109TH CONGRESS
2D SESSION

S. _____

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

Mr. CARPER (for himself, Mr. ALEXANDER, Mr. CHAFEE, Mr. GREGG, Mr. DODD, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clean Air Planning Act of 2006''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

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

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

(3) the Clean Air Act (42 U.S.C. 7401 et seq.) regulates substances (including carbon dioxide) that—

(A) are emitted into the ambient air; and

(B) affect the weather and the climate;

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

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

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

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

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

(8) States and regions have increasingly adopted programs to address carbon dioxide emissions from electric generating facilities, and Federal regulations relating to carbon dioxide emissions should take those programs into consideration.

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

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

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

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

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

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

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

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

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

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

"SEC. 701. DEFINITIONS.

"In this title:

"(1) AFFECTED UNIT.—

''(A) MERCURY.—The term 'affected unit', with respect to mercury, means a coal-fired electric generating facility (including a cogeneration facility) that—

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

''(ii) generates electricity for sale.

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

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

''(ii) generates electricity for sale.

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

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

''(3) CLEAN COAL TECHNOLOGY.—The term 'clean coal technology' means—

"(A) an advanced pulverized coal technology;

"(B) an atmospheric fluidized bed combustion technology;

"(C) a pressurized fluidized bed combustion technology;

"(D) a integrated gasification combined cycle technology; and

"(E) any other highly efficient and low-emitting technology for the production of electricity using coal or coal-based fuels.

"(4) COGENERATION FACILITY.—The term 'cogeneration facility' means a facility that—

"(A) cogenerates—

"(i) steam; and

"(ii) electricity; and

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

"(i) more than ⅓ of the potential electric output capacity of the facility; and

"(ii) more than 25 megawatts of electrical output of the facility.

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

"(A) an affected unit;

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

''(C) a renewable energy unit.

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

''(A) carbon dioxide;

''(B) methane;

''(C) nitrous oxide;

''(D) hydrofluorocarbons;

''(E) perfluorocarbons; and

''(F) sulfur hexafluoride.

''(7) INCREMENTAL NUCLEAR GENERATION.—The term 'incremental nuclear generation' means, as determined by the Administrator and measured in megawatt hours, the difference between—

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

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

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

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

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

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

''(C) carbon dioxide allowances under section 705(e).

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

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

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

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

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

''(A) wind;

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

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

"(D) fuel cells; or

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

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

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

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

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

"(ii)(I) storing the carbon in a geologic formation; or

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

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

"SEC. 702. NATIONAL POLLUTANT TONNAGE LIMITATIONS.

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

''(1) for each of calendar years 2010 through 2014, 4,500,000 tons; and

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

''(b) NITROGEN OXIDES.—

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

''(A) ZONE 1 STATE.—The term 'Zone 1 State' means the District of Columbia or any of the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

''(B) ZONE 2 STATE.—The term 'Zone 2 State' means any State within the 48 contiguous States that is not a Zone 1 State.

''(2) APPLICABILITY.—

''(A) ZONE 1 PROHIBITION.—

''(i) IN GENERAL.—Beginning on January 1, 2009, it shall be unlawful for an affected unit in a Zone 1 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxide allowances held for the affected unit for that year by the owner or operator of the affected unit.

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

''(B) ZONE 2 PROHIBITION.—

''(i) IN GENERAL.—Beginning on January 1, 2010, it shall be unlawful for an affected unit in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxide allowances held for the affected unit

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

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

''(3) LIMITATIONS ON TOTAL EMISSIONS.—

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

''(i) for each of calendar years 2009 through 2014, 1,450,000 tons; and

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

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

''(i) for each of calendar years 2010 through 2014, 450,000 tons; and

''(ii) for calendar year 2015 and each calendar year thereafter, 320,000 tons.

''(c) MERCURY.—The emission of mercury from affected units shall be limited in accordance with section 704.

''(d) CARBON DIOXIDE.—Subject to section 705(c), the annual tonnage limitation for emissions of carbon dioxide from covered units in the United States shall be equal to, as determined by the Administrator based on certified and quality-assured continuous emissions monitoring data for carbon dioxide reported to the Administrator by affected units in accordance with this Act—

''(1) for each of calendar years 2010 through 2014, the quantity of emissions projected to be emitted from affected units in calendar year 2006; and

''(2) for calendar year 2015 and each calendar year thereafter, the quantity of emissions emitted from affected units in calendar year 2001.

