

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.

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

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;

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”;

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;

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

(B) 915 powerplants will operate without 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);

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 (including corn and grass) could be used to produce
5 biofuels that can take the place of high-carbon fossil
6 fuels used in transportation and power generation;
7 and
8

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;

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;

(7) to achieve emission reductions from electric 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

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

8 “(3) LIMITATIONS ON TOTAL EMISSIONS.—

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

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

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—

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 information concerning the activities described in clause
2 (i) that is not confidential;

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

5 “(C) the monitoring and reporting of emissions under paragraphs (2) and (3) of subsection (e); and
6
7

8 “(D) excess emission penalties under subsection (e)(4).

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

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

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

19 “(b) NEW UNIT RESERVES.—

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

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

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—

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 responsible 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.

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

6 “(C) REQUIREMENT.—In establishing cri-
7 teria and standards under subparagraph (B),
8 the Administrator shall ensure that the qual-
9 fying advanced clean coal technologies represent
10 an advance in available technology, taking into
11 consideration—

12 “(i) net thermal efficiency;
13 “(ii) measures to capture and seque-
14 ster carbon dioxide; and
15 “(iii) output-based emission rates
16 for—

17 “(I) carbon dioxide;
18 “(II) sulfur dioxide;
19 “(III) oxides of nitrogen;
20 “(IV) filterable and condensable
21 particulate matter; and
22 “(V) mercury.

23 “(D) REVIEW AND REVISION.—

24 “(i) IN GENERAL.—Not later than
25 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.

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-

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 ministrator 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-

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

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

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

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

13 “(C) was reported—

14 “(i) under section 1605(b) of the En-
15 ergy Policy Act of 1992 (42 U.S.C.
16 13385(b));

17 “(ii) under a voluntary climate change
18 program of the Environmental Protection
19 Agency, such as the Climate Leaders pro-
20 gram; or

21 “(iii) to a State or regional green-
22 house gas registry.

23 “(3) LIMITATION.—The quantity of early re-
24 duction allowances available for greenhouse gas re-
25 duction 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 ministrator 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—

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 vuln-
10 erable 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

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

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

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

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

21 (b) DEFINITION OF ALLOWANCE.—Section 402 of
22 the Clean Air Act (relating to acid deposition control) (42
23 U.S.C. 7651a) is amended by striking paragraph (3) and
24 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.—

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

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

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

15 Section 111 of the Clean Air Act (42 U.S.C. 7411)

16 is amended by adding at the end the following:

17 "(k) STANDARDS OF PERFORMANCE FOR NEW ELEC-
18 TRIC GENERATING UNITS —

19 “(1) STANDARD OF PERFORMANCE —

20 “(A) IN GENERAL.—Each covered unit
21 that commences operation on or after January
22 1, 2015, shall meet the following standards of
23 performance:

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 minister 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 regulations under clause (i) shall—

3 “(I) require compliance with applicable standards as expeditiously as practicable, but not later than 3 years after the effective date of the regulations; and

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

11 “(iii) EFFECTIVE DATE.—The regulations under clause (i) shall be effective on the date of promulgation of the regulations.”.

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

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

○