

110TH CONGRESS  
1ST SESSION

# S. 1177

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

APRIL 20, 2007

Mr. CARPER (for himself, Mr. SUNUNU, Mr. GREGG, Mr. DODD, Mrs. FEINSTEIN, Mrs. LINCOLN, Mr. LIEBERMAN, and Ms. COLLINS) 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.**

4 This Act may be cited as the “Clean Air Planning  
5 Act of 2007”.

### 6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) in 1992, the United States became a signa-  
9 tory to the United Nations Framework Convention

1 on Climate Change, done at New York on May 9,  
2 1992, in recognition of the need to begin to reverse  
3 the adverse effects of global warming by decreasing  
4 greenhouse gas emission levels to 1990 levels;

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

9 (3) fossil fuel-fired electric generating facilities  
10 produce approximately 67 percent of the total sulfur  
11 dioxide emissions, 23 percent of the total nitrogen  
12 oxides emissions, 40 percent of the total carbon di-  
13 oxide emissions, and 40 percent of the total mercury  
14 emissions, in the United States;

15 (4)(A) in 1977, in amending the Clean Air Act  
16 (42 U.S.C. 7401 et seq.), Congress sought to pre-  
17 vent adverse impacts caused by manmade pollution  
18 on national parks and wilderness areas designated  
19 as class I areas under section 162(a) of that Act (42  
20 U.S.C. 7472(a));

21 (B) as of the date of enactment of this Act—

22 (i) many class I areas are impaired by  
23 haze pollution;

1           (ii) the ecosystems of many class I areas  
2           are impacted by deposits of acidic and toxic  
3           compounds; and

4           (iii) the air quality of many class I areas  
5           fails to meet national ambient air quality stand-  
6           ards; and

7           (C)(i) fossil-fuel fired electric generating units  
8           are the major source of air pollution impacting class  
9           I areas; and

10          (ii) proposed new fossil-fuel fired electric gener-  
11          ating units threaten to increase air pollution in class  
12          I areas throughout the United States;

13          (5)(A) on implementing an acid rain program  
14          in 1990, the Administrator of the Environmental  
15          Protection Agency (referred to in this subsection as  
16          the “Administrator”) overestimated the actual cost  
17          of sulfur dioxide permits by more than a factor of  
18          5; and

19          (B) after years of carrying out the program, the  
20          Administrator acknowledged that “independent stud-  
21          ies show that real life experiences with the program  
22          reveal greater cost savings than initially expected,  
23          due in large part to the efficiencies achieved through  
24          emissions trading”;

1           (6)(A) nearly  $\frac{3}{4}$  of all powerplant boilers in op-  
2           eration on the date of enactment of this Act are  
3           more than 30 years old, and most continue to oper-  
4           ate without modern pollution control technology; and

5           (B) those older powerplants release approxi-  
6           mately 99 percent of the sulfur dioxide, 98 percent  
7           of the nitrogen oxides, and 91 percent of the carbon  
8           dioxide emitted from all powerplants;

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

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

16          (8) according to the analysis by the Adminis-  
17          trator of the rule of the Administrator entitled the  
18          “Clean Air Interstate Rule” (70 Fed. Reg. 25162  
19          (May 12, 2005)), the majority of the 1,168 outdated  
20          coal-fired powerplant boilers in operation in the east-  
21          ern United States on the date of enactment of this  
22          Act will operate without sulfur dioxide scrubbers and  
23          advanced nitrogen oxide controls even after the im-  
24          plementation of that rule is completed in 2020, such  
25          that—

1 (A) 858 plants will operate without sulfur  
2 dioxide scrubbers; and

3 (B) 915 powerplants will operate without  
4 advanced nitrogen oxide controls;

5 (9) according to the Energy Outlook for 2006  
6 of the Energy Information Administration, carbon  
7 dioxide emissions from electric generating units in  
8 the United States have increased by 32 percent dur-  
9 ing the period of 1990 through 2006;

10 (10) the deployment by the electric utility sec-  
11 tor of zero- and low-emitting generation technologies  
12 should be accelerated given the increase in carbon  
13 dioxide emissions from the electric utility sector de-  
14 scribed in paragraph (9);

15 (11) the ability of owners of electric generating  
16 facilities to plan effectively for the future is impeded  
17 by the uncertainties surrounding future environ-  
18 mental regulatory requirements that are imposed in-  
19 efficiently on a piecemeal basis;

20 (12) many owners of electric generating units  
21 have failed—

22 (A) to install best available control tech-  
23 nology for emissions reductions; and

24 (B) to retire the units, as anticipated by  
25 Congress in the new source review provisions of

1 the prevention of significant deterioration and  
2 nonattainment programs of the Clean Air Act  
3 (42 U.S.C. 7401 et seq.);

4 (13) according to the Administrator, many own-  
5 ers of electric generating units carried out projects  
6 to extend the economic lives of the units without up-  
7 grading the emission controls of the units to best  
8 available control technology levels;

9 (14) according to the National Energy Tech-  
10 nology Laboratory of the Department of Energy—

11 (A) as of the date of enactment of this  
12 Act, 159 new coal-fired electric generating units  
13 are proposed to be constructed, which would  
14 produce 96 gigawatts of new electric generating  
15 capacity; and

16 (B) if the units described in subparagraph  
17 (A) are constructed, the units would produce—

18 (i) an incremental increase of  
19 500,000,000 tons of carbon dioxide per  
20 year from the production by the power sec-  
21 tor in the United States as in existence on  
22 the date of enactment of this Act; and

23 (ii) an estimated 30,000,000,000 ad-  
24 ditional tons of carbon dioxide over the

1 course of the useful lives of the units (as-  
2 suming a lifespan of 60 years);

3 (15) total emissions of carbon dioxide from the  
4 United States should be on a reduction pathway to  
5 achieve a 60 percent to 80 percent reduction from  
6 current levels by 2050;

7 (16) pollution from electric generating facilities  
8 in existence on the date of enactment of this Act can  
9 be reduced through the adoption of modern tech-  
10 nologies and practices;

11 (17) a report of the Congressional Budget Of-  
12 fice, dated September 19, 2006, concluded that—

13 (A) relying exclusively on research and de-  
14 velopment funding is not the most effective  
15 strategy for reducing greenhouse gas emissions;  
16 and

17 (B) combining research and development  
18 funding with a gradually-increasing limitation  
19 on emissions is a more cost-effective approach;

20 (18)(A) agriculture can be part of the solution  
21 to reducing greenhouse gas emissions;

22 (B) less productive agricultural land can be re-  
23 forested with carbon dioxide-consuming trees;

1 (C) farming practices can be improved to in-  
2 crease the absorption and retention of carbon in ag-  
3 ricultural soils;

4 (D) biomass from agricultural sources (includ-  
5 ing corn and grass) could be used to produce  
6 biofuels that can take the place of high-carbon fossil  
7 fuels used in transportation and power generation;  
8 and

9 (E) many of the farming practices and land use  
10 changes involved in achieving those reductions have  
11 multiple benefits, including—

12 (i) improving soil, water, and air quality;

13 (ii) increasing wildlife habitat; and

14 (iii) providing additional recreational op-  
15 portunities; and

16 (19) States and regions have increasingly  
17 adopted programs to address carbon dioxide emis-  
18 sions from electric generating facilities, and Federal  
19 regulations relating to carbon dioxide emissions  
20 should take those programs into consideration.

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

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



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

5           (3) to ensure that air quality of national parks  
6           and all other class I areas (as designated by section  
7           162(a) of the Clean Air Act (42 U.S.C. 7472(a)))  
8           impacted by emissions from fossil-fuel fired electric  
9           generating units is significantly improved by 2016,  
10          the year in which the National Park System cele-  
11          brates its 100th anniversary;

12          (4) to encourage the development and use of re-  
13          newable energy;

14          (5) to internalize the cost of protecting the val-  
15          ues of public health, air, land, and water quality;

16          (6) to provide a period of environmental regu-  
17          latory stability for owners and operators of electric  
18          generating facilities so as to promote improved man-  
19          agement of existing assets and new capital invest-  
20          ments;

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

23          (8) to establish a mandatory cap-and-trade sys-  
24          tem for the electric power sector that is part of an

1 economy-wide national greenhouse gas trading mar-  
 2 ket;

3 (9) to provide for the future integration of addi-  
 4 tional sectors of the economy into such a greenhouse  
 5 gas trading market; and

6 (10) to establish a regulatory system that, by  
 7 2050, will allow for a reduction in United States  
 8 greenhouse gas emissions to a level of approximately  
 9 20 percent to 40 percent of levels of emissions as of  
 10 the date of enactment of this Act.

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

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

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

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

“Sec. 701. Definitions.

“Sec. 702. National pollutant tonnage limitations.

“Sec. 703. Nitrogen oxide trading program.

“Sec. 704. Mercury program.

“Sec. 705. Carbon dioxide allowance trading program.

“Sec. 706. Distribution of allowances between auctions and allocations; nature  
 of allowances.

“Sec. 707. Auction of allowances.

“Sec. 708. Climate Action Trust Fund.

19 **“SEC. 701. DEFINITIONS.**

20 “In this title:

1 “(1) AFFECTED UNIT.—

2 “(A) CARBON DIOXIDE.—

3 “(i) IN GENERAL.—The term ‘affected  
4 unit’, with respect to carbon dioxide,  
5 means a fossil fuel-fired electric generating  
6 facility (including a cogeneration facility)  
7 that—

8 “(I) on or after January 1, 1985,  
9 served as a generator with a name-  
10 plate capacity greater than 25  
11 megawatts; and

12 “(II) produces electricity for sale.

13 “(ii) INCLUSION.—The term ‘affected  
14 unit’, with respect to nuclear facilities, in-  
15 cludes only incremental nuclear generation  
16 facilities.

17 “(B) MERCURY.—The term ‘affected unit’,  
18 with respect to mercury, means a coal-fired  
19 electric generating facility (including a cogen-  
20 eration facility) that—

21 “(i) on or after January 1, 1985,  
22 served as a generator with a nameplate ca-  
23 pacity greater than 25 megawatts; and

24 “(ii) produces electricity for sale.

1           “(C) NITROGEN OXIDES.—The term ‘af-  
 2           fected unit’, with respect to nitrogen oxides,  
 3           means a fossil fuel-fired electric generating fa-  
 4           cility (including a cogeneration facility) that—

5                   “(i) on or after January 1, 1985,  
 6                   served as a generator with a nameplate ca-  
 7                   pacity greater than 25 megawatts; and

8                   “(ii) produces electricity for sale.