''(e) REVIEW OF ANNUAL TONNAGE LIMITATIONS AND MERCURY EMISSIONS REQUIREMENTS.—

''(1) DETERMINATION BY ADMINISTRATOR.—Not later than 10 years after the date of enactment of this title, the Administrator shall determine—

''(A) after considering impacts on human health, the environment, the economy, and costs, whether 1 or more of the annual tonnage limitations should be revised; and

"(B) whether the mercury emission requirements under section 704 should be revised in accordance with the risk standards described in section 112(f)(2).

"(2) DETERMINATION NOT TO REVISE.—If the Administrator determines under paragraph (1) that none of the annual tonnage limitations or mercury emissions requirements should be revised, the Administrator shall publish in the Federal Register a notice of the determination and the reasons for the determination.

"(3) DETERMINATION TO REVISE.—If the Administrator determines under paragraph (1) that 1 or more of the annual tonnage limitations or mercury emissions requirements should be revised, the Administrator shall publish in the Federal Register—

"(A) not later than 10 years and 180 days after the date of enactment of this title, proposed regulations implementing the revisions; and

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

''(4) ADMINISTRATION.—The duty of the Administrator to make a determination under paragraph (1) shall be—

''(A) considered to be a nondiscretionary duty;

''(B) enforceable through a citizen suit under section 304; and

''(C) subject to rulemaking procedures and judicial review under section 307.

''(f) REDUCTION OF EMISSIONS FROM SPECIFIED AFFECTED UNITS.—Notwithstanding the annual tonnage limitations and mercury emissions requirements established under this section, the Federal Government or a State government may require that emissions from a specified affected unit be reduced.

''SEC. 703. NITROGEN OXIDE TRADING PROGRAM.

''(a) REGULATIONS.—

''(1) PROMULGATION.—

''(A) IN GENERAL.—Not later than January 1, 2007, the Administrator shall promulgate regulations to establish for affected units in the United States a nitrogen oxide allowance trading program.

''(B) REQUIREMENTS.—Regulations promulgated under subparagraph (A) shall estab-

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

"(i)(I) the generation, allocation, issuance, recording, tracking, transfer, and use of nitrogen oxide allowances; and

"(II) the public availability of all information concerning the activities described in subclause (I) that is not confidential;

"(ii) compliance with subsection (e)(1);

"(iii) the monitoring and reporting of emissions under paragraphs (2) and (3) of subsection (e); and

"(iv) excess emission penalties under subsection (e)(4).

"(2) MIXED FUEL, CO-GENERATION FACILITIES AND COMBINED HEAT AND POWER FACILITIES.—The Administrator shall promulgate such regulations as are necessary to ensure the equitable issuance of allowances to—

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

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

''(b) NEW UNIT RESERVES.—

''(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 that is not less than 5 percent of the total allowances allocated to affected units for the calendar year.

''(2) UNUSED ALLOWANCES.—For each calendar year, the Administrator shall reallocate, to all affected units, any unused nitrogen oxide allowances from the new unit reserve established under paragraph (1) in the proportion that—

''(A) the number of allowances allocated to each affected unit for the calendar year; bears to

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

''(c) NITROGEN OXIDE ALLOCATIONS.—

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

''(A)(i) not later than December 31, 2007, for calendar year 2009 for all Zone 1 States; and

''(ii) not later than December 31, 2007, for calendar year 2010 for all Zone 2 States; and

''(B) not later than December 31 of calendar year 2008 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

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

''(A) QUANTITY OF ALLOWANCES.—

''(i) ZONE 1 STATES.—The Administrator shall allocate to each affected unit in a Zone 1 State that is not a new unit a quantity of nitrogen oxide allowances in the proportion that—

''(I) the number of megawatt hours of electric power generated by the affected unit in the Zone 1 State; bears to

''(II) the number of megawatt hours of electric power generated by all affected units in all Zone 1 States.

"(ii) ZONE 2 STATES.—The Administrator shall allocate to each affected unit in a Zone 2 State that is not a new unit a quantity of nitrogen oxide allowances in the proportion that—

"(I) the number of megawatt hours of electric power generated by the affected unit in the Zone 2 State; bears to

"(II) the number of megawatt hours of electric power generated by all affected units in all Zone 2 States.

"(iii) FACTORS FOR CONSIDERATION.—In allocating allowances under clauses (i) and (ii), the Administrator shall take into consideration the average megawatt hours of an affected unit, calculated for the most recent 3-calendar year period for which data are available and updated each calendar year.

