

111TH CONGRESS
2D SESSION

S. 2995

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

FEBRUARY 4, 2010

Mr. CARPER (for himself, Mr. ALEXANDER, Ms. KLOBUCHAR, Ms. COLLINS, Mrs. FEINSTEIN, Mr. GREGG, Mrs. SHAHEEN, Mr. GRAHAM, Mr. KAUFMAN, Mr. SCHUMER, Mr. LIEBERMAN, and Ms. SNOWE) 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 Act Amend-
5 ments of 2010”.

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

7 Section 401 of the Clean Air Act (42 U.S.C. 7651)
8 is amended to read as follows:

1 **“SEC. 401. FINDINGS AND PURPOSES.**

2 “(a) FINDINGS.—Congress finds that—

3 “(1) the presence of acidic compounds and as-
4 sociated precursors in the atmosphere and in deposi-
5 tion from the atmosphere represents a threat to nat-
6 ural resources, ecosystems, materials, visibility, and
7 public health;

8 “(2) the principal sources of the acidic com-
9 pounds and those precursors in the atmosphere are
10 emissions of sulfur and nitrogen oxides from the
11 combustion of fossil fuels;

12 “(3) the problem of acid deposition is of na-
13 tional and international significance;

14 “(4) strategies and technologies for the control
15 of precursors to acid deposition exist now that are
16 economically feasible, and improved methods are ex-
17 pected to become increasingly available over the next
18 decade;

19 “(5) current and future generations of people in
20 the United States will be adversely affected by delay-
21 ing measures to remedy the problem;

22 “(6) reduction of total atmospheric loading of
23 sulfur dioxide and nitrogen oxides will enhance pro-
24 tection of the public health and welfare and the envi-
25 ronment;

1 “(7) control measures to reduce precursor emis-
2 sions from steam-electric generating units should be
3 initiated without delay;

4 “(8) exposure to sulfur oxides is associated
5 with—

6 “(A) decreased lung function and res-
7 piratory symptoms, in exercising asthmatics;
8 and

9 “(B) more serious indicators of adverse
10 respiratory effects, such as respiratory-related
11 emergency department visits and hospital ad-
12 missions, in the general population;

13 “(9) exposure to nitrogen oxides is associated
14 with worsened asthma symptoms, increased res-
15 piratory illnesses and symptoms, and serious indica-
16 tors of adverse respiratory effects such as res-
17 piratory-related emergency department visits and
18 hospital admissions;

19 “(10) gaseous emissions of sulfur oxides and ni-
20 trogen oxides may be transformed in the atmosphere
21 to form particles;

22 “(11) exposure to those particles has been asso-
23 ciated with adverse health and welfare effects, in-
24 cluding—

25 “(A) premature mortality;

1 “(B) aggravation of respiratory and car-
2 diovascular disease (as indicated by hospital ad-
3 missions and emergency department visits);

4 “(C) changes in lung function;

5 “(D) increased respiratory symptoms (such
6 as coughing, wheezing, and shortness of
7 breath);

8 “(E) impairment of visibility;

9 “(F) adverse effects on ecosystem proc-
10 esses;

11 “(G) impacts on climate; and

12 “(H) damage or soiling of structures and
13 property;

14 “(12) in addition to the public welfare effects of
15 materials damage and visibility, the ecological effects
16 due to both gas and particle deposition of nitrogen
17 and sulfur compounds include acidification (due to
18 both nitrogen and sulfur), excess nitrogen enrich-
19 ment, and interactions between sulfur and
20 methylmercury production;

21 “(13) nitrogen oxide can react with volatile or-
22 ganic compounds in the presence of heat and sun-
23 light to form ground-level ozone;

24 “(14) exposure to ground-level ozone can—

1 “(A) cause symptoms such as wheezing
2 and shortness of breath;

3 “(B) inflame the linings of the lungs;

4 “(C) aggravate respiratory illnesses such
5 as asthma, emphysema, and bronchitis, leading
6 to increased medication use, school absences,
7 doctor, and emergency department visits and
8 hospital admissions;

9 “(D) increase susceptibility to respiratory
10 infection;

11 “(E) in the case of long-term exposure,
12 permanently damage lung tissue; and

13 “(F) in the case of short-term exposure, be
14 associated with increased nonaccidental and
15 cardiopulmonary mortality;

16 “(15) exposure to ozone damages vegetation
17 and ecosystems;

18 “(16) specifically, ozone exposure can visibly
19 damage the leaves of plants and photosynthesis, the
20 process by which plants produce food;

21 “(17) impaired food production leads to re-
22 duced plant growth and reproduction, resulting in
23 reduced forestry production, crop yields, and overall
24 plant vigor;

1 “(18) loss of vigor can result in increased sus-
2 ceptibility of plants to insect attack, disease, harsh
3 weather, and interspecies competition;

4 “(19) all of those adverse effects of ozone have
5 implications for global crop production and food se-
6 curity; and

7 “(20) visible ozone injury to leaves can result in
8 a loss of aesthetic value in areas of special scenic
9 significance, such as national parks and wilderness
10 areas.