9           “(D) SULFUR DIOXIDE.—The term ‘af-  
 10          fected unit’, with respect to sulfur dioxide, has  
 11          the meaning given the term in section 402.

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

17          “(3) COGENERATION FACILITY.—The term ‘co-  
 18          generation facility’ means a facility that—

19                   “(A) cogenerates—

20                           “(i) steam; and

21                           “(ii) electricity; and

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

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

1                   “(ii) more than 219,000 megawatt-  
2                   hours of electrical output.

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

5                   “(A) an affected unit;

6                   “(B) with respect to incremental nuclear  
7                   generation, a nuclear generating unit; and

8                   “(C) a renewable energy unit.

9                   “(5) FOSSIL FUEL-FIRED.—The term ‘fossil  
10                  fuel-fired’, with respect to an electric generating fa-  
11                  cility, means the combustion of fossil fuel by the  
12                  electric generating facility, alone or in combination  
13                  with any other fuel, in any case in which the fossil  
14                  fuel combusted comprises, or is projected to com-  
15                  prise, more than 20 percent of the annual heat input  
16                  of the electric generating facility, on a Btu basis,  
17                  during any calendar year.

18                  “(6) FUND.—The term ‘Fund’ means the Cli-  
19                  mate Action Trust Fund established by section  
20                  708(a)(1).

21                  “(7) GREENHOUSE GAS.—The term ‘greenhouse  
22                  gas’ means—

23                  “(A) carbon dioxide;

24                  “(B) methane;

25                  “(C) nitrous oxide;

1 “(D) hydrofluorocarbons;

2 “(E) perfluorocarbons; and

3 “(F) sulfur hexafluoride.

4 “(8) INCREMENTAL NUCLEAR GENERATION.—

5 The term ‘incremental nuclear generation’ means, as  
6 determined by the Administrator and measured in  
7 megawatt hours, the difference between—

8 “(A) the quantity of electricity generated  
9 by a nuclear generating unit in a calendar year;  
10 and

11 “(B) the quantity of electricity generated  
12 by the nuclear generating unit in calendar year  
13 1990.

14 “(9) NEW UNIT.—The term ‘new unit’ means  
15 an affected unit that has operated for not more than  
16 3 years and is not eligible to receive—

17 “(A) sulfur dioxide allowances under sec-  
18 tion 417(b);

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

21 “(C) carbon dioxide allowances under sec-  
22 tion 705(d).

23 “(10) NITROGEN OXIDE ALLOWANCE.—The  
24 term ‘nitrogen oxide allowance’ means an authoriza-  
25 tion allocated by the Administrator under this title

1 to emit 1 ton of nitrogen oxides during or after a  
2 specified calendar year.

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

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

8 “(B) entered operation in calendar year  
9 1990 or earlier.

10 “(12) RENEWABLE ENERGY.—The term ‘renew-  
11 able energy’ means electric energy generated from  
12 solar energy, wind, hydroelectric energy, biomass,  
13 landfill gas, ocean energy (including tidal, wave, cur-  
14 rent, and thermal energy), or geothermal energy.

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

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

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

21 “(ii)(I) storing the carbon in a geologic  
22 formation for not less than 300 years in a man-  
23 ner that prevents any release of the carbon di-  
24 oxide in a quantity greater than 1 percent of  
25 the total quantity so stored; or

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

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

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

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

11           “(1) for each of calendar years 2012 through  
12          2014, 3,500,000 tons; and

13           “(2) for calendar year 2015 and each calendar  
14          year thereafter, 2,000,000 tons.

15          “(b) NITROGEN OXIDES.—

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

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



1           nessee, Texas, Vermont, Virginia, West Vir-  
2           ginia, and Wisconsin.

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

6           “(2) APPLICABILITY.—

7           “(A) ZONE 1 PROHIBITION.—

8           “(i) IN GENERAL.—Beginning on Jan-  
9           uary 1, 2012, it shall be unlawful for an  
10          affected unit in a Zone 1 State to emit a  
11          total amount of nitrogen oxides during a  
12          year in excess of the number of nitrogen  
13          oxide allowances held for the affected unit  
14          for that year by the owner or operator of  
15          the affected unit.

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

20          “(B) ZONE 2 PROHIBITION.—

21          “(i) IN GENERAL.—Beginning on Jan-  
22          uary 1, 2012, it shall be unlawful for an  
23          affected unit in a Zone 2 State to emit a  
24          total amount of nitrogen oxides during a  
25          year in excess of the number of nitrogen

oxide allowances held for the affected unit for that year by the owner or operator of the affected unit.

“(ii) LIMITATION.—Only nitrogen oxide allowances under paragraph (3)(B) shall be held in order to meet the requirements of clause (i).

“(3) LIMITATIONS ON TOTAL EMISSIONS.—

“(A) ZONE 1 LIMITATIONS.—The Administrator shall allocate an annual tonnage limitation for emissions of nitrogen oxides from affected units in the Zone 1 States in an amount equal to—

“(i) for each of calendar years 2012 through 2014, 1,390,000 tons; and

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

“(B) ZONE 2 LIMITATIONS.—The Administrator shall allocate an annual tonnage limitation for emissions of nitrogen oxides from affected units in the Zone 2 States in an amount equal to—

“(i) for each of calendar years 2012 through 2014, 400,000 tons; and

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

3           “(c) MERCURY.—The emission of mercury from af-  
4     fected units shall be limited in accordance with section  
5     704.

6           “(d) CARBON DIOXIDE.—

7                   “(1) IN GENERAL.—The annual tonnage limita-  
8     tion for emissions of carbon dioxide from affected  
9     units in the United States shall be equal to, as de-  
10    termined by the Administrator based on certified  
11    and quality-assured continuous emissions monitoring  
12    data for carbon dioxide reported to the Adminis-  
13    trator by affected units in accordance with this  
14    Act—

15                   “(A) for each of calendar years 2012  
16     through 2014, the quantity of emissions emitted  
17     from affected units in calendar year 2006;

18                   “(B) for calendar year 2015, the quantity  
19     of emissions emitted from affected units in cal-  
20     endar year 2001;

21                   “(C) for each of calendar years 2016  
22     through 2019, the aggregate quantity of emis-  
23     sions emitted from affected units during the  
24     calendar year that is 1 percent less than the ag-  
25     gregate quantity of emissions from affected

1 units allowed pursuant to this section during  
 2 the preceding calendar year; and

3 “(D) for calendar year 2020 and each cal-  
 4 endar year thereafter, the aggregate quantity of  
 5 emissions emitted during the calendar year that  
 6 is 1.5 percent less than the aggregate quantity  
 7 of emissions from affected units allowed pursu-  
 8 ant to this section during the preceding cal-  
 9 endar year.

10 “(2) ADDITIONAL LIMITATIONS.—For calendar  
 11 year 2030 and each calendar year thereafter, in ac-  
 12 cordance with subsection (e), the Administrator shall  
 13 take into consideration the practicability of increas-  
 14 ing the reduction in emissions of carbon dioxide re-  
 15 quired for the calendar year to at least 3 percent  
 16 less than the aggregate quantity of emissions emit-  
 17 ted during the preceding calendar year.

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

20 “(1) DETERMINATION BY ADMINISTRATOR.—  
 21 Not later than 10 years after the date of enactment  
 22 of this title and every 10 years thereafter, the Ad-  
 23 ministrator shall determine—

24 “(A) after considering impacts on human  
 25 health, the environment, the economy, and

1 costs, whether 1 or more of the annual tonnage  
2 limitations should be revised; and

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

7 “(2) DETERMINATION NOT TO REVISE.—If the  
8 Administrator determines under paragraph (1) that  
9 no annual tonnage limitation or mercury emission  
10 requirement should be revised, the Administrator  
11 shall publish in the Federal Register—

12 “(A) a notice of the determination; and

13 “(B) the reasons for the determination.

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

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

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

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

7           “(A) considered to be a nondiscretionary  
8           duty;

9           “(B) enforceable through a citizen suit  
10          under section 304; and

11          “(C) subject to rulemaking procedures and  
12          judicial review under section 307.

13          “(5) REQUIREMENT.—No revision of an annual  
14          tonnage limitation or mercury emission requirement  
15          under this subsection shall result in a limitation or  
16          emission requirement that is less stringent than an  
17          existing applicable requirement under this title.

18          “(f) REDUCTION OF EMISSIONS FROM SPECIFIED  
19          AFFECTED UNITS.—Notwithstanding the annual tonnage  
20          limitations and mercury emissions requirements estab-  
21          lished under this section, the Federal Government or a  
22          State government may require that emissions from a spec-  
23          ified affected unit be reduced.

24          “(g) GENERAL ENFORCEMENT.—

1           “(1) IN GENERAL.—It shall be unlawful for any  
2           individual or entity subject to this title to violate any  
3           requirement or prohibition under this title.

4           “(2) TREATMENT OF EXCESS EMISSIONS.—In  
5           calculating any penalty for violation of this title,  
6           each ton of emissions of sulfur dioxide, nitrogen ox-  
7           ides, mercury, or a greenhouse gas emitted by a cov-  
8           ered unit during a calendar year in excess of the al-  
9           lowances held for use by the covered unit for the cal-  
10          endar year shall be considered to be a separate viola-  
11          tion of the applicable limitation under this title.

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

13          “(a) REGULATIONS.—

14               “(1) IN GENERAL.—Not later than January 1,  
15               2010, the Administrator shall promulgate regula-  
16               tions to establish for affected units in the United  
17               States a nitrogen oxide allowance trading program.

18               “(2) REQUIREMENTS.—Regulations promul-  
19               gated under paragraph (1) shall establish require-  
20               ments for the allowance trading program under this  
21               section, including requirements concerning—

22                       “(A)(i) the generation, allocation, issuance,  
23                       recording, tracking, transfer, and use of nitro-  
24                       gen oxide allowances; and

1           “(ii) the public availability of all informa-  
 2           tion concerning the activities described in clause  
 3           (i) that is not confidential;

4           “(B) compliance with subsection (e)(1);

5           “(C) the monitoring and reporting of emis-  
 6           sions under paragraphs (2) and (3) of sub-  
 7           section (e); and

8           “(D) excess emission penalties under sub-  
 9           section (e)(4).