"(B) ADJUSTMENT OF ALLOCATIONS.—

"(i) IN GENERAL.—If, for any calendar year, the total quantity of allowances allocated under subparagraph (A) is not equal to the applicable quantity determined

under clause (ii), the Administrator shall adjust the quantity of allowances allocated to affected units that are not new units on a pro-rata basis so that the quantity is equal to the applicable quantity determined under clause (ii).

''(ii) APPLICABLE QUANTITY.—The applicable quantity referred to in clause (i) is the difference between—

''(I) the applicable annual tonnage limitation for emissions from affected units specified in section 702(b) for the calendar year; and

''(II) the quantity of nitrogen oxide allowances placed in the applicable new unit reserve established under subsection (b) for the calendar year.

''(3) ALLOCATION TO NEW UNITS.—

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

''(B) QUANTITY OF NITROGEN OXIDE ALLOWANCES ALLOCATED.—The Administrator shall determine the quantity of nitrogen oxide

allowances to be allocated to each new unit based on the projected emissions from the new unit.

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

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

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

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

''(d) NITROGEN OXIDE ALLOWANCE TRANSFER SYSTEM.—

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

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

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

''(C) provide that unused nitrogen oxide allowances may be transferred by—

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

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

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

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

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

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

"(4) PERMIT REQUIREMENTS.—An allocation or transfer of nitrogen oxide allowances to an affected unit shall, after recording by the Adminis-

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

''(e) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2009 and each calendar year thereafter for Zone 1 States, and for calendar year 2010 and each calendar year thereafter for Zone 2 States, the operator of each affected unit shall surrender to the Administrator a quantity of nitrogen oxide allowances that is equal to the total tons of nitrogen oxides emitted by the affected unit during the calendar year.

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

''(3) REPORTING.—

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

''(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be authorized by a responsible official of the affected unit, who shall certify the accuracy of the report.

''(C) PUBLIC REPORTING.—The Administrator shall make available to the public, through 1 or more published reports and 1 or more forms of electronic media, data concerning the emissions of nitrogen oxides from each affected unit.

''(4) EXCESS EMISSIONS.—

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

''(i) pay an excess emissions penalty determined under subparagraph (B); and

''(ii) offset the excess emissions by an equal quantity in the following calendar year or such other period as the Administrator shall prescribe.

''(B) DETERMINATION OF EXCESS EMISSIONS PENALTY.—The excess emissions penalty

for nitrogen oxides shall be equal to the product obtained by multiplying—

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

"(ii) 2 times the average price of a nitrogen oxides allowance for the Zone and calendar year in which the excess emissions occurred, as determined by the Administrator.

"(f) TREATMENT OF EXISTING PROGRAMS.—

"(1) SEASONAL CAP AND TRADING PROGRAM.—The provisions of the rule of the Administrator entitled the 'Clean Air Interstate Rule' (70 Fed. Reg. 25,162) (May 12, 2005) providing for the establishment of a seasonal emissions cap and ozone trading program for oxides of nitrogen shall remain in full force and effect.

"(2) ANNUAL CAP AND TRADING PROGRAM.—The provisions of the rule referred to in paragraph (1) providing for the establishment of an annual emissions cap and trading program for oxides of nitrogen shall terminate on the later of—

"(A) the effective date of the regulations promulgated under this section; and

''(B) January 1, 2009.

"SEC. 704. MERCURY PROGRAM.

''(a) DEFINITION OF INLET MERCURY.—In this section, the term 'inlet mercury' means the quantity of mercury found—

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

''(2) for an affected unit using coal that is subjected to an advanced coal cleaning technology, in the as-mined coal of the affected unit.

''(b) ANNUAL LIMITATION FOR NEW UNITS.—An affected unit that commences operation during the 1-year period beginning on the date of enactment of this title shall be subject to the less stringent of the following emissions limitations on an annual calendar year basis with respect to inlet mercury:

''(1) 90 percent capture of inlet mercury.

''(2) An emission rate of 0.0060 lbs/GWh.