11 “(b) PURPOSES.—The purposes of this title are—

12 “(1) to reduce the adverse public and environ-
13 mental health effects caused by the emission of sul-
14 fur dioxide and nitrogen oxides, including the effects
15 of acid deposition, particulate matter, and ozone,
16 through reductions in annual emissions of sulfur di-
17 oxide and nitrogen oxides in the 48 contiguous
18 States and the District of Columbia;

19 “(2) to effectuate those reductions by requiring
20 compliance by affected sources with prescribed emis-
21 sion limitations by specified deadlines, which limita-
22 tions may be met through alternative methods of
23 compliance provided by an emission allocation and
24 transfer system; and

1 “(3) to encourage energy conservation, use of
 2 renewable and clean alternative technologies, and
 3 pollution prevention as a long-range strategy, con-
 4 sistent with this title, for reducing air pollution and
 5 other adverse impacts of energy production and
 6 use.”.

7 **SEC. 3. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PRO-**
 8 **GRAM.**

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

12 **“SEC. 417. INTERIM CLEAN AIR INTERSTATE RULE.**

13 “(a) IN GENERAL.—Notwithstanding any other pro-
 14 vision of law, the Clean Air Interstate Rule and related
 15 Federal implementation plans promulgated and modified
 16 by the Administrator on May 12, 2005 (70 Fed. Reg.
 17 25162), April 28, 2006 (71 Fed. Reg. 25288 and 25328),
 18 October 19, 2007 (72 Fed. Reg. 59190), November 2,
 19 2007 (72 Fed. Reg. 62338), April 28, 2008 (73 Fed. Reg.
 20 22818), and November 3, 2009 (74 Fed. Reg. 56721),
 21 shall remain in force and effect with respect to all provi-
 22 sions relating in any way to nitrogen oxides and sulfur
 23 dioxide emitted through calendar year 2011.

24 “(b) EXCEPTIONS.—

1 “(1) IN GENERAL.—Subsection (a) shall not
 2 apply with respect to the response of the Adminis-
 3 trator (71 Fed. Reg. 25328 (April 28, 2006)) to the
 4 petition of the State of North Carolina under section
 5 126.

6 “(2) OZONE PROGRAMS.—Any provision of the
 7 rules referred to in subsection (a) relating to the es-
 8 tablishment and implementation of a seasonal ozone
 9 emission cap-and-trade program for nitrogen oxides
 10 shall not expire, but shall remain in full force and
 11 effect, with respect to nitrogen oxides emitted in cal-
 12 endar year 2012 and thereafter.

13 “(3) REVISIONS.—

14 “(A) IN GENERAL.—Notwithstanding para-
 15 graph (2), if the Administrator makes the de-
 16 termination described in subparagraph (B), the
 17 Administrator may—

18 “(i) not later than January 1, 2020,
 19 and every 5 years thereafter, revise the
 20 provisions referred to in paragraph (2) to
 21 reduce the total quantity of tons of nitro-
 22 gen oxides in—

23 “(I) the ozone season nitrogen
 24 oxides budget for electric generating
 25 units;

1 “(II) any ozone season nitrogen
2 oxides budget for nonelectric gener-
3 ating units; and

4 “(III) the ozone season nitrogen
5 oxides trading budget for any State
6 that is, or the sources in which are,
7 subject to those provisions; and

8 “(ii) make those provisions consistent,
9 to the extent the Administrator determines
10 is necessary or appropriate, with the re-
11 quirements of the regulations promulgated
12 in accordance with section 419(e).

13 “(B) DETERMINATION.—The determina-
14 tion described in this subparagraph is a deter-
15 mination by the Administrator that emissions
16 should be reduced further—

17 “(i) to protect public health or the en-
18 vironment;

19 “(ii) to assist with attainment or
20 maintenance with respect to national ambi-
21 ent air quality standards; or

22 “(iii) to assist States in meeting emis-
23 sion reduction obligations under section
24 110(a)(2)(D).