10          “(3) MIXED FUEL, COGENERATION FACILITIES  
 11          AND COMBINED HEAT AND POWER FACILITIES.—  
 12          The Administrator shall promulgate such regulations  
 13          as the Administrator determines to be necessary to  
 14          ensure the equitable issuance of allowances to—

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

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

19          “(b) NEW UNIT RESERVES.—

20               “(1) ESTABLISHMENT.—For each calendar  
 21          year, based on projections of electricity output from  
 22          new units, the Administrator, in consultation with  
 23          the Secretary of Energy, shall establish by regula-  
 24          tion a reserve of nitrogen oxide allowances to be set  
 25          aside for use by new units in Zone 1 States, and a



1       reserve of nitrogen oxide allowances to be set aside  
 2       for use by new units in Zone 2 States, that is not  
 3       less than 5 percent of the total allowances allocated  
 4       to affected units for the calendar year.

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

10           “(A) the number of allowances allocated to  
 11       each affected unit for the calendar year; bears  
 12       to

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

15       “(c) NITROGEN OXIDE ALLOCATIONS.—

16           “(1) TIMING OF ALLOCATIONS.—The Adminis-  
 17       trator shall allocate nitrogen oxide allowances to af-  
 18       fected units by not later than December 31 of cal-  
 19       endar year 2008 and each calendar year thereafter,  
 20       for the fourth calendar year that begins after that  
 21       December 31.

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

24           “(A) ZONE 1 STATES.—The Administrator  
 25       shall allocate, to each affected unit in a Zone 1

1 State that is not a new unit, a quantity of ni-  
 2 trogen oxide allowances that is equal to the  
 3 product obtained by multiplying—

4 “(i) the quantity of nitrogen oxide al-  
 5 lowances available for allocation under  
 6 paragraph (3)(A); and

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

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

15 “(II) the total of the average  
 16 quantities described in subclause (I)  
 17 with respect to all affected units in all  
 18 Zone 1 States.

19 “(B) ZONE 2 STATES.—The Administrator  
 20 shall allocate, to each affected unit in a Zone 2  
 21 State that is not a new unit, a quantity of ni-  
 22 trogen oxide allowances that is equal to the  
 23 product obtained by multiplying—

1 “(i) the quantity of nitrogen oxide al-  
 2 lowances available for allocation under  
 3 paragraph (3)(B); and

4 “(ii) the quotient obtained by divid-  
 5 ing—

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

12 “(II) the total of the average  
 13 quantities described in subclause (I)  
 14 with respect to all affected units in all  
 15 Zone 2 States.

16 “(3) QUANTITY TO BE ALLOCATED.—

17 “(A) ZONE 1 STATES.—For each calendar  
 18 year, the quantity of nitrogen oxide allowances  
 19 allocated under paragraph (2)(A) to affected  
 20 units that are not new units shall be equal to  
 21 the difference between—

22 “(i) the annual tonnage limitation for  
 23 emissions of nitrogen oxides from affected  
 24 units specified in section 702(b)(3)(A) for  
 25 the calendar year; and

1 “(ii) the quantity of nitrogen oxide al-  
2 lowances placed in the new unit reserve es-  
3 tablished under subsection (b) for the cal-  
4 endar year.

5 “(B) ZONE 2 STATES.—For each calendar  
6 year, the quantity of nitrogen oxide allowances  
7 allocated under paragraph (2)(B) to affected  
8 units that are not new units shall be equal to  
9 the difference between—

10 “(i) the annual tonnage limitation for  
11 emissions of nitrogen oxides from affected  
12 units specified in section 702(b)(3)(B) for  
13 the calendar year; and

14 “(ii) the quantity of nitrogen oxide al-  
15 lowances placed in the new unit reserve es-  
16 tablished under subsection (b) for the cal-  
17 endar year.

18 “(4) ADJUSTMENT OF ALLOCATIONS.—If, for  
19 any calendar year, the total quantities of allowances  
20 allocated under paragraph (2) are not equal to the  
21 applicable quantities determined under paragraph  
22 (3), the Administrator shall adjust the quantities of  
23 allowances allocated to affected units that are not  
24 new units on a pro-rata basis so that the quantities

1 are equal to the applicable quantities determined  
2 under paragraph (3).

3 “(5) ALLOCATION TO NEW UNITS.—

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

8 “(B) QUANTITY OF NITROGEN OXIDE AL-  
9 LOWANCES ALLOCATED.—The Administrator  
10 shall determine the quantity of nitrogen oxide  
11 allowances to be allocated to each new unit  
12 based on the projected emissions from the new  
13 unit.

14 “(6) ALLOWANCE NOT A PROPERTY RIGHT.—A  
15 nitrogen oxide allowance—

16 “(A) is not a property right; and

17 “(B) may be terminated or limited by the  
18 Administrator.

19 “(7) NO JUDICIAL REVIEW.—An allocation of  
20 nitrogen allowances by the Administrator under this  
21 subsection shall not be subject to judicial review.

22 “(d) NITROGEN OXIDE ALLOWANCE TRANSFER SYS-  
23 TEM.—

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

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

5           “(B) provide that unused nitrogen oxide  
6           allowances may be carried forward and added  
7           to nitrogen oxide allowances allocated for subse-  
8           quent years; and

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

11               “(i) the person to which the allow-  
12               ances are allocated; or

13               “(ii) any person to which the allow-  
14               ances are transferred.

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

19               “(A) may use the nitrogen oxide allow-  
20               ances in the calendar year for which the nitro-  
21               gen oxide allowances were allocated, or in a  
22               subsequent calendar year, to demonstrate com-  
23               pliance with subsection (e)(1); or

1           “(B) may transfer the nitrogen oxide al-  
2           lowances to any other person for the purpose of  
3           demonstration of that compliance.

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

10          “(4) PERMIT REQUIREMENTS.—An allocation  
11          or transfer of nitrogen oxide allowances to an af-  
12          fected unit shall, after recording by the Adminis-  
13          trator, be considered to be part of the federally en-  
14          forceable permit of the affected unit under this Act,  
15          without a requirement for any further review or revi-  
16          sion of the permit.

17          “(e) COMPLIANCE AND ENFORCEMENT.—

18               “(1) IN GENERAL.—For calendar year 2012  
19               and each calendar year thereafter, the operator of  
20               each affected unit shall surrender to the Adminis-  
21               trator a quantity of nitrogen oxide allowances that  
22               is equal to the total tons of nitrogen oxides emitted  
23               by the affected unit during the calendar year.

24               “(2) MONITORING SYSTEM.—The Administrator  
25               shall promulgate regulations requiring—

1           “(A) operation, reporting, and certification  
2 of continuous emissions monitoring systems to  
3 accurately measure the quantity of nitrogen ox-  
4 ides that is emitted from each affected unit;  
5 and

6           “(B) verification and reporting of nitrogen  
7 oxides emissions at each affected unit.

8           “(3) REPORTING.—

9           “(A) IN GENERAL.—Not less often than  
10 quarterly, the owner or operator of an affected  
11 unit shall submit to the Administrator a report  
12 on the monitoring of emissions of nitrogen ox-  
13 ides carried out by the owner or operator in ac-  
14 cordance with the regulations promulgated  
15 under paragraph (2).

16           “(B) AUTHORIZATION.—Each report sub-  
17 mitted under subparagraph (A) shall be author-  
18 ized by a responsible official of the affected  
19 unit, who shall certify the accuracy of the re-  
20 port.

21           “(C) PUBLIC REPORTING.—The Adminis-  
22 trator shall make available to the public,  
23 through 1 or more published reports and 1 or  
24 more forms of electronic media, data concerning



1 the emissions of nitrogen oxides from each af-  
 2 fected unit.

3 “(4) EXCESS EMISSIONS.—

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

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

11 “(ii) offset the excess emissions by at  
 12 least an equal quantity in the following cal-  
 13 endar year or such other period as the Ad-  
 14 ministrator shall prescribe.

15 “(B) DETERMINATION OF EXCESS EMIS-  
 16 SIONS PENALTY.—The excess emissions penalty  
 17 for nitrogen oxides shall be equal to the product  
 18 obtained by multiplying—

19 “(i) the number of tons of nitrogen  
 20 oxides emitted in excess of the total quan-  
 21 tity of nitrogen oxide allowances held; and

22 “(ii) 2 times the average price of a ni-  
 23 trogen oxide allowance for the Zone and  
 24 calendar year in which the excess emissions

1                   occurred, as determined by the Adminis-  
2                   trator.

3           “(f) TREATMENT OF EXISTING PROGRAMS.—

4                   “(1) IN GENERAL.—Except as provided in para-  
5                   graph (2), the provisions of the rule of the Adminis-  
6                   trator entitled the ‘Clean Air Interstate Rule’ (70  
7                   Fed. Reg. 25162 (May 12, 2005)) (or a successor  
8                   regulation) providing for the establishment of an an-  
9                   nual emissions cap and trading program for oxides  
10                  of nitrogen shall terminate on the later of—

11                           “(A) the effective date of the regulations  
12                           promulgated under this section; and

13                           “(B) January 1, 2012.

14                   “(2) EXCEPTION.—Notwithstanding paragraph  
15                   (1), any provision of the rule referred to in that  
16                   paragraph (or a successor regulation) relating to the  
17                   establishment of a seasonal ozone emission cap-and-  
18                   trade program for nitrogen oxides shall remain in  
19                   full force and effect.

20   **“SEC. 704. MERCURY PROGRAM.**

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

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

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

4       “(b) ANNUAL LIMITATION FOR CERTAIN UNITS.—  
5   On an annual average calendar year basis with respect to  
6   inlet mercury, an affected unit that commences operation  
7   on or after the date of enactment of this title shall be  
8   subject to the less stringent emission limitation of—

9           “(1) 90 percent capture of inlet mercury; or

10          “(2) an emission rate of 0.0060 lbs/GWh.

11       “(c) ANNUAL LIMITATION FOR EXISTING UNITS.—  
12   An affected unit in operation on the date of enactment  
13   of this title shall be subject to the following emission limi-  
14   tations on an annual average calendar year basis with re-  
15   spect to inlet mercury:

16          “(1) CALENDAR YEARS 2012 THROUGH 2014.—

17       For the period beginning on January 1, 2012, and  
18       ending on December 31, 2014, the less stringent  
19       limitation of—

20           “(A) 60 percent capture of inlet mercury;

21       and

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

23          “(2) CALENDAR YEAR 2015 AND THERE-  
24       AFTER.—For calendar year 2015 and each calendar  
25       year thereafter, the less stringent limitation of—

1                   “(A) 90 percent capture of inlet mercury;

2                   and

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

4           “(d) AVERAGING ACROSS UNITS.—An owner or oper-  
5 ator of an affected unit may demonstrate compliance with  
6 the annual average limitations under subsections (b) and  
7 (c) by averaging emissions from all affected units at a sin-  
8 gle facility.