''(c) ANNUAL LIMITATION FOR EXISTING UNITS.—An affected unit in operation on the date of enactment of this title shall be subject to the following emissions limitations on an annual calendar year basis with respect to inlet mercury:

''(1) CALENDAR YEARS 2010 THROUGH 2014.—For the period beginning January 1, 2010, and end-

ing December 31, 2014, the less stringent limitation of—

"(A) 60 percent capture of inlet mercury; and

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

"(2) CALENDAR YEAR 2015 AND THEREAFTER.—Beginning January 1, 2015, the less stringent limitation of—

"(A) 90 percent capture of inlet mercury; and

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

"(d) AVERAGING ACROSS UNITS.—An owner or operator of an affected unit may demonstrate compliance with the annual limitations under subsections (b) and (c) by averaging emissions from all affected units at a single facility in operation on the date of enactment of this title.

"(e) MONITORING SYSTEM.—The Administrator shall promulgate regulations requiring—

"(1) operation, reporting, and certification of continuous emissions monitoring systems to accurately measure the quantity of mercury that is emitted from each affected unit; and

"(2) verification and reporting of inlet mercury at each affected unit.

"(f) REPORTING.—

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

''(2) AUTHORIZATION.—Each report submitted under paragraph (1) shall be authorized by a responsible official of the affected unit, who shall certify the accuracy of the report.

''(3) PUBLIC REPORTING.—The Administrator shall make available to the public, through 1 or more published reports and 1 or more forms of electronic media, data concerning the emission of inlet mercury from each affected unit.

''(g) EXCESS EMISSIONS.—

''(1) IN GENERAL.—The owner or operator of an affected unit that emits inlet mercury in excess of the emission limitation described in subsection (b) shall pay an excess emissions penalty determined under paragraph (2).

''(2) DETERMINATION OF EXCESS EMISSIONS PENALTY.—The excess emissions penalty for inlet mercury shall be an amount equal to $50,000 per day for each pound of inlet mercury emitted in ex-

cess of the emission limitations for inlet mercury described in subsections (b) and (c).

''(h) PREVIOUSLY REQUIRED REDUCTIONS.—For calendar year 2015 and each calendar year thereafter, in evaluating the quantity of inlet mercury emitted from an affected unit and determining whether to impose a penalty under subsection (g), the Administrator shall—

''(1) take into consideration any reduction in inlet mercury emissions at the affected unit during the preceding calendar year pursuant to any other Federal regulation or any State regulation; and

''(2) adjust each applicable penalty accordingly.

''SEC. 705. CARBON DIOXIDE ALLOWANCE TRADING PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ALLOWANCE.—The term 'allowance' means—

''(A) a carbon dioxide allowance;

''(B) an offset allowance; or

''(C) an early reduction allowance.

''(2) EARLY REDUCTION ALLOWANCE.—The term 'early reduction allowance' means a carbon dioxide allowance issued under subsection (h) for a project in the United States to reduce emissions of greenhouse gases or to sequester greenhouse gases

that is carried out in calendar years 2000 through 2010.

''(3) OFFSET ALLOWANCE.—The term 'offset allowance' means a carbon dioxide allowance issued under subsection (g) for a project to reduce emissions of greenhouse gases or to sequester greenhouse gases.

''(b) REGULATIONS.—

''(1) IN GENERAL.—Not later than January 1, 2008, the Administrator shall promulgate regulations to establish an allowance trading program for covered units in the United States.

''(2) REQUIRED ELEMENTS.—Regulations promulgated under paragraph (1) shall establish requirements for the carbon dioxide allowance trading program under this section, including requirements concerning—

''(A) the allocation, issuance, and use of carbon dioxide allowances;

''(B) the issuance, certification, and use of offset allowances;

''(C) the issuance, certification, and use of early reduction allowances;

''(D) the transfer of allowances;

''(E) the monitoring, tracking, and reporting of carbon dioxide emissions;

''(F) the public availability of carbon dioxide emissions information;

''(G) compliance and enforcement; and

''(H) the reserve and allocation of carbon dioxide allowances for new units and new renewable energy units.

''(3) INTERACTION WITH DEPARTMENT OF AGRICULTURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator shall promulgate all regulations relating to offsets under this title.

''(B) OFFSETS.—The Administrator, in consultation with the Secretary of Agriculture, shall promulgate regulations relating to offsets produced by agricultural sequestration practices.