1 “(4) ELIMINATION OF FUEL ADJUSTMENT FAC-
 2 TORS.—Not later than 90 days after the date of en-
 3 actment of this section, the Administrator may—

4 “(A) eliminate any allocation of nitrogen
 5 oxide allowances based on fuel-adjusted heat-
 6 input under sections 96.140, 96.142, 96.340,
 7 and 96.342 of title 40, Code of Federal Regula-
 8 tions (or successor regulations); and

9 “(B) use a different distribution method
 10 for those nitrogen oxide allowances.

11 **“SEC. 418. PHASE III SULFUR DIOXIDE REQUIREMENTS.**

12 “(a) ESTABLISHMENT.—Not later than January 1,
 13 2011, the Administrator shall promulgate regulations to
 14 establish, for affected units in the 48 contiguous States
 15 and the District of Columbia, a sulfur dioxide allowance
 16 trading program to reduce sulfur dioxide emissions from
 17 affected units.

18 “(b) APPLICABILITY.—After January 1, 2012—

19 “(1) each affected unit shall be subject to regu-
 20 lation under this section; and

21 “(2) each source that includes 1 or more such
 22 affected units shall be considered to be an affected
 23 source under this section.

24 “(c) LIMITATIONS ON EMISSIONS.—

25 “(1) PROHIBITION.—

1 “(A) IN GENERAL.—Beginning on January
2 1, 2012, it shall be unlawful for the affected
3 units at an affected source to emit a total num-
4 ber of tons of sulfur dioxide during a calendar
5 year in excess of the number of tons authorized
6 by the sulfur dioxide allowances held for the af-
7 fected source for that year by the owners and
8 operators of the affected source and affected
9 units.

10 “(B) QUALIFICATION.—Only sulfur dioxide
11 allowances described in paragraphs (2), (3),
12 and (5) of subsection (d) shall be held in order
13 to meet the requirements of subparagraph (A).

14 “(2) LIMITATION ON TOTAL EMISSIONS.—The
15 Administrator shall issue allowances authorizing an
16 annual tonnage of emissions of sulfur dioxide from
17 affected units in the United States equal to—

18 “(A) for each of calendar years 2012
19 through 2014, 3,500,000 tons;

20 “(B) for each of calendar years 2015
21 through 2017, 2,000,000 tons;

22 “(C) for each calendar years 2018 through
23 2020, 1,500,000 tons; and

24 “(D) for calendar year 2021 and each cal-
25 endar year thereafter—

1 “(i) 1,500,000 tons; or

2 “(ii) a lesser quantity, if the Adminis-
3 trator determines that emissions should be
4 reduced further—

5 “(I) to protect public health or
6 the environment;

7 “(II) to assist with attainment or
8 maintenance with respect to the at-
9 tainment of national ambient air qual-
10 ity standards; or

11 “(III) to assist States in meeting
12 emission reduction obligations under
13 section 110(a)(2)(D).

14 “(3) REGULATIONS.—The regulations promul-
15 gated by the Administrator to carry out this section
16 shall establish requirements for the allowance trad-
17 ing program under this section, including require-
18 ments concerning—

19 “(A) the selection of a designated rep-
20 resentative for each affected source, who shall
21 make all submissions to the Administrator
22 under this section for the affected source;

23 “(B) the issuance, recording, tracking,
24 holding, transfer, auction, and use of sulfur di-
25 oxide allowances;

1 “(C) the monitoring and reporting of emis-
2 sions, quality assurance of data, and record-
3 keeping, which shall be consistent with sub-
4 sections (a) and (d) of section 412, as applied
5 to the owners and operators of an affected unit
6 and an affected source, except that subsection
7 (a) shall apply in lieu of the deadlines for pro-
8 mulgation of regulations under subsections (a)
9 and (d) of section 412;

10 “(D) excess emission penalties and offsets
11 in accordance with section 411;

12 “(E) permits in accordance with section
13 408(h)(3) and title V, as applied to—

14 “(i) an affected unit and an affected
15 source; and

16 “(ii) allowances under subsection (d);

17 “(F) provisions that require—

18 “(i) a statement submitted by the des-
19 ignated representative of an owner or oper-
20 ator that the owner or operator will hold
21 allowances authorizing emissions equaling
22 not less than the actual emissions of the
23 affected units at the affected source, in ac-
24 cordance with this section, to be considered

1 to meet the compliance planning require-
2 ments of title V; and

3 “(ii) recording by the Administrator
4 of a transfer of allowances to amend auto-
5 matically all applicable permit applications,
6 compliance plans, and permits; and

7 “(G) the public availability of all informa-
8 tion concerning the activities described in sub-
9 paragraphs (A) through (E) that is not con-
10 fidential or is emission data that, pursuant to
11 section 114(c), cannot be confidential.

