

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

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## A BILL

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

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

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Clean Air Act Amendments of 2010”.

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

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

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

“(a) FINDINGS.—Congress finds that—

“(1) the presence of acidic compounds and associated precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

“(2) the principal sources of the acidic compounds and those precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

“(3) the problem of acid deposition is of national and international significance;

“(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

~~“(5) current and future generations of people in the United States will be adversely affected by delaying measures to remedy the problem;~~

“(5) ~~(6)~~ reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment;

“(6) ~~(7)~~ control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay;

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

~~“(A) decreased lung function and respiratory symptoms, in exercising asthmatics; and~~

~~“(B) more serious indicators of adverse respiratory effects, such as respiratory-related emergency department visits and hospital admissions, in the general population;~~

~~“(9) exposure to nitrogen oxides is associated with worsened asthma symptoms, increased respiratory illnesses and symptoms, and serious indicators of adverse respiratory effects such as respiratory-related emergency department visits and hospital admissions;~~

“(7) ~~(10)~~ gaseous emissions of sulfur oxides and nitrogen oxides may be transformed in the atmosphere to form particles;

~~“(11) exposure to those particles has been associated with adverse health and welfare effects, including—~~

~~“(A) premature mortality;~~

~~“(B) aggravation of respiratory and cardiovascular disease (as indicated by hospital admissions and emergency department visits);~~

~~“(C) changes in lung function;~~

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

~~“(E) impairment of visibility;~~

~~“(F) adverse effects on ecosystem processes;~~

~~“(G) impacts on climate; and~~

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

~~“(8) (12) in addition to the public welfare effects of materials damage and visibility, the ecological effects due to both gas and particle deposition of nitrogen and sulfur compounds include acidification (due to both nitrogen and sulfur), excess nitrogen enrichment, and interactions between sulfur and methylmercury production;~~

~~“(9) (13) nitrogen oxide can react with volatile organic compounds in the presence of heat and sunlight to form ground-level ozone;~~

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

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

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

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

~~“(D) increase susceptibility to respiratory infection;~~

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

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

~~“(10) (15) exposure to ozone damages vegetation and ecosystems;~~

~~“(11) (46)~~ specifically, ozone exposure can visibly damage the leaves of plants and photosynthesis, the process by which plants produce food;

~~“(12) (47)~~ impaired food production leads to reduced plant growth and reproduction, resulting in reduced forestry production, crop yields, and overall plant vigor;

~~“(13) (48)~~ loss of vigor can result in increased susceptibility of plants to insect attack, disease, harsh weather, and interspecies competition;

~~“(14) (49)~~ all of those adverse effects of ozone have implications for global crop production and food security; and

~~“(15) (20)~~ visible ozone injury to leaves can result in a loss of aesthetic value in areas of special scenic significance, such as national parks and wilderness areas.

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

“(1) to reduce the adverse public and environmental health effects caused by the emission of sulfur dioxide and nitrogen oxides, including the effects of acid deposition, particulate matter, and ozone, through reductions in annual emissions of sulfur dioxide and nitrogen oxides in the 48 contiguous States and the District of Columbia;

“(2) to effectuate those reductions by requiring compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system; and

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

### **SEC. 3. 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. INTERIM CLEAN AIR INTERSTATE RULE.**

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Clean Air Interstate Rule and related Federal implementation plans promulgated and modified by the Administrator on May 12, 2005 (70 Fed. Reg. 25162), April 28, 2006 (71 Fed. Reg. 25288 and 25328), October 19, 2007 (72 Fed. Reg. 59190), November 2, 2007 (72 Fed. Reg. 62338), April 28, 2008 (73 Fed. Reg. 22818), and November 3, 2009 (74 Fed. Reg. 56721), shall remain in force and effect with respect to all provisions relating in any way to nitrogen oxides and sulfur dioxide emitted through calendar year 2014. ~~2014~~.

“(b) EXCEPTIONS AND SPECIAL RULES.—

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

“(2) OZONE PROGRAMS.—Any provision of the rules referred to in subsection (a) relating to the establishment and implementation of a seasonal ozone emission cap-and-trade program for nitrogen oxides shall not expire, but shall remain in full force and effect, with respect to nitrogen oxides emitted in calendar year 2015 ~~2012~~ and thereafter.