''(c) CARBON DIOXIDE TONNAGE LIMITATION.—The annual tonnage limitation for emissions of carbon dioxide from affected units in the United States shall be equal to—

''(1) for each of calendar years 2010 through 2014, the quantity of emissions projected to be emit-

ted from affected units in calendar year 2006, as determined by the Administrator based on certified and quality-assured continuous emissions monitoring data for carbon dioxide or based on data that the Administrator determines to be of similar reliability for units without continuous monitoring systems, reported to the Administrator by affected units in accordance with this Act; and

''(2) for calendar year 2015 and each calendar year thereafter, the quantity of emissions emitted from affected units in calendar year 2001, as determined by the Administrator based on certified and quality-assured continuous emissions monitoring data for carbon dioxide or based on data that the Administrator determines to be of similar reliability for units without continuous monitoring systems, reported to the Administrator by affected units in accordance with this Act.

''(d) NEW UNIT RESERVE.—

''(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 carbon dioxide allowances to be allocated—

''(A) to new affected units for the calendar year; and

''(B) to the clean coal technology reserve under subsection (e).

''(2) LIMITATION.—The number of allowances allocated under paragraph (1) during a calendar year shall be not more than 7 percent of the total number of allowances allocated to affected units for the calendar year.

''(3) UNUSED ALLOWANCES.—For each calendar year, the Administrator shall reallocate, to all affected units, any unused carbon dioxide allowances from the new unit reserve established under paragraph (1) in the proportion that—

''(A) the number of allowances allocated to each affected unit for the calendar year; bears to

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

''(e) INCENTIVES FOR CLEAN COAL TECHNOLOGY.—

''(1) ESTABLISHMENT.—The Administrator shall establish by regulation a reserve of carbon dioxide allowances to be set aside during a calendar year to encourage the deployment of clean coal technologies.

''(2) DEFINING QUALIFYING ADVANCED CLEAN COAL TECHNOLOGIES.—

''(A) IN GENERAL.—Not later than July 1, 2008, the Administrator, by regulation, shall establish criteria and standards to define the term 'qualifying advanced clean coal technologies' with respect to electric power generation.

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

''(i) net thermal efficiency;

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

''(iii) output-based emission rates for—

''(I) carbon dioxide;

''(II) sulfur dioxide;

''(III) oxides of nitrogen;

''(IV) filterable and condensable particulate matter; and

''(V) mercury.

"(C) REVIEW AND REVISION.—

"(i) IN GENERAL.—Not later than July 1, 2009, and each July 1 thereafter through July 1, 2014, the Administrator shall review and, if appropriate, revise the criteria and standards under subparagraph (A) based on technological advances during the preceding calendar year.

"(ii) NOTICE AND COMMENT NOT REQUIRED.—Subject to clause (iii), after the initial criteria and standards are established under subparagraph (A), no subsequent review or revision under this subparagraph shall be subject to the notice and comment provisions of section 553 of title 5, United States Code.

"(iii) EFFECT.—Nothing in clause (ii) precludes the application of the notice and comment provisions of section 553 of title 5, United States Code, as the Administrator determines to be practicable.

"(3) TREATMENT OF CORRESPONDENCE.—The correspondence of the Office of Air Quality Planning and Standards addressing best available control technology requirements for proposed coal-fired

power plant projects and dated December 13, 2005—

''(A) shall be considered to be inconsistent with section 169(3); and

''(B) shall be treated as void and of no effect as of the date of issuance of the correspondence.

''(f) CARBON DIOXIDE ALLOWANCE ALLOCATION TO COVERED UNITS THAT ARE NOT NEW UNITS OR NEW RENEWABLE ENERGY UNITS.—

''(1) TIMING OF ALLOCATIONS.—The Administrator shall allocate carbon dioxide allowances to covered units that are not new units or new renewable energy units—

''(A) not later than December 31, 2007, for calendar year 2010; and

''(B) not later than December 31 of calendar year 2008 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

''(2) ALLOCATIONS.—

''(A) IN GENERAL.—The Administrator shall allocate to each covered unit that is not a new unit or a new renewable energy unit, a

quantity of carbon dioxide allowances that is equal to the product obtained by multiplying—

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

"(ii) the quotient obtained by dividing—

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

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

"(B) QUANTITY TO BE ALLOCATED.—For each calendar year, the quantity of carbon dioxide allowances allocated under subparagraph (A) to covered units that are not new units or new renewable energy units shall be equal to the difference between—

"(i) the annual tonnage limitation for emissions of carbon dioxide from covered

units specified in section 702(d) for the calendar year; and

''(ii) the sum of—

''(I) the quantity of carbon dioxide allowances placed in the new unit reserve established under subsection (d) for the calendar year; and

''(II) the quantity of carbon dioxide allowances reserved to provide incentives for advanced clean coal technologies under subsection (e) for the calendar year.