9           “(e) MONITORING SYSTEM.—The Administrator shall  
10 promulgate regulations requiring—

11                   “(1) operation, reporting, and certification of  
12 continuous emissions monitoring systems to accu-  
13 rately measure the quantity of mercury that is emit-  
14 ted from each affected unit; and

15                   “(2) verification and reporting of mercury emis-  
16 sions at each affected unit.

17           “(f) REPORTING.—

18                   “(1) IN GENERAL.—Not less often than quar-  
19 terly, the owner or operator of an affected unit shall  
20 submit to the Administrator a report on the moni-  
21 toring of emissions of mercury carried out by the  
22 owner or operator in accordance with the regulations  
23 promulgated under subsection (e).

24                   “(2) AUTHORIZATION.—Each report submitted  
25 under paragraph (1) shall be authorized by a re-

1       sponsible official of the affected unit, who shall cer-  
2       tify the accuracy of the report.

3               “(3) PUBLIC REPORTING.—The Administrator  
4       shall make available to the public, through 1 or  
5       more published reports and 1 or more forms of elec-  
6       tronic media, data concerning the emission of mer-  
7       cury from each affected unit.

8               “(g) EXCESS EMISSIONS.—

9               “(1) IN GENERAL.—The owner or operator of  
10       an affected unit that emits mercury in excess of the  
11       emission limitation described in subsection (b) or (c)  
12       shall pay an excess emissions penalty determined  
13       under paragraph (2).

14              “(2) DETERMINATION OF EXCESS EMISSIONS  
15       PENALTY.—The excess emissions penalty for mer-  
16       cury shall be an amount equal to \$50,000 for each  
17       pound of mercury emitted in excess of the emission  
18       limitation described in subsection (b) or (c), as pro-  
19       rated for each fraction of a pound.

20   **“SEC. 705. CARBON DIOXIDE ALLOWANCE TRADING PRO-**  
21                   **GRAM.**

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

23              “(1) ALLOWANCE.—The term ‘allowance’  
24       means—

25                   “(A) a carbon dioxide allowance;

1 “(B) an offset allowance; or

2 “(C) an early reduction allowance.

3 “(2) EARLY REDUCTION ALLOWANCE.—The  
4 term ‘early reduction allowance’ means a carbon di-  
5 oxide allowance issued under subsection (g) for a  
6 project in the United States to reduce emissions of  
7 greenhouse gases or to sequester greenhouse gases  
8 that is carried out in calendar years 2000 through  
9 2012.

10 “(3) OFFSET ALLOWANCE.—The term ‘offset  
11 allowance’ means a carbon dioxide allowance issued  
12 under subsection (e) for a project to reduce emis-  
13 sions of greenhouse gases or to sequester greenhouse  
14 gases.

15 “(b) REGULATIONS.—

16 “(1) IN GENERAL.—Not later than 2 years  
17 after the date of enactment of this title, the Admin-  
18 istrator shall promulgate regulations to establish an  
19 allowance trading program for covered units in the  
20 United States.

21 “(2) REQUIREMENTS.—Regulations promul-  
22 gated under paragraph (1) shall establish require-  
23 ments for the carbon dioxide allowance trading pro-  
24 gram under this section, including requirements con-  
25 cerning—

1           “(A) the allocation, issuance, and use of  
2 carbon dioxide allowances;

3           “(B) the reserve and allocation of carbon  
4 dioxide allowances for new units and new re-  
5 newable energy units;

6           “(C) the issuance, certification, and use of  
7 offset allowances;

8           “(D) the issuance, certification, and use of  
9 early reduction allowances;

10          “(E) the transfer of allowances;

11          “(F) the monitoring, tracking, and report-  
12 ing of carbon dioxide emissions;

13          “(G) compliance and enforcement; and

14          “(H) the public availability of carbon diox-  
15 ide emissions information.

16          “(3) INTERACTION WITH DEPARTMENT OF AG-  
17 RICULTURE.—

18           “(A) IN GENERAL.—Except as provided in  
19 subparagraph (B), the Administrator shall pro-  
20 mulgate all regulations relating to offsets under  
21 this title.

22           “(B) OFFSETS.—The Administrator shall  
23 promulgate regulations relating to offsets pro-  
24 duced by agricultural sequestration practices in  
25 consultation with the Secretary of Agriculture.

1 “(c) NEW UNIT RESERVE.—

2 “(1) ESTABLISHMENT.—For each calendar  
3 year, based on projections of electricity output from  
4 new units, the Administrator, in consultation with  
5 the Secretary of Energy, shall establish by regula-  
6 tion a reserve of carbon dioxide allowances to be al-  
7 located to new covered units for the calendar year.

8 “(2) LIMITATIONS.—

9 “(A) IN GENERAL.—The number of allow-  
10 ances allocated under paragraph (1) during a  
11 calendar year shall be not more than 2 percent  
12 of the total number of allowances allocated to  
13 covered units for the calendar year.

14 “(B) REQUIREMENT.—Notwithstanding  
15 any other provision of this Act, no allowance  
16 shall be allocated to any coal-fired covered unit  
17 or any coal-fired new unit unless that covered  
18 unit or new unit—

19 “(i) is powered by a qualifying ad-  
20 vanced clean coal technology (as defined  
21 pursuant to subsection (d)(2)); or

22 “(ii) entered operation before January  
23 1, 2007.

24 “(3) UNUSED ALLOWANCES.—For each cal-  
25 endar year, the Administrator shall reallocate, to all



1 covered units, any unused carbon dioxide allowances  
 2 from the new unit reserve established under para-  
 3 graph (1) in the proportion that—

4 “(A) the number of allowances allocated to  
 5 each covered unit for the calendar year; bears  
 6 to

7 “(B) the number of allowances allocated to  
 8 all covered units for the calendar year.

9 “(d) INCENTIVES FOR CLEAN COAL TECHNOLOGY.—

10 “(1) ESTABLISHMENT.—The Administrator  
 11 shall establish by regulation a reserve of carbon di-  
 12 oxide allowances to be set aside during a calendar  
 13 year to encourage the deployment of clean coal tech-  
 14 nologies.

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

17 “(A) DEFINITION OF AVAILABLE TECH-  
 18 NOLOGY.—In this paragraph, the term ‘avail-  
 19 able technology’ means any coal combustion  
 20 technology that achieves an output-based emis-  
 21 sion rate of, as applicable—

22 “(i) 1,100 pounds of carbon dioxide  
 23 per megawatt-hour; and

24 “(ii) 0.0060 pounds of mercury per  
 25 gigawatt-hour.

“(B) CRITERIA AND STANDARDS.—Not later than July 1, 2009, the Administrator shall establish criteria and standards to define the term ‘qualifying advanced clean coal technology’ with respect to electric power generation.

“(C) REQUIREMENT.—In establishing criteria and standards under subparagraph (B), the Administrator shall ensure that the qualifying advanced clean coal technologies represent an advance in available technology, taking into consideration—

“(i) net thermal efficiency;

“(ii) measures to capture and sequester carbon dioxide; and

“(iii) output-based emission rates for—

“(I) carbon dioxide;

“(II) sulfur dioxide;

“(III) oxides of nitrogen;

“(IV) filterable and condensable particulate matter; and

“(V) mercury.

“(D) REVIEW AND REVISION.—

“(i) IN GENERAL.—Not later than July 1, 2010, and each July 1 thereafter,

1 the Administrator shall review and, if ap-  
2 propriate, revise the criteria and standards  
3 under subparagraph (B) based on techno-  
4 logical advances during the preceding cal-  
5 endar year.

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

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

19 “(3) QUANTITY AND DISTRIBUTION OF ALLOW-  
20 ANCES.—

21 “(A) QUANTITY.—The Administrator shall  
22 set aside by regulation an annual quantity of  
23 carbon dioxide allowances for qualifying ad-  
24 vanced clean coal technologies equal to 3 per-  
25 cent of the annual tonnage limitation estab-

1           lished under section 702(d) for the period be-  
2           ginning on January 1, 2012, and ending on De-  
3           cember 31, 2025.

4           “(B) DISTRIBUTION.—

5           “(i) IN GENERAL.—The Administrator  
6           shall establish by regulation a methodology  
7           for distributing the carbon dioxide allow-  
8           ances set aside under subparagraph (A) to  
9           encourage the deployment of advanced  
10          clean coal technologies.

11          “(ii) REVIEW AND REVISION.—

12          “(I) IN GENERAL.—Not later  
13          than July 1, 2009, and each July 1  
14          thereafter, the Administrator shall re-  
15          view and, if appropriate, revise the  
16          criteria and standards under clause (i)  
17          based on technological advances dur-  
18          ing the preceding calendar year.

19          “(II) NOTICE AND COMMENT  
20          NOT REQUIRED.—Subject to subclause  
21          (III), after the initial criteria and  
22          standards are established under clause  
23          (i), no subsequent review or revision  
24          under this subparagraph shall be sub-  
25          ject to the notice and comment provi-

1                   sions of section 553 of title 5, United  
2                   States Code.

3                   “(III) EFFECT.—Nothing in sub-  
4                   clause (II) precludes the application of  
5                   the notice and comment provisions of  
6                   section 553 of title 5, United States  
7                   Code, as the Administrator deter-  
8                   mines to be practicable.

9                   “(4) TREATMENT OF CORRESPONDENCE.—The  
10                  correspondence of the Office of Air Quality Planning  
11                  and Standards addressing best available control  
12                  technology requirements for proposed coal-fired  
13                  power plant projects and dated December 13,  
14                  2005—

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

17                  “(B) shall be treated as void and of no ef-  
18                  fect as of the date of issuance of the cor-  
19                  respondence.