12 “(d) ALLOWANCES.—

13 “(1) IN GENERAL.—Not later than January 1,
14 2011, the Administrator shall promulgate regula-
15 tions providing for the distribution of sulfur dioxide
16 allowances issued in accordance with subsection
17 (c)(2).

18 “(2) DISTRIBUTION.—The regulations shall
19 provide that—

20 “(A) the same total number of allowances
21 issued under section 405 that are required to be
22 offered for sale at auction in calendar year
23 2011 under subsection (c)(7), and paragraphs
24 (1) and (2) of subsection (d), of section 416

1 shall be auctioned in each of vintage years 2012
2 through 2017;

3 “(B) for vintage year 2018 and each cal-
4 endar year thereafter, the number of allowances
5 auctioned shall increase by 10 percent each
6 year; and

7 “(C) subject to paragraph (3), the remain-
8 ing allowances shall be distributed in 2 pools
9 that are determined by the Administrator to
10 provide for a fair and equitable distribution of
11 allowances between—

12 “(i) affected units that received Phase
13 II allowance allocations under sections 403
14 and 405; and

15 “(ii) affected units that did not re-
16 ceive any Phase II allowance allocations
17 under sections 403 and 405.

18 “(3) REQUIREMENTS RELATING TO POOLS.—

19 “(A) IN GENERAL.—The Administrator
20 shall determine the fairness and equitability of
21 the size of the pools described in paragraph
22 (2)(C) based on the Phase II allowance alloca-
23 tions and not on the current ownership of those
24 allowances.

25 “(B) DISTRIBUTION.—

1 “(i) ACCOUNTS.—Allowances in the
2 pool described in paragraph (2)(C)(i) shall
3 be distributed to the account of each facil-
4 ity and each general account in the allow-
5 ance tracking system under section 403(c),
6 without cost to the recipients, in a quantity
7 equal to, as of the date that is 180 days
8 after the date of enactment of this section,
9 the proportion that—

10 “(I) the pro rata share of each
11 such account of the total number of
12 allowances; bears to

13 “(II) the total number of allow-
14 ances that were held in all such ac-
15 counts.

16 “(ii) SIMILAR METHODOLOGY.—Allow-
17 ances in the pool described in paragraph
18 (2)(C)(ii) shall be distributed using the
19 same or similar allocation methodology as
20 was used under sections 403 and 405.

21 “(C) LIMITATION ON NUMBER OF ALLOW-
22 ANCES.—In no case may the total number of al-
23 lowances distributed under paragraph (2)(C)
24 exceed the annual tonnage limitation for emis-

1 sions of sulfur dioxide from affected units speci-
2 fied in subsection (c)(2).

3 “(4) TIMING OF ALLOCATIONS.—Not later than
4 January 1, 2011, and each year thereafter, the Ad-
5 ministrator shall allocate allowances to affected
6 units.

7 “(5) PREVIOUSLY BANKED ALLOWANCES.—

8 “(A) IN GENERAL.—Any sulfur dioxide al-
9 lowances issued under sections 403 through 416
10 or the rules referred to in section 417(a) for
11 any vintage year before 2012 that are not used
12 to meet any requirements under sections 403
13 through 416 or those rules, and that are not
14 otherwise retired by the Administrator, may be
15 used to meet requirements under this section.

16 “(B) VINTAGE YEARS BEFORE 2010.—Each
17 sulfur dioxide emission allowance issued for a
18 vintage year before 2010 shall authorize a
19 quantity of sulfur dioxide emissions equal to 1
20 ton of sulfur dioxide.

21 “(C) VINTAGE YEAR 2010 OR 2011.—Each
22 sulfur dioxide emission allowance issued for vin-
23 tage year 2010 or 2011 shall authorize a quan-
24 tity of sulfur dioxide emissions equal to $\frac{1}{2}$ ton
25 of sulfur dioxide.

1 “(6) NO PROPERTY RIGHT.—An allowance
2 issued under this section does not constitute a prop-
3 erty right.

