of the Administrator under this subsection with respect to mercury emitted from affected units (as defined in section 701).''; and

(2) in subsection (n)(1)(A)—

(A) by striking ''(A) The Administrator'' and inserting the following:

''(A) STUDY, REPORT, AND REGULATIONS.—

''(i) STUDY AND REPORT TO CONGRESS.—The Administrator'';

(B) by striking ''The Administrator'' in the fourth sentence and inserting the following:

''(ii) REGULATIONS.—

''(I) IN GENERAL.—The Administrator''; and

(C) in clause (ii) (as designated by subparagraph (B)), by adding at the end the following:

''(II) EXEMPTION FOR CERTAIN AFFECTED UNITS RELATING TO MERCURY.—An affected unit (as defined in section 701) that would otherwise be subject to mercury emission standards under subclause (I) shall not be subject to mercury emission standards under subclause (I) or subsection (c).''.

(b) TEMPORARY EXEMPTION FROM VISIBILITY PROTECTION REQUIREMENTS.—Section 169A(c) of the Clean Air Act (42 U.S.C. 7491(c)) is amended—

(1) in paragraph (3), by striking ''this subsection'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(4) TEMPORARY EXEMPTION FOR CERTAIN AFFECTED UNITS.—An affected unit (as defined in section 701) shall not be subject to subsection (b)(2)(A) during the period—

''(A) beginning on the date of enactment of this paragraph; and

''(B) ending on the date that is 20 years after the date of enactment of this paragraph.''.

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

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

(1) affects any permitting, monitoring, or enforcement obligation of the Administrator of the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.) or any remedy provided under that Act;

(2) affects any requirement applicable to, or liability of, an electric generating facility under that Act;

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

(4) precludes a State or political subdivision of a State from adopting and enforcing any requirement for the control or abatement of air pollution, except that a State or political subdivision may not adopt or enforce any emission standard or limitation that is less stringent than the requirements imposed under that Act.

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