20                  “(e) CARBON DIOXIDE ALLOWANCE ALLOCATION TO  
21                  COVERED UNITS THAT ARE NOT NEW UNITS AND CLEAN  
22                  COAL TECHNOLOGY RESERVE.—

23                  “(1) TIMING OF ALLOCATIONS.—The Adminis-  
24                  trator shall allocate carbon dioxide allowances to  
25                  covered units that are not new units—

1           “(A) not later than December 31, 2008,  
2           for calendar year 2012; and

3           “(B) not later than December 31 of cal-  
4           endar year 2009 and each calendar year there-  
5           after, for the fourth calendar year that begins  
6           after that December 31.

7           “(2) ALLOCATIONS.—

8           “(A) IN GENERAL.—The Administrator  
9           shall allocate to each covered unit that is not a  
10          new unit a quantity of carbon dioxide allow-  
11          ances that is equal to the product obtained by  
12          multiplying—

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

16               “(ii) the quotient obtained by divid-  
17               ing—

18                       “(I) the annual average quantity  
19                       of electricity generated by the unit  
20                       during the most recent 3-calendar  
21                       year period for which data are avail-  
22                       able, updated each calendar year and  
23                       measured in megawatt hours; and

1 “(II) the total of the average  
2 quantities described in subclause (I)  
3 with respect to all such units.

4 “(B) QUANTITY TO BE ALLOCATED.—For  
5 each calendar year, the quantity of carbon diox-  
6 ide allowances allocated under subparagraph  
7 (A) to covered units that are not new units  
8 shall be equal to the difference between—

9 “(i) the annual tonnage limitation for  
10 emissions of carbon dioxide from covered  
11 units specified in section 702(d) for the  
12 calendar year; and

13 “(ii) the sum of—

14 “(I) the quantity of carbon diox-  
15 ide allowances placed in the new unit  
16 reserve established under subsection  
17 (c) for the calendar year; and

18 “(II) the quantity of carbon diox-  
19 ide allowances reserved to provide in-  
20 centives for advanced clean coal tech-  
21 nologies under subsection (d) for the  
22 calendar year.

23 “(C) REQUIREMENT.—Notwithstanding  
24 any other provision of this title, no allowance

1 shall be allocated to any coal-fired unit that was  
 2 previously a new unit unless the unit—

3 “(i) is powered by a qualifying ad-  
 4 vanced clean coal technology (as defined  
 5 pursuant to subsection (d)(2)); or

6 “(ii) entered operation before January  
 7 1, 2007.

8 “(f) OFFSET ALLOWANCES.—

9 “(1) REGULATIONS.—Regulations promulgated  
 10 pursuant to subsection (b)(1) shall establish require-  
 11 ments for the issuance, certification, and use of off-  
 12 set allowances for greenhouse gas reduction or se-  
 13 questration projects carried out in the United States  
 14 or any other country, including requirements—

15 “(A) that projects not cause or contribute  
 16 to adverse effects on human health or the envi-  
 17 ronment;

18 “(B) that projects result in greenhouse gas  
 19 reductions that are real, surplus, enforceable,  
 20 verifiable, permanent, and not used more than  
 21 once, as determined by the Administrator;

22 “(C) for methodology for calculating the  
 23 carbon dioxide equivalent reductions attrib-  
 24 utable to projects;



1           “(D) for the monitoring, reporting, and  
 2           verification of the greenhouse gas reductions  
 3           from projects; and

4           “(E) for accounting principles used to  
 5           quantify the greenhouse gas reductions of  
 6           projects that require—

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

9                   “(ii) the consistent application of ac-  
 10                  counting principles;

11                  “(iii) transparency;

12                  “(iv) to the maximum extent prac-  
 13                  ticable, accuracy; and

14                  “(v) the use of conservative assump-  
 15                  tions in cases in which uncertainties re-  
 16                  quire the use of assumptions.

17           “(2) STATE OFFSET METHODS.—In promul-  
 18           gating regulations pursuant to subsection (b)(1), the  
 19           Administrator shall take into consideration offset  
 20           methods developed, as of the date of enactment of  
 21           this title, by the State of California or any other  
 22           State pursuant to the Regional Greenhouse Gas Ini-  
 23           tiative or a similar regulatory program of com-  
 24           parable rigor, as determined by the Administrator.

1           “(3) APPROVED CATEGORIES OF OFFSET  
2 PROJECTS.—

3           “(A) IN GENERAL.—Greenhouse gas re-  
4 duction or sequestration projects from the fol-  
5 lowing types of operations and projects shall be  
6 eligible to create offsets for use under this sec-  
7 tion:

8                   “(i) Landfill operations.

9                   “(ii) Agricultural manure manage-  
10 ment projects.

11                  “(iii) Agricultural soil sequestration  
12 projects.

13                  “(iv) Forest based projects, including  
14 conservation-based forest management  
15 projects, reforestation projects, and con-  
16 servation projects.

17                  “(v) Reduction in emission of sulfur  
18 hexafluoride projects.

19                  “(vi) Energy efficiency projects.

20                  “(vii) Wastewater treatment facilities.

21                  “(viii) Coal mining operations.

22                  “(ix) Natural gas transmission and  
23 distribution systems.

24                  “(x) Electrical transmission and dis-  
25 tribution systems.

1 “(xi) Fossil fuel combustion at com-  
 2 mercial and residential buildings.

3 “(B) PROTOCOLS.—

4 “(i) INITIAL PROTOCOLS.—Not later  
 5 than January 1, 2009, the Administrator  
 6 shall develop specific offset protocols for at  
 7 least a majority of the project types de-  
 8 scribed in subparagraph (A), with priority  
 9 given to project types with the greatest  
 10 greenhouse gas reduction or sequestration  
 11 potential, as determined by the Adminis-  
 12 trator.

13 “(ii) SUBSEQUENT PROTOCOLS.—Not  
 14 later than January 1, 2010, the Adminis-  
 15 trator shall develop a specific offset pro-  
 16 tocol for each project type for which a pro-  
 17 tocol was not developed under clause (i).

18 “(4) CREATION OF ADDITIONAL CATEGORIES  
 19 OF GREENHOUSE GAS EMISSIONS REDUCTION OFF-  
 20 SET PROJECTS.—

21 “(A) IN GENERAL.—Subject to subpara-  
 22 graph (B), the Administrator, by regulation,  
 23 may create additional categories of greenhouse  
 24 gas emissions reduction or sequestration offset  
 25 projects for types of projects for which the Ad-

1            administrator determines that compliance with the  
 2            regulations promulgated pursuant to subsection  
 3            (b)(1) is feasible.

4            “(B) EXCLUSIONS.—Regulations promul-  
 5            gated pursuant to subparagraph (A) shall not  
 6            include any greenhouse gas emission reduction  
 7            or sequestration offset project (or type of  
 8            project) that affects—

9                    “(i) a motor vehicle (as defined in sec-  
 10                    tion 216);

11                   “(ii) a nonroad engine (as defined in  
 12                   section 216); or

13                   “(iii) a stationary source (as defined  
 14                   in section 302) that is not a covered unit.

15            “(5) PROHIBITION ON USE.—Notwithstanding  
 16            paragraphs (3) and (4), a greenhouse gas emissions  
 17            reduction or sequestration offset project shall not be  
 18            eligible to receive an offset credit for use under this  
 19            section beginning on the date on which the reduction  
 20            or sequestration achieved by the project is required  
 21            by law (including regulations) or another legally  
 22            binding requirement.

23            “(g) EARLY REDUCTION ALLOWANCES.—

24                   “(1) IN GENERAL.—Not later than January 1,  
 25            2009, the Administrator shall promulgate regula-

tions for the issuance, certification, and use of early reduction allowances for greenhouse gas reduction or sequestration projects carried out during calendar years 2000 through 2012.

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

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

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

“(C) was reported—

“(i) under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b));

“(ii) under a voluntary climate change program of the Environmental Protection Agency, such as the Climate Leaders program; or

“(iii) to a State or regional greenhouse gas registry.

“(3) LIMITATION.—The quantity of early reduction allowances available for greenhouse gas reduction or sequestration projects in calendar years

1       2000 through 2012 shall not exceed 10 percent of  
2       the carbon dioxide emission tonnage limitation for  
3       calendar year 2012 under section 702(d).

4       “(h) USE AND TRANSFER OF ALLOWANCES.—

5               “(1) USE IN OTHER CARBON DIOXIDE ALLOW-  
6       ANCE TRADING PROGRAMS.—

7                       “(A) IN GENERAL.—Allowances may be  
8       used in any other carbon dioxide allowance  
9       trading program that is approved by the Ad-  
10      ministrators for use of the allowances.

11                      “(B) MONITORING.—The Administrator  
12      shall review each transfer of an allowance into  
13      or out of the allowance trading program under  
14      this section.

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

18               “(3) TRANSFER.—

19                      “(A) IN GENERAL.—Notwithstanding para-  
20      graph (2), allowances may be transferred before  
21      the calendar year for which the allowances were  
22      allocated.

23                      “(B) LIMITATION.—The transfer of an al-  
24      lowance shall not take effect until receipt and  
25      recording by the Administrator of a written cer-

1           tification of the transfer, which is executed by  
2           an authorized official of the person making the  
3           transfer.

4           “(4) USE BY PERSONS TO WHICH CARBON DI-  
5           OXIDE ALLOWANCES ARE TRANSFERRED.—Any per-  
6           son to which carbon dioxide allowances are trans-  
7           ferred under paragraph (3)(A) may use the carbon  
8           dioxide allowances in the calendar year for which the  
9           carbon dioxide allowances were allocated, or in a  
10          subsequent calendar year, to demonstrate compli-  
11          ance with subsection (i)(1).

12          “(5) PERMIT REQUIREMENTS.—An allocation  
13          or transfer of allowances to a covered unit shall be  
14          considered to be part of the federally enforceable  
15          permit of the covered unit under this Act, without  
16          a requirement for further review or revision of the  
17          permit.

18          “(i) COMPLIANCE AND ENFORCEMENT.—

19               “(1) IN GENERAL.—For the period of calendar  
20               years 2012 and 2013, and for each 2-calendar-year  
21               period thereafter, the owner of each covered unit  
22               shall surrender to the Administrator a quantity of  
23               allowances that is equal to the total tons of carbon  
24               dioxide emitted by the covered unit during the 2-cal-  
25               endar-year period.

1           “(2) EXCESS EMISSIONS.—

2                   “(A) IN GENERAL.—The owner or operator  
3 of a covered unit that emits carbon dioxide in  
4 excess of the allowances that the owner or oper-  
5 ator holds for use for the covered unit for the  
6 2-calendar-year period shall—

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

9                           “(ii) offset the excess emissions by at  
10 least an equal quantity in the following 2-  
11 calendar-year period or such other period  
12 as the Administrator shall prescribe.