4 “(e) REPLACEMENT OF SULFUR DIOXIDE PRO-
5 GRAM.—Except as expressly provided in this section, the
6 provisions and requirements of sections 404, subsections
7 (a) through (f), paragraphs (1) through (5) of subsection
8 (g), and subsections (h) through (j), of section 405, sec-
9 tions 406 through 410, and sections 412 through 416,
10 concerning emissions of sulfur dioxide shall not apply to
11 any such emissions in calendar year 2012 or any calendar
12 year thereafter.

13 “(f) EFFECT ON OTHER REQUIREMENTS.—

14 “(1) NO EXEMPTION OR EXCLUSION.—

15 “(A) IN GENERAL.—Nothing in this sec-
16 tion exempts or excludes the owner or operator
17 of any affected source or affected unit from
18 compliance with any other applicable require-
19 ments of this Act.

20 “(B) LIABILITY.—Any liability for excess
21 emission penalties under this section shall not
22 limit the application of section 113, 114, 120,
23 or 304 to the owner or operator.

24 “(2) SEPARATE VIOLATIONS.—

1 “(A) IN GENERAL.—Each ton of sulfur di-
 2 oxide emitted in violation of subsection (c)(1),
 3 as implemented in the regulations promulgated
 4 under subsection (c)(3), shall be a violation of
 5 this title.

6 “(B) SEPARATE DAYS.—For a calendar
 7 year during which an emission described in sub-
 8 paragraph (A) occurs, each day of that year
 9 shall be a violation of this title.

10 **“SEC. 419. NITROGEN OXIDE CONTROL AND TRADING PRO-**
 11 **GRAM.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) AFFECTED UNIT.—The term ‘affected
 14 unit’, with respect to nitrogen oxides, means a fossil
 15 fuel-fired electric generating facility (including a co-
 16 generation facility) that—

17 “(A) on or after January 1, 1985, served
 18 as a generator with a nameplate capacity great-
 19 er than 25 megawatts; and

20 “(B) produces electricity for sale.

21 “(2) ZONE 1 STATE.—The term ‘Zone 1 State’
 22 means the District of Columbia or any of the States
 23 of Alabama, Arkansas, Connecticut, Delaware, Flor-
 24 ida, Georgia, Illinois, Indiana, Iowa, Kentucky, Lou-
 25 isiana, Maine, Maryland, Massachusetts, Michigan,

1 Minnesota, Mississippi, Missouri, New Hampshire,
 2 New Jersey, New York, North Carolina, Ohio, Penn-
 3 sylvania, Rhode Island, South Carolina, Tennessee,
 4 Texas, Vermont, Virginia, West Virginia, and Wis-
 5 consin.

6 “(3) ZONE 2 STATE.—The term ‘Zone 2 State’
 7 means any State within the 48 contiguous States
 8 that is not a Zone 1 State.

9 “(b) ESTABLISHMENT.—Not later than January 1,
 10 2011, the Administrator shall promulgate regulations to
 11 establish 2 nitrogen oxide allowance trading programs to
 12 reduce nitrogen oxide emissions for affected units—

13 “(1) 1 of which programs shall be for affected
 14 units in the Zone 1 States; and

15 “(2) the other of which programs shall be for
 16 affected units in the Zone 2 States.

17 “(c) APPLICABILITY.—Beginning on January 1,
 18 2012, each source that includes 1 or more affected units
 19 shall be an affected source under this section.

20 “(d) LIMITATIONS ON EMISSIONS.—

21 “(1) ZONE 1 PROHIBITION.—

22 “(A) IN GENERAL.—Beginning on January
 23 1, 2012, it shall be unlawful for the affected
 24 units at an affected source in a Zone 1 State
 25 to emit a total quantity of nitrogen oxides dur-

1 ing a calendar year in excess of the number of
2 nitrogen oxide allowances held for the affected
3 source for that year by the owners and opera-
4 tors of the affected source and the affected
5 units.

6 “(B) LIMITATION.—Only nitrogen oxide al-
7 lowances described in paragraphs (1)(A) and
8 (6) of subsection (f) shall be held in order to
9 meet the requirements of subparagraph (A).

10 “(2) ZONE 2 PROHIBITION.—

11 “(A) IN GENERAL.—Beginning on January
12 1, 2012, it shall be unlawful for the affected
13 units at an affected source in a Zone 2 State
14 to emit a total quantity of nitrogen oxides dur-
15 ing a calendar year in excess of the number of
16 nitrogen oxide allowances held for the affected
17 source for that year by the owners and opera-
18 tors of the affected source and the affected
19 units.

20 “(B) LIMITATION.—Only nitrogen oxide al-
21 lowances described in subsection (f)(1)(B) shall
22 be held in order to meet the requirements of
23 subparagraph (A).