''(g) OFFSET ALLOWANCES.—

''(1) IN GENERAL.—Not later than January 1, 2008, the Administrator shall promulgate regulations that provide for the issuance, certification, and use of offset allowances for greenhouse gas reduction or sequestration projects carried out in the United States or any other country.

''(2) REQUIRED ELEMENTS.—Regulations promulgated under paragraph (1) shall establish requirements for the issuance, certification, and use of offset allowances for greenhouse gas reduction or sequestration projects, including requirements—

"(A) that projects not cause or contribute to adverse effects on human health or the environment;

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

"(C) for methodology for calculating the carbon dioxide equivalent reductions attributable to projects;

"(D) for the monitoring, reporting, and verification of the greenhouse gas reductions from projects;

"(E) for accounting principles used to quantify the greenhouse gas reductions of projects that require—

"(i) the consideration of all greenhouse gas impacts of a project;

"(ii) the consistent application of accounting principles;

"(iii) transparency;

"(iv) to the maximum extent practicable, accuracy; and

''(v) the use of conservative assumptions in cases in which uncertainties require the use of assumptions; and

''(F) for conditions under which allowances traded under any other United States or internationally recognized carbon dioxide reduction program may be used.

''(3) STATE OFFSET ALLOWANCES.—In promulgating regulations under paragraph (1), the Administrator shall take into consideration offset allowances issued by California or any other State pursuant to the Regional Greenhouse Gas Initiative or a similar regulatory program with a comparable offset provision.

''(h) EARLY REDUCTION ALLOWANCES.—

''(1) IN GENERAL.—Not later than January 1, 2008, the Administrator shall promulgate regulations that provide for the issuance, certification, and use of early reduction allowances for greenhouse gas reduction or sequestration projects carried out during calendar years 2000 through 2010.

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

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

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

''(C) was reported—

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

''(ii) to a State or regional greenhouse gas registry.

''(3) LIMITATION.—The quantity of early reduction allowances available for greenhouse gas reduction or sequestration projects in calendar years 2000 through 2010 shall not exceed 10 percent of the tonnage limitation for calendar year 2011 for emissions of carbon dioxide from affected units under subsection (c).

''(i) USE AND TRANSFER OF ALLOWANCES.—

''(1) USE IN OTHER CARBON DIOXIDE ALLOWANCE TRADING PROGRAMS.—Allowances may be used in any other carbon dioxide allowance trading program that is approved by the Administrator for use of the allowances.

''(2) USE BEFORE APPLICABLE CALENDAR YEAR.—Allowances may not be used before the calendar year for which the allowance was allocated.

''(3) TRANSFER.—

''(A) IN GENERAL.—Notwithstanding paragraph (2), allowances may be transferred before the calendar year for which the allowances were allocated.

''(B) LIMITATION.—The transfer of an allowance shall not take effect until receipt and recording by the Administrator of a written certification of the transfer, which is executed by an authorized official of the person making the transfer.

''(4) USE BY PERSONS TO WHICH CARBON DIOXIDE ALLOWANCES ARE TRANSFERRED.—Any person to which carbon dioxide allowances are transferred under paragraph (3)(A) may use the carbon dioxide allowances in the calendar year for which the carbon dioxide allowances were allocated, or in a subsequent calendar year, to demonstrate compliance with subsection (j)(1).

''(5) PERMIT REQUIREMENTS.—An allocation or transfer of allowances to an affected unit shall be considered to be part of the federally enforceable

permit of the affected unit under this Act, without a requirement for further review or revision of the permit.

''(j) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2011 and each calendar year thereafter, the owner of each affected unit shall surrender to the Administrator a quantity of allowances that is equal to the total tons of carbon dioxide emitted by the affected unit during the calendar year.

''(2) PENALTY.—The owner of an affected unit that emits carbon dioxide in excess of the allowances that the owner holds for use for the affected unit for the calendar year shall pay an excess emissions penalty equal to the product obtained by multiplying—

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

''(B) $100, adjusted for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

''(k) ALLOWANCE NOT A PROPERTY RIGHT.—An allowance—

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

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

''(l) NO JUDICIAL REVIEW.—An allocation or issuance of an allowance by the Administrator shall not be subject to judicial review.''.