13                   “(B) DETERMINATION OF EXCESS EMIS-  
14 SIONS PENALTY.—The excess emissions penalty  
15 for carbon dioxide shall be equal to the product  
16 obtained by multiplying—

17                           “(i) the number of tons of carbon di-  
18 oxide emitted in excess of the total quan-  
19 tity of allowances held; and

20                           “(ii) 2 times the average price of a  
21 carbon dioxide allowance for the 2-cal-  
22 endar-year period in which the excess emis-  
23 sions occurred, as determined by the Ad-  
24 ministrator.



1           “(3) MONITORING SYSTEM.—The Administrator  
2       shall promulgate regulations requiring—

3           “(A) operation, reporting, and certification  
4       of continuous emissions monitoring systems to  
5       accurately measure the quantity of carbon diox-  
6       ide that is emitted from each covered unit; and

7           “(B) verification and reporting of carbon  
8       dioxide emissions at each covered unit.

9       “(4) REPORTING.—

10          “(A) IN GENERAL.—Not less often than  
11       quarterly, the owner or operator of a covered  
12       unit shall submit to the Administrator a report  
13       on the monitoring of emissions of carbon diox-  
14       ide carried out by the owner or operator in ac-  
15       cordance with the regulations promulgated  
16       under paragraph (3).

17          “(B) AUTHORIZATION.—Each report sub-  
18       mitted under subparagraph (A) shall be author-  
19       ized by a responsible official of the covered unit,  
20       who shall certify the accuracy of the report.

21          “(C) PUBLIC REPORTING.—The Adminis-  
22       trator shall make available to the public,  
23       through 1 or more published reports and 1 or  
24       more forms of electronic media, data concerning

1           the emission of carbon dioxide from each cov-  
2           ered unit.

3           “(j) ALLOWANCE NOT A PROPERTY RIGHT.—An al-  
4           lowance—

5           “(1) is not a property right; and

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

8           “(k) NO JUDICIAL REVIEW.—An allocation or  
9           issuance of an allowance by the Administrator shall not  
10          be subject to judicial review.

11   **“SEC. 706. DISTRIBUTION OF ALLOWANCES BETWEEN AUC-**  
12                           **TIONS AND ALLOCATIONS; NATURE OF AL-**  
13                           **LOWANCES.**

14          “(a) DISTRIBUTION OF ALLOWANCES BETWEEN  
15          AUCTIONS AND ALLOCATIONS.—

16               “(1) IN GENERAL.—For each calendar year, the  
17          total quantity of allowances to be auctioned and allo-  
18          cated under this title shall be equal to the annual  
19          tonnage limitation for emissions of greenhouse gases  
20          from affected units specified in section 702 for the  
21          calendar year.

22               “(2) DISTRIBUTION.—The proportion of allow-  
23          ances to be auctioned pursuant to section 707 and  
24          allocated pursuant to section 705 for each calendar

1 year beginning in calendar year 2012 shall be as fol-  
 2 lows:

“Percentages of Allowances To Be Auctioned and Allocated

Calendar year	Percentage to be auc- tioned	Percentage to be allo- cated
2012 .....	18	82
2013 .....	21	79
2014 .....	24	76
2015 .....	27	73
2016 .....	30	70
2017 .....	33	67
2018 .....	36	64
2019 .....	39	61
2020 .....	42	58
2021 .....	45	55
2022 .....	48	52
2023 .....	51	49
2024 .....	54	46
2025 .....	57	43
2026 .....	60	40
2027 .....	63	37
2028 .....	66	34
2029 .....	69	41
2030 .....	72	28
2031 .....	75	25
2032 .....	80	20
2033 .....	85	15
2034 .....	90	10
2035 .....	95	5
2036 and thereafter ....	100	0

3 “(b) NATURE OF ALLOWANCES.—An allowance—

4 “(1) shall not be considered to be a property  
 5 right; and

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

8 “(c) NO JUDICIAL REVIEW.—An auction or alloca-  
 9 tion of an allowance by the Administrator shall not be sub-  
 10 ject to judicial review.

11 **“SEC. 707. AUCTION OF ALLOWANCES.**

12 “(a) IN GENERAL.—Not later than 2 years after the  
 13 date of enactment of this title, the Administrator shall

1 promulgate regulations establishing a procedure for the  
2 auction of the quantity of allowances specified in section  
3 706(a) for each calendar year.

4 “(b) DEPOSIT OF PROCEEDS.—The Administrator  
5 shall deposit all proceeds from auctions conducted under  
6 this section in the Fund for use in accordance with section  
7 708.

8 **“SEC. 708. CLIMATE ACTION TRUST FUND.**

9 “(a) ESTABLISHMENT AND ADMINISTRATION.—

10 “(1) IN GENERAL.—There is established in the  
11 general fund of the Treasury a fund, to be known  
12 as the ‘Climate Action Trust Fund’, consisting of—

13 “(A) such amounts as are deposited in the  
14 Fund under paragraph (2); and

15 “(B) any interest earned on investment of  
16 amounts in the Fund under paragraph (4).

17 “(2) TRANSFERS TO FUND.—The Secretary of  
18 the Treasury shall deposit in the Fund amounts  
19 equivalent to the proceeds received by the Adminis-  
20 trator as a result of the conduct of auctions of allow-  
21 ances under section 707.

22 “(3) EXPENDITURES FROM FUND.—

23 “(A) IN GENERAL.—Subject to subpara-  
24 graph (B), the Administrator shall use amounts

1 in the Fund to carry out the programs de-  
 2 scribed in this section.

3 “(B) ADMINISTRATIVE EXPENSES.—Of  
 4 amounts in the Fund, there shall be made avail-  
 5 able to pay the administrative expenses nec-  
 6 essary to carry out this title, as adjusted for  
 7 changes beginning on January 1, 2007, in ac-  
 8 cordance with the Consumer Price Index for  
 9 All-Urban Consumers published by the Depart-  
 10 ment of Labor—

11 “(i) \$90,000,000 for each fiscal year,  
 12 to the Administrator; and

13 “(ii) \$30,000,000 for each fiscal year,  
 14 to the Secretary of Agriculture.

15 “(4) INVESTMENT OF AMOUNTS.—

16 “(A) IN GENERAL.—The Secretary of  
 17 Treasury shall invest such portion of the Fund  
 18 as is not, in the judgment of the Administrator,  
 19 required to meet current withdrawals.

20 “(B) INTEREST-BEARING OBLIGATIONS.—  
 21 Investments may be made only in interest-bear-  
 22 ing obligations of the United States.

23 “(C) ACQUISITION OF OBLIGATIONS.—For  
 24 the purpose of investments under paragraph  
 25 (1), obligations may be acquired—

1                   “(i) on original issue at the issue  
2                   price; or

3                   “(ii) by purchase of outstanding obli-  
4                   gations at the market price.

5                   “(D) SALE OF OBLIGATIONS.—Any obliga-  
6                   tion acquired by the Fund may be sold by the  
7                   Administrator at the market price.

8                   “(E) RETURN OF PROCEEDS TO FUND.—  
9                   The interest on, and the proceeds from the sale  
10                  or redemption of, any obligations held in the  
11                  Fund shall be credited to, and form a part of,  
12                  the Fund.

13                  “(5) REGULATIONS.—Not later than 2 years  
14                  after the date of enactment of this title, the Admin-  
15                  istrator, in consultation with the Secretary of En-  
16                  ergy and the Secretary of Agriculture, shall promul-  
17                  gate such regulations as are necessary to administer  
18                  the Fund in accordance with this section.

19                  “(b) USES OF FUND.—

20                  “(1) NO FURTHER APPROPRIATION.—The Ad-  
21                  ministrator shall distribute amounts in the Fund for  
22                  use in accordance with this section, without further  
23                  appropriation.

24                  “(2) REGULATIONS.—

1           “(A) IN GENERAL.—Not later than 3 years  
2           after the date of enactment of this title, the Ad-  
3           ministrator, in consultation with the Secretary  
4           of Energy and the Secretary of Agriculture,  
5           shall promulgate regulations establishing an in-  
6           novative low- and zero-emitting carbon tech-  
7           nologies program, a clean coal technologies pro-  
8           gram, a research and analysis program, and an  
9           energy efficiency technology program that in-  
10          clude—

11                 “(i) the funding mechanisms that will  
12                 be available to support the development  
13                 and deployment of the technologies ad-  
14                 dressed by each program, including low-in-  
15                 terest loans, loan guarantees, grants, and  
16                 financial awards; and

17                 “(ii) the criteria for the methods by  
18                 which proposals will be funded to develop  
19                 and deploy the technologies.

20           “(B) REVISION OF CRITERIA.—Not later  
21           than January 1, 2014, and every 3 years there-  
22           after, the Administrator shall review and, if ap-  
23           propriate, revise, based on technological ad-  
24           vances, the criteria referred to in subparagraph  
25           (A)(ii).

1                   “(C) ADAPTATION ASSISTANCE FOR WORK-  
 2                   ERS AND COMMUNITIES.—Not later than 3  
 3                   years after the date of enactment of this title,  
 4                   the Administrator, in consultation with the Sec-  
 5                   retary of Energy, shall promulgate regulations  
 6                   governing the distribution of funds pursuant to  
 7                   subsection (g).

8                   “(3) PROGRESS REPORTS.—Not later than Jan-  
 9                   uary 1, 2015, and every 5 years thereafter, the Ad-  
 10                  ministrator shall prepare and submit to the Presi-  
 11                  dent and Congress a report containing an evaluation  
 12                  of the effectiveness of the distribution of funds  
 13                  under this section.

14                  “(c) INNOVATIVE LOW- AND ZERO-EMITTING CAR-  
 15                  BON ELECTRICITY GENERATION TECHNOLOGIES PRO-  
 16                  GRAM.—

17                  “(1) IN GENERAL.—For each calendar year, of  
 18                  amounts remaining in the Fund after making the  
 19                  expenditures described in subsection (a)(3)(B), the  
 20                  Administrator shall use not more than 35 percent to  
 21                  support the development and deployment of low- and  
 22                  zero-emitting carbon electricity generation tech-  
 23                  nologies.