24 “(3) ZONE 1 STATE LIMITATIONS ON TOTAL
25 EMISSIONS.—The Administrator shall issue allow-

ances authorizing an annual tonnage of emissions of
nitrogen oxides from affected units in the Zone 1
States that are equal, in the aggregate, to—

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

“(B) for each of calendar years 2015
through 2019, 1,300,000 tons; and

“(C) for calendar year 2020 and each cal-
endar year thereafter—

“(i) 1,300,000 tons; or

“(ii) a lesser quantity, if the Adminis-
trator determines that emissions should be
reduced further—

“(I) to protect public health or
the environment;

“(II) to assist with attainment or
maintenance with respect to national
ambient air quality standards; or

“(III) to assist States in meeting
emission reduction obligations under
section 110(a)(2)(D).

“(4) ZONE 2 STATE LIMITATIONS ON TOTAL
EMISSIONS.—The Administrator shall issue allow-
ances authorizing an annual tonnage limitation for
emissions of nitrogen oxides from affected units in

1 the Zone 2 States that are equal, in the aggregate,
2 to—

3 “(A) for each of calendar years 2012
4 through 2014, 510,000 tons;

5 “(B) for each of calendar years 2015
6 through 2019, 320,000 tons; and

7 “(C) for calendar year 2020 and each cal-
8 endar year thereafter—

9 “(i) 320,000 tons; or

10 “(ii) a lesser quantity, if the Adminis-
11 trator determines that emissions should be
12 reduced further—

13 “(I) to protect public health or
14 the environment;

15 “(II) to assist with attainment or
16 maintenance with respect to national
17 ambient air quality standards; or

18 “(III) to assist States in meeting
19 emission reduction obligations under
20 section 110(a)(2)(D).

21 “(e) REGULATIONS.—The regulations promulgated
22 by the Administrator to carry out this section shall estab-
23 lish requirements for the allowance trading program under
24 this section, including requirements concerning—

1 “(1) the selection of a designated representative
2 for each affected source, who shall make all submis-
3 sions to the Administrator under this section for the
4 affected source;

5 “(2) the issuance, recording, tracking, holding,
6 transfer, auction, and use of nitrogen oxide allow-
7 ances;

8 “(3) the monitoring and reporting of emissions,
9 quality assurance of data, and recordkeeping, which
10 shall be consistent with section 412(a) and section
11 412(d), as applied to the owners and operators of an
12 affected unit and an affected source, except that
13 subsection (a) shall apply in lieu of the deadlines for
14 promulgation of regulations under subsections (a)
15 and (d) of section 412;

16 “(4) excess emission penalties and offsets in ac-
17 cordance with section 411;

18 “(5) permits in accordance with section
19 408(h)(3) and title V, as applied to—

20 “(A) an affected unit and an affected
21 source; and

22 “(B) allowances under subsection (f);

23 “(6) provisions that require—

24 “(A) a statement submitted by the des-
25 ignated representative of an owner or operator

1 that the owner or operator will hold allowances
 2 authorizing emissions equaling not less than the
 3 actual emissions of the affected units at the af-
 4 fected source, in accordance with this section,
 5 to be considered to meet the compliance plan-
 6 ning requirements of title V; and

7 “(B) recordation by the Administrator of a
 8 transfer of allowances to amend automatically
 9 all applicable permit applications, compliance
 10 plans, and permits; and

11 “(7) the public availability of all information
 12 concerning the activities described in paragraphs (1)
 13 through (5) that is not confidential or is emission
 14 data that, pursuant to section 114(c), cannot be con-
 15 fidential.

16 “(f) ALLOWANCES.—

17 “(1) IN GENERAL.—Not later than January 1,
 18 2012, the Administrator shall promulgate regula-
 19 tions to establish a methodology for 2 distributions
 20 of the nitrogen oxide allowances to—

21 “(A) each affected unit in a Zone 1 State
 22 in accordance with subsection (d)(3); and

23 “(B) each affected unit in a Zone 2 State
 24 in accordance with subsection (d)(4).

1 “(2) ACCOUNTING.—The Administrator shall
2 account in the nitrogen oxide allowance distribution
3 methodology for a reserve of allowances for new
4 units in Zone 1 States and Zone 2 States.

5 “(3) TIMING OF ALLOCATIONS.—Not later than
6 January 1, 2011, and each year thereafter, the Ad-
7 ministrator shall allocate allowances to affected
8 units.