SEC. 4. NEW SOURCE REVIEW PROGRAM.

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

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

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

''(A) AFFECTED UNIT; COVERED UNIT.—The terms 'affected unit' and 'covered unit' have the meanings given the terms in section 701.

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

''(2) PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), beginning January 1, 2020, and on each January 1 thereafter, each affected unit that has been in operation 50 or more years as of that January 1 shall meet performance standards of—

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

''(ii) 1 lbs/MWh for nitrogen oxides.

''(B) EXCEPTION.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), an affected unit that, as of January 1, 2020, is required to meet a more stringent performance standard than the applicable standard under subparagraph (A) shall continue to meet the more stringent standard.

''(ii) MODIFICATION OF AFFECTED UNITS.—The requirements of this section shall not affect in any way any requirement under section 111(a)(4), this part, or part D governing modifications of major stationary sources.

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

''(A) any State authority under section 116; or

''(B) the obligation of any State or local government or any major emitting facility to comply with the requirements of this section.''.

SEC. 5. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PROGRAM.

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

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

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

''(b) REGULATIONS.—Not later than January 1, 2007, the Administrator shall promulgate such revisions to the regulations to implement this title as the Administrator determines to be necessary to implement section 702(a).

''(c) NEW UNIT RESERVE.—

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

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

''(A) not later than June 30, 2007, the quantity of allowances required to be held in reserve for new units for each of calendar years 2011 through 2015; and

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

''(3) ALLOCATION.—

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

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

''(d) EXISTING UNITS.—

''(1) ALLOCATION.—

''(A) REGULATIONS.—Subject to the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in section 702(a), and subject to the reserve of allowances for new units under subsection (c), the Administrator shall promulgate regulations to govern

the allocation of allowances to affected units that are not new units.

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

''(i) the allocation of allowances on a fair and equitable basis between affected units that received allowances under section 405 and affected units that are not new units and that did not receive allowances under that section, using for both categories of units the same or similar allocation methodology as was used under section 405; and

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

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

''(A) not later than December 31, 2007, for calendar year 2011; and

''(B) not later than December 31 of calendar year 2008 and each calendar year there-

after, for the fourth calendar year that begins after that December 31.

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

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

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

(c) TECHNICAL AMENDMENTS.—

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

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

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

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

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

SEC. 6. AIR QUALITY FORECASTS AND WARNINGS.

(a) REQUIREMENT FOR FORECASTS AND WARNINGS.—The Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration, in cooperation with the Administrator of the Environmental Protection Agency, shall issue air quality forecasts and air quality warnings as part of the mission of the Department of Commerce.

(b) REGIONAL WARNINGS.—In carrying out subsection (a), the Secretary of Commerce shall establish within the National Oceanic and Atmospheric Administration a program to provide region-oriented forecasts and warnings regarding air quality for each of the following regions of the United States:

(1) The Northeast, composed of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

(2) The Mid-Atlantic, composed of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia.

(3) The Southeast, composed of Alabama, Florida, Georgia, North Carolina, and South Carolina.

(4) The South, composed of Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.

(5) The Midwest, composed of Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

(6) The High Plains, composed of Kansas, Nebraska, North Dakota, and South Dakota.

(7) The Northwest, composed of Idaho, Montana, Oregon, Washington, and Wyoming.

(8) The Southwest, composed of Arizona, California, Colorado, New Mexico, Nevada, and Utah.

(9) Alaska.

(10) Hawaii.

(c) PRIORITY AREA.—In establishing the program described in subsection (a), the Secretary of Commerce and the Administrator shall identify and expand, to the maximum extent practicable, Federal air quality forecast and warning programs in effect as of the date of establishment of the program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 7. RELATIONSHIP TO OTHER LAW.

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

''(A) REGULATIONS.—

''(i) IN GENERAL.—Not later than 18 months after the date of enactment of the Clean Air Planning Act of 2006, the Administrator shall promulgate regulations under this section limiting the emission from electric utility steam generating units of hazardous air pollutants, other than mercury, as the Administrator determines to be appropriate and necessary in accordance with the standards under subsection (b)(2).

''(ii) REQUIREMENTS.—The regulations under clause (i) shall—

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

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

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

(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—

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

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

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

(4) precludes a State or political subdivision of a State from adopting and enforcing any require-

ment for the control or abatement of air pollution, except that a State or political subdivision may not adopt or enforce any emission standard or limitation that is less stringent than the requirements imposed under that Act.