24                  “(2) REGULATIONS.—The regulations estab-  
 25                  lishing the innovative low- and zero-emitting carbon



1 electricity generation technologies program referred  
2 to in subsection (b)(2)(A) shall establish the areas of  
3 technology development that will qualify for funding  
4 under that program, including technologies for the  
5 generation of electricity from renewable energy  
6 sources.

7 “(d) CLEAN COAL TECHNOLOGIES PROGRAM.—

8 “(1) IN GENERAL.—For each calendar year, of  
9 amounts remaining in the Fund after making the  
10 expenditures described in subsection (a)(3)(B), the  
11 Administrator shall use not more than 20 percent to  
12 support the development and deployment of clean  
13 coal technologies.

14 “(2) REGULATIONS.—The criteria and stand-  
15 ards established pursuant to section 705(d)(2) to de-  
16 fine the term ‘clean coal technology’ shall establish  
17 criteria for use of a technology in the clean coal  
18 technologies program under subsection (b)(2)(A).

19 “(e) ENERGY EFFICIENCY TECHNOLOGY PRO-  
20 GRAM.—

21 “(1) IN GENERAL.—For each calendar year, of  
22 amounts remaining in the Fund after making the  
23 expenditures described in subsection (a)(3)(B), the  
24 Administrator shall use not more than 15 percent to  
25 support the development and deployment of tech-

1 nologies for increasing the efficiency of energy end  
 2 use in buildings and industry.

3 “(2) REGULATIONS.—The regulations estab-  
 4 lishing the energy efficiency program referred to in  
 5 subsection (b)(2)(A) shall establish the areas of  
 6 technology development that will qualify for funding  
 7 under the energy efficiency program.

8 “(f) FEDERAL FUNDING OF RESEARCH INTO AND  
 9 DEVELOPMENT OF ENERGY AND EFFICIENCY TECH-  
 10 NOLOGIES, CARBON LIFECYCLE ANALYSIS, AND AGRICUL-  
 11 TURAL PRACTICES.—For each calendar year, the Admin-  
 12 istrator shall use not more than 10 percent of the amounts  
 13 in the Fund to support research into and development  
 14 of—

15 “(1) energy and efficiency technologies;

16 “(2) carbon lifecycle analyses of energy genera-  
 17 tion technologies and practices; and

18 “(3) agricultural practices that sequester or re-  
 19 duce atmospheric greenhouse gases.

20 “(g) ADAPTATION ASSISTANCE FOR WORKERS AND  
 21 COMMUNITIES NEGATIVELY AFFECTED BY CLIMATE  
 22 CHANGE AND GREENHOUSE GAS REGULATION.—For  
 23 each calendar year, of amounts remaining in the Fund  
 24 after making the expenditures described in subsection  
 25 (a)(3)(B), the Administrator shall use at least 10 percent

1 to provide adaptation assistance for workers and commu-  
 2 nities—

3 “(1) to address local or regional impacts of cli-  
 4 mate change and the impacts, if any, from green-  
 5 house gas regulation, including by providing assist-  
 6 ance to displaced workers and disproportionately af-  
 7 fected communities; and

8 “(2) to mitigate impacts of climate change and  
 9 the impacts, if any, from greenhouse gas regulation  
 10 on low-income energy consumers.

11 “(h) FISH AND WILDLIFE HABITAT.—

12 “(1) IN GENERAL.—For each calendar year, of  
 13 amounts remaining in the Fund after making the  
 14 expenditures described in subsection (a)(3)(B), the  
 15 Administrator shall use at least 10 percent to miti-  
 16 gate the impacts of climate change on fish and wild-  
 17 life habitat in accordance with this subsection.

18 “(2) WILDLIFE RESTORATION FUND.—

19 “(A) IN GENERAL.—For each calendar  
 20 year, the Administrator shall transfer not less  
 21 than 70 percent of the amounts made available  
 22 under paragraph (1) to the Federal aid to wild-  
 23 life restoration fund established under section  
 24 3(a)(1) of the Pittman-Robertson Wildlife Res-  
 25 toration Act (16 U.S.C. 669b(a)(1))—

1 “(i) to carry out climate change im-  
2 pact mitigation actions pursuant to com-  
3 prehensive wildlife conservation strategies;  
4 and

5 “(ii) to provide relevant information,  
6 training, monitoring, and other assistance  
7 to develop climate change impact mitiga-  
8 tion and adaptation plans and integrate  
9 the plans into State comprehensive wildlife  
10 conservation strategies.

11 “(B) AVAILABILITY.—Amounts transferred  
12 to the Federal aid to wildlife restoration fund  
13 under this paragraph shall—

14 “(i) be available, without further ap-  
15 propriation, for obligation and expenditure;  
16 and

17 “(ii) remain available until expended.

18 “(3) PROTECTION OF NATURAL RESOURCES.—

19 “(A) IN GENERAL.—For each calendar  
20 year, the Administrator, in consultation with  
21 the Secretary of Agriculture, the Secretary of  
22 Commerce, the Chief of Engineers, and State  
23 and national wildlife conservation organizations,  
24 shall transfer not more than 30 percent of the  
25 funds made available under paragraph (1) to

1 the Secretary of the Interior for use in carrying  
2 out Federal and State programs and projects—

3 “(i) to protect natural communities  
4 that are most vulnerable to climate change;

5 “(ii) to restore and protect natural re-  
6 sources that directly guard against dam-  
7 ages from climate change events; and

8 “(iii) to restore and protect ecosystem  
9 services that are most vulnerable to climate  
10 change.

11 “(B) ADMINISTRATION.—Amounts trans-  
12 ferred to the Secretary of the Interior under  
13 this paragraph shall—

14 “(i) be available, without further ap-  
15 propriation, for obligation and expenditure;

16 “(ii) remain available until expended;

17 “(iii)(I) be obligated not later than 2  
18 years after the date of transfer; or

19 “(II) if the amounts are not obligated  
20 in accordance with subclause (I), be trans-  
21 ferred to the Federal aid to wildlife res-  
22 toration fund for use in accordance with  
23 paragraph (2); and

24 “(iv) supplement, and not supplant,  
25 the amount of Federal, State, and local

1 funds otherwise expended to carry out pro-  
2 grams and projects described in subpara-  
3 graph (A).

4 “(C) PROGRAMS AND PROJECTS.—Pro-  
5 grams and projects for which funds may be  
6 used under this paragraph include—

7 “(i) Federal programs and projects—

8 “(I) to identify Federal land and  
9 water at greatest risk of being dam-  
10 aged or depleted by climate change;

11 “(II) to monitor Federal land  
12 and water to allow for early detection  
13 of impacts;

14 “(III) to develop adaptation  
15 strategies to minimize the damage;  
16 and

17 “(IV) to restore and protect Fed-  
18 eral land and water at the greatest  
19 risk of being damaged or depleted by  
20 climate change;

21 “(ii) Federal programs and projects to  
22 identify climate change risks and develop  
23 adaptation strategies for natural grassland,  
24 wetlands, migratory corridors, and other

1 habitats vulnerable to climate change on  
2 private land enrolled in—

3 “(I) the wetlands reserve pro-  
4 gram established under subchapter C  
5 of chapter 1 of subtitle D of title XII  
6 of the Food Security Act of 1985 (16  
7 U.S.C. 3837 et seq.);

8 “(II) the grassland reserve pro-  
9 gram established under subchapter C  
10 of chapter 2 of subtitle D of title XII  
11 of that Act (16 U.S.C. 3838n et seq.);  
12 and

13 “(III) the wildlife habitat incen-  
14 tive program established under section  
15 1240N of that Act (16 U.S.C.  
16 3839bb–1);

17 “(iii) programs and projects under the  
18 North American Wetlands Conservation  
19 Act (16 U.S.C. 4401 et seq.), the North  
20 American Bird Conservation Initiative, and  
21 the Neotropical Migratory Bird Conserva-  
22 tion Act (16 U.S.C. 6101 et seq.) to pro-  
23 tect habitat for migratory birds that are  
24 vulnerable to climate change impacts;

25 “(iv) programs and projects—

1           “(I) to identify coastal and ma-  
2           rine resources (such as coastal wet-  
3           lands, coral reefs, submerged aquatic  
4           vegetation, shellfish beds, and other  
5           coastal or marine ecosystems) at the  
6           greatest risk of being damaged by cli-  
7           mate change;

8           “(II) to monitor those resources  
9           to allow for early detection of impacts;

10          “(III) to develop adaptation  
11          strategies;

12          “(IV) to protect and restore  
13          those resources; and

14          “(V) to integrate climate change  
15          adaptation requirements into State  
16          plans developed under the coastal  
17          zone management program estab-  
18          lished under the Coastal Zone Man-  
19          agement Act of 1972 (16 U.S.C. 1451  
20          et seq.), the national estuary program  
21          established under section 320 of the  
22          Federal Water Pollution Control Act  
23          (33 U.S.C. 1330), the Coastal and  
24          Estuarine Land Conservation Pro-  
25          gram established under the fourth



1                   proviso of the matter under the head-  
2                   ing ‘PROCUREMENT, ACQUISITION,  
3                   AND CONSTRUCTION (INCLUDING  
4                   TRANSFERS OF FUNDS)’ of title II of  
5                   the Departments of Commerce, Jus-  
6                   tice, and State, the Judiciary, and Re-  
7                   lated Agencies Appropriations Act,  
8                   2002 (16 U.S.C. 1456d), or other  
9                   comparable State programs;

10                  “(v) programs and projects to con-  
11                  serve habitat for endangered species and  
12                  species of conservation concern that are  
13                  vulnerable to the impact of climate change;

14                  “(vi) programs and projects under the  
15                  Forest Legacy Program established under  
16                  section 7 of the Cooperative Forestry As-  
17                  sistance Act (16 U.S.C. 2103c), to support  
18                  State efforts to protect environmentally  
19                  sensitive forest land through conservation  
20                  easements to provide refuges for wildlife;

21                  “(vii) other Federal or State pro-  
22                  grams and projects identified by the heads  
23                  of agencies described in subparagraph (A)  
24                  as high priorities—

1 “(I) to protect natural commu-  
2 nities that are most vulnerable to cli-  
3 mate change;

4 “(II) to restore and protect nat-  
5 ural resources that directly guard  
6 against damages from climate change  
7 events; and

8 “(III) to restore and protect eco-  
9 system services that are most vulner-  
10 able to climate change;

11 “(viii) to address climate change in  
12 Federal land use planning and plan imple-  
13 mentation and to integrate climate change  
14 adaptation strategies into—

15 “(I) comprehensive conservation  
16 plans prepared under section 4(e) of  
17 the National Wildlife Refuge System  
18 Administration Act of 1966 (16  
19 U.S.C. 668dd(e));

20 “(II) general management plans  
21 for units of the National Park Sys-  
22 tem;

23 “(III) resource management  
24 plans of the Bureau of Land Manage-  
25 ment; and

1 “(IV) land and resource manage-  
 2 ment plans under the Forest and  
 3 Rangeland Renewable Resources  
 4 Planning Act of 1974 (16 U.S.C.  
 5 1600 et seq.) and the National Forest  
 6 Management Act of 1976 (16 U.S.C.  
 7 1600 et seq.); and

8 “(ix) projects to promote sharing of  
 9 information on climate change wildlife im-  
 10 pacts and mitigation strategies across  
 11 agencies, including funding efforts to  
 12 strengthen and restore habitat that im-  
 13 proves the ability of fish and wildlife to  
 14 adapt successfully to climate change  
 15 through the Wildlife Conservation and Res-  
 16 toration Account established by section  
 17 3(a)(2) of the Pittman-Robertson Wildlife  
 18 Restoration Act (16 U.S.C. 669b(a)(2)).”.