9 “(4) DISTRIBUTION OF ALLOWANCES.—

10 “(A) IN GENERAL.—The regulations pro-
11 mulgated under paragraph (1) shall provide
12 that the Administrator shall—

13 “(i) establish an auction for distrib-
14 uting nitrogen oxide allowances to affected
15 units; and

16 “(ii) require—

17 “(I) a total of zero nitrogen oxide
18 allowances in calendar years 2011
19 through 2013 to be offered for sale in
20 an auction;

21 “(II) that the total number of ni-
22 trogen oxide allowances to be offered
23 for sale at auction in calendar year
24 2014 shall—

1 “(aa) be the same as the
 2 total number of sulfur dioxide al-
 3 lowances issued under section
 4 418(d)(2)(A) for that calendar
 5 year; and

6 “(bb) increase by 10 percent
 7 for each calendar year thereafter;
 8 and

9 “(III) subject to subparagraph
 10 (B), that the remaining allowances
 11 shall be distributed in 2 pools that are
 12 determined by the Administrator to
 13 provide for a fair and equitable dis-
 14 tribution of allowances between—

15 “(aa) affected units that
 16 shall receive Zone 1 allowances;
 17 and

18 “(bb) affected units that
 19 shall receive Zone 2 allowances.

20 “(B) NO ALLOCATION BASED ON CERTAIN
 21 ADJUSTMENT FACTORS.—The Administrator
 22 shall determine the allocation methodology for
 23 use in implementing subparagraph (A)(ii)(III),
 24 but shall not allocate nitrogen oxide allowances

to affected units based on baseline heat input
fuel adjustment factors.

“(5) PREVIOUSLY BANKED ALLOWANCES.—

“(A) IN GENERAL.—Any nitrogen oxide allowances issued under the rules referred to in section 417(a) concerning annual nitrogen oxide emissions for any vintage year before 2012 that are not used to meet any requirements under those rules, and that are not otherwise retired by the Administrator, may be used to meet requirements under this section concerning annual nitrogen oxide emissions applicable to sources in Zone 1 States.

“(B) NATURE OF ALLOWANCES.—Each allowance described in subparagraph (A) is a limited authorization to emit, in accordance with the requirements of this section, 1 ton of nitrogen oxide.

“(6) NO PROPERTY RIGHT.—An allowance issued under this section does not constitute a property right.

“(g) EFFECT ON OTHER REQUIREMENTS.—

“(1) IN GENERAL.—Nothing in this section exempts or excludes the owner or operator of any affected source or affected unit from compliance with

1 any other applicable requirements of this Act, and
 2 any liability for excess emission penalties under this
 3 section shall not limit the application of section 113,
 4 114, 120, or 304 to the owner or operator.

5 “(2) SEPARATE VIOLATIONS.—Each ton of ni-
 6 trogen oxides emitted in violation of paragraph (1)
 7 or (2) of subsection (d), as implemented in the regu-
 8 lations promulgated under subsection (e), shall be a
 9 violation of this title, and, for a calendar year during
 10 which the emission occurs, each day of that year
 11 shall be a violation of this title.”.

12 (b) CONFORMING AMENDMENTS.—Section 411 of the
 13 Clean Air Act (42 U.S.C. 7651j) is amended—

14 (1) in subsection (a), by striking the subsection
 15 designation and heading and all that follows through
 16 “That penalty” and inserting the following:

17 “(a) EXCESS EMISSIONS PENALTY.—The owner or
 18 operator of any unit or process source subject to the re-
 19 quirements of sections 403, 404, 405, 406, 407, 409, 410,
 20 417, or 418, or designated under section 419, that emits
 21 sulfur dioxide or nitrogen oxides for any calendar year in
 22 excess of the emission limitation requirement applicable
 23 to the unit or source or in excess of the allowances the
 24 owner or operator holds for use for the unit or source for
 25 that calendar year, shall be liable for the payment of an

1 excess emissions penalty, except in a case in which the
 2 emissions were authorized pursuant to section 110(f). The
 3 excess emission penalty for the phase II sulfur dioxide re-
 4 quirements under section 418 and for the nitrogen oxide
 5 control and trading program requirements under section
 6 419 shall be calculated on the basis of the number of tons
 7 emitted in excess of the allowances the operator holds for
 8 use for the unit for that year, multiplied by 2 times the
 9 market price of such allowances for the same vintage year
 10 emission allowances. Any such penalty shall be imme-
 11 diately due and payable without demand to the Adminis-
 12 trator as provided in regulations to be issued by the Ad-
 13 ministrator under sections 418 and 419. For the require-
 14 ments established under title IV of the Clean Air Act
 15 Amendments of 1990, that penalty”; and