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

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

22 “(f) REVISIONS TO NEW SOURCE REVIEW PRO-  
 23 GRAM.—

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

1           “(A) AFFECTED UNIT.—The term ‘af-  
 2           fected unit’ has the meaning given the term in  
 3           section 701.

4           “(B) NEW SOURCE REVIEW PROGRAM.—  
 5           The term ‘new source review program’ means  
 6           the program to carry out this part and part D.

7           “(2) PERFORMANCE STANDARDS.—

8           “(A) IN GENERAL.—Except as provided in  
 9           subparagraph (B), beginning January 1, 2020,  
 10          and on each January 1 thereafter, each affected  
 11          unit that has been in operation 40 or more  
 12          years as of that January 1, and that operates  
 13          for more than 500 hours per calendar year,  
 14          shall meet performance standards of—

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

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

17          “(B) EXCEPTION.—

18               “(i) IN GENERAL.—Notwithstanding  
 19          subparagraph (A), an affected unit that, as  
 20          of January 1, 2020, is required to meet a  
 21          more stringent performance standard than  
 22          the applicable standard under subpara-  
 23          graph (A) shall continue to meet the more  
 24          stringent standard.

1                   “(ii) MODIFICATION OF AFFECTED  
 2                   UNITS.—The requirements of this section  
 3                   shall not affect in any way any require-  
 4                   ment under section 111(a)(4), this part, or  
 5                   part D governing modifications of major  
 6                   stationary sources.

7                   “(3) NO EFFECT ON OTHER REQUIREMENTS  
 8                   AND RETENTION OF STATE AUTHORITY.—Nothing in  
 9                   this subsection affects—

10                   “(A) any State authority under section  
 11                   116; or

12                   “(B) the obligation of any State or local  
 13                   government or any major emitting facility to  
 14                   comply with the requirements of this section.”.

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

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

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

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

1       “(b) REGULATIONS.—Not later than January 1,  
2 2008, the Administrator shall promulgate such revisions  
3 to the regulations to implement this title as the Adminis-  
4 trator determines to be necessary to implement section  
5 702(a).

6       “(c) NEW UNIT RESERVE.—

7           “(1) ESTABLISHMENT.—Subject to the annual  
8 tonnage limitation for emissions of sulfur dioxide  
9 from affected units specified in section 702(a), the  
10 Administrator shall establish by regulation a reserve  
11 of allowances 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, 2008, the  
17 quantity of allowances required to be held in re-  
18 serve for new units for each of calendar years  
19 2012 through 2014; and

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

24          “(3) ALLOCATION.—

1           “(A) REGULATIONS.—The Administrator  
2           shall promulgate regulations to establish a  
3           methodology for allocating allowances to new  
4           units.

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

9           “(d) EXISTING UNITS.—

10          “(1) ALLOCATION.—

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

19           “(B) REQUIRED ELEMENTS.—The regula-  
20           tions shall provide for—

21           “(i) the allocation of allowances on a  
22           fair and equitable basis between affected  
23           units that received allowances under sec-  
24           tion 405 and affected units that are not  
25           new units and that did not receive allow-

ances 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, 2007, for calendar years 2010 and 2011; and

“(B) not later than December 31 of calendar year 2008 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.”.

(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:



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

8       (c) EXCESS EMISSIONS.—Section 411 of the Clean  
 9       Air Act (relating to acid deposition control) (42 U.S.C.  
 10      7651j) is amended by striking subsections (a) and (b) and  
 11      inserting the following:

12       “(a) IN GENERAL.—The owner or operator of a new  
 13      unit or an affected unit that emits sulfur dioxide in excess  
 14      of the sulfur dioxide allowances that the owner or operator  
 15      holds for use for the new unit or affected unit for the cal-  
 16      endar year shall—

17           “(1) pay an excess emissions penalty deter-  
 18      mined under subsection (b); and

19           “(2) offset the excess emissions by at least an  
 20      equal quantity in the following calendar year or such  
 21      other period as the Administrator shall prescribe.

22       “(b) DETERMINATION OF EXCESS EMISSIONS PEN-  
 23      ALTY.—

1           “(1) IN GENERAL.—The excess emissions pen-  
2           alty for sulfur dioxide shall be equal to the product  
3           obtained by multiplying—

4                   “(A) the quantity of sulfur dioxide emitted  
5                   in excess of the total quantity of sulfur dioxide  
6                   allowances held; and

7                   “(B) 2 times the average price of a sulfur  
8                   dioxide allowance for the calendar year in which  
9                   the excess emissions occurred, as determined by  
10                  the Administrator.

11           “(2) TREATMENT.—An excess emissions pen-  
12           alty under paragraph (1)—

13                   “(A) shall be due and payable without de-  
14                   mand to the Administrator, in accordance with  
15                   applicable regulations promulgated by the Ad-  
16                   ministrator, by not later than 18 months after  
17                   the date of enactment of the Clean Air Plan-  
18                   ning Act of 2007; and

19                   “(B) shall not diminish the liability of the  
20                   owner or operator of the affected unit with re-  
21                   spect to any fine, penalty, or assessment appli-  
22                   cable to the affected unit for the same violation  
23                   under any other provision of this Act.”.

24           (d) 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:

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

**SEC. 6. ENVIRONMENTAL PROTECTION AGENCY PROGRAM  
TO REDUCE CARBON DIOXIDE FROM NEW  
COAL-FIRED ELECTRIC GENERATING UNITS.**

Section 111 of the Clean Air Act (42 U.S.C. 7411) is amended by adding at the end the following:

“(k) STANDARDS OF PERFORMANCE FOR NEW ELECTRIC GENERATING UNITS.—

“(1) STANDARD OF PERFORMANCE.—

“(A) IN GENERAL.—Each covered unit that commences operation on or after January 1, 2015, shall meet the following standards of performance:

“(i) For each of calendar years 2015 through 2025, an emission limitation of

1 1,100 pounds of carbon dioxide per mega-  
2 watt-hour or less.

3 “(ii) For calendar year 2025 and each  
4 calendar year thereafter, an emission limi-  
5 tation of 285 pounds of carbon dioxide per  
6 megawatt-hour or less.

7 “(B) REVIEW AND REVISION.—

8 “(i) IN GENERAL.—Not later than  
9 January 1, 2015, and every 5 years there-  
10 after, the Administrator shall complete a  
11 review of the standard of performance  
12 under subparagraph (A) (or a modified  
13 standard, if applicable) to determine  
14 whether the standard requires revision,  
15 based on the best available technological  
16 system of continuous emission reduction on  
17 the date on which the review is conducted.

18 “(ii) PUBLICATION.—The Adminis-  
19 trator shall publish each determination  
20 under clause (i) not later than the deadline  
21 for the determination under that clause.

22 “(iii) TREATMENT.—A determination  
23 of the Administrator under clause (i) shall  
24 be considered to be a final agency action  
25 for purposes of section 307(b)(1).

1           “(2) TREATMENT OF CERTAIN CARBON DIOX-  
 2           IDE.—Carbon dioxide that is injected into a geologi-  
 3           cal formation in a manner that prevents any release  
 4           of the carbon dioxide into the atmosphere shall not  
 5           be considered to be a carbon dioxide emission from  
 6           an electric generating unit for purposes of meeting  
 7           an applicable standard under paragraph (1).”.

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

9           (a) REGULATION OF HAZARDOUS AIR POLLUT-  
 10          ANTS.—Section 112(n)(1) of the Clean Air Act (42 U.S.C.  
 11          7412(n)(1)) is amended by striking subparagraph (A) and  
 12          inserting the following:

13                   “(A) REGULATIONS.—

14                           “(i) IN GENERAL.—Not later than 18  
 15                           months after the date of enactment of the  
 16                           Clean Air Planning Act of 2007, the Ad-  
 17                           ministrator shall promulgate regulations  
 18                           under this section limiting the emission  
 19                           from electric utility steam generating units  
 20                           of hazardous air pollutants, other than  
 21                           mercury, as the Administrator determines  
 22                           to be appropriate and necessary in accord-  
 23                           ance with the standards under this section,  
 24                           including subsections (b)(2) and (f).

1                   “(ii) REQUIREMENTS.—The regula-  
2                   tions under clause (i) shall—

3                   “(I) require compliance with ap-  
4                   plicable standards as expeditiously as  
5                   practicable, but not later than 3 years  
6                   after the effective date of the regula-  
7                   tions; and

8                   “(II) be in accordance with other  
9                   applicable requirements under this  
10                  section.

11                  “(iii) EFFECTIVE DATE.—The regula-  
12                  tions under clause (i) shall be effective on  
13                  the date of promulgation of the regula-  
14                  tions.”.

15                  (b) NO EFFECT ON OTHER FEDERAL AND STATE  
16 REQUIREMENTS.—Except as otherwise specifically pro-  
17 vided in this Act, nothing in this Act or an amendment  
18 made by this Act—

19                  (1) affects any permitting, monitoring, or en-  
20                  forcement obligation of the Administrator of the En-  
21                  vironmental Protection Agency under the Clean Air  
22                  Act (42 U.S.C. 7401 et seq.) or any remedy pro-  
23                  vided under that Act;

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

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

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

○