16 (2) in subsection (b), by striking the subsection
 17 designation and heading and all that follows through
 18 “The owner or operator of the source shall,” and in-
 19 serting the following:

20 “(b) EXCESS EMISSION OFFSET.—The owner or op-
 21 erator of any affected source or any affected unit that
 22 emits sulfur dioxide or nitrogen oxides during any cal-
 23 endar year in excess of the emissions limitation require-
 24 ment of the unit or of the allowances held for the unit
 25 for the calendar year shall be liable to offset the excess

1 emission by an equal tonnage amount in the following cal-
 2 endar year, or such longer period as the Administrator
 3 may prescribe. The owner or operator of the source or the
 4 unit shall,”.

5 **SEC. 4. MERCURY REDUCTIONS FOR THE COAL-FIRED**
 6 **ELECTRIC GENERATING SECTOR.**

7 (a) MACT MERCURY REQUIREMENT REDUC-
 8 TIONS.—Section 112(d) of the Clean Air Act (42 U.S.C.
 9 7412(d)) is amended by adding at the end the following:

10 “(11) ELECTRIC UTILITY STEAM GENERATING
 11 UNITS.—

12 “(A) IN GENERAL.—The Administrator
 13 shall regulate coal- and oil-fired electric utility
 14 steam generating units under section 112(d).

15 “(B) MINIMUM PERCENT REDUCTION IN
 16 EMISSIONS.—In promulgating emission stand-
 17 ards for the coal-fired electric utility steam gen-
 18 erating units under this section, the Adminis-
 19 trator shall—

20 “(i) ensure that such standards
 21 achieve at least a 90-percent reduction in
 22 emissions of mercury when applied to the
 23 listed category as a whole; and

24 “(ii) consult with States that already
 25 have a coal-fired electric utility steam gen-

1 erating unit mercury reduction program in
2 place before setting the standard.

3 “(C) FAILURE TO PROMULGATE LIMITA-
4 TIONS.—If the Administrator fails to promul-
5 gate nationally applicable emission limitations
6 under this paragraph for electric utility steam
7 generating units by January 1, 2012, electric
8 utility steam generating units in existence as of
9 that date shall be required to meet, by not later
10 than January 1, 2015, maximum achievable
11 control technology emission limitations, as de-
12 termined on a case-by-case basis under section
13 112(j).”.

14 (b) ELECTRIC UTILITY STEAM GENERATING UNIT
15 MONITORING AND REPORTING PROGRAM.—Section 112 of
16 the Clean Air Act (42 U.S.C. 7412) is amended by adding
17 at the end the following:

18 “(t) MERCURY MONITORING AND REPORTING PRO-
19 GRAM.—

20 “(1) MONITORING.—The Administrator shall
21 promulgate regulations requiring—

22 “(A) the operation, reporting, and certifi-
23 cation of continuous emission monitoring sys-
24 tems to accurately measure the quantity of

1 mercury that is emitted by electric coal utility
2 steam generating units; and

3 “(B) verification and reporting of mercury
4 emissions at each electric coal utility steam gen-
5 erating unit.

6 “(2) REPORTING.—

7 “(A) IN GENERAL.—Not less often than
8 quarterly, the owner or operator of an affected
9 unit that is an electric coal utility steam gener-
10 ating unit shall submit to the Administrator a
11 report on the monitoring of emissions of mer-
12 cury carried out by the owner or operator in ac-
13 cordance with the regulations promulgated
14 under paragraph (1).

15 “(B) AUTHORIZATION.—Each report sub-
16 mitted under subparagraph (A) shall be author-
17 ized by a responsible official of the electric coal
18 utility steam generating unit, who shall certify
19 the accuracy of the report.

20 “(C) PUBLIC REPORTING.—The Adminis-
21 trator shall make available to the public,
22 through 1 or more published reports and 1 or
23 more forms of electronic media, data concerning
24 the emission of mercury from each electric coal
25 utility steam generating unit.”.

1 **SEC. 5. EFFECT ON OTHER LAW.**

2 Except as specifically provided in this Act or an
3 amendment made by this Act, nothing in this Act modifies
4 or otherwise affects any authority or obligation set forth
5 in the Clean Air Act (42 U.S.C. 7401 et seq.), including
6 sections 110(a)(2)(D), 112, and 126 of that Act (42
7 U.S.C. 7410(a)(2)(D), 7412, 7426).

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