“(3) ELECTRIC GENERATING UNITS.—

“(A) LIMITATION.—Prior to January 1, 2020, the Administrator shall not—

“(1) reduce the total quantity of tons of nitrogen oxides in the ozone season nitrogen oxide budget for electric generating units that is established by the rules referred to in subsection (a); or

“(2) otherwise further limit the nitrogen oxide emissions from any affected unit in order to carry out the requirements of sections 110(a)(2)(D) and 126 (42 U.S.C 7410(a)(2)(D), 7426).

“(B) ADDITIONAL REDUCTIONS.—On or after January 1, 2020, the Administrator may reduce the ozone season nitrogen oxide budget referred to in subparagraph (A) in order to carry out the requirements of sections 110(a)(2)(D) and 126 only to the extent that the Administrator determines that additional reductions in nitrogen oxide emissions during the

ozone season from electric generating units within a State will significantly improve the air quality in a nonattainment area within any other State, as provided in section 420.

“(4) REVISIONS: OTHER STATIONARY SOURCES.—

“(A) IN GENERAL.—Notwithstanding paragraph (2), if the Administrator makes the determination described in subparagraph (B), the Administrator may—

“(i) not later than January 1, 2020, and every 5 years thereafter, revise the provisions referred to in paragraph (2) to reduce the total quantity of tons of nitrogen oxides in—

“(I) ~~the ozone season nitrogen oxides budget for electric generating units;~~

~~“(II) any ozone season nitrogen oxides budget for stationary sources, other than non-electric generating units, that; and~~

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

“(ii) make those provisions consistent, to the extent the Administrator determines is necessary or appropriate, with the requirements of the regulations promulgated in accordance with section 419(e).

“(B) DETERMINATION.—The determination described in this subparagraph is a determination by the Administrator 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).

~~“(5) (4) ELIMINATION OF FUEL ADJUSTMENT FACTORS.—In implementing the seasonal ozone emission cap-and-trade program for nitrogen oxides under this section, Not later than 90 days after the date of enactment of this section, the Administrator shall establish nitrogen oxide budgets for each State and allocate~~  
~~may—~~

~~“(A) eliminate any allocation of nitrogen oxide allowances based on fuel-adjusted heat input under sections 96.140, 96.142, 96.340, and 96.342 of title 40, Code of Federal Regulations (or successor regulations); and~~

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

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

“(a) DEFINITIONS.—In this section—

“(1) AFFECTED UNIT.—The term ‘affected unit’, with respect to sulfur dioxide, shall have the meaning that the Administrator has established by regulation for such term on May 12, 2005 (70 Fed. Reg. 25162), except that an affected unit shall not include any unit that exclusively combusts—

“(A) natural gas;

“(B) distillate fuel oil with a sulfur content that is 0.05 percent or less; or

“(C) some combination of fuels identified in subparagraphs (A) and (B).

“(2) GENERAL ACCOUNT HOLDER.—The term ‘general account holder’ means any person or entity that receives an allocation of sulfur dioxide allowances under subsection (e) based on the quantity of sulfur dioxide allowances that the person or entity holds in its general account for a particular year in the allowance tracking system under section 403(d).

“(3) Recipient.—The term ‘recipient’ means—

“(A) any owner or operator of affected unit that receives an allocation of sulfur dioxide allowances under subsection (e) based on the quantity of sulfur dioxide allowances that are held in the compliance

account for such unit for a particular year under the allowance tracking system; and

“(B) any general account holder.

“(b) (a) ESTABLISHMENT.—Not later than January 1, 2012, 2014, the Administrator shall promulgate regulations to establish, for affected units in the 48 contiguous States and the District of Columbia, and establish a sulfur dioxide allowance trading program to reduce sulfur dioxide emissions from affected units.

“(c) (b) APPLICABILITY.—Beginning on After January 1, 2015— 2012—

“(1) each affected unit shall be subject to regulation under this section; and

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

“(d) (e) LIMITATIONS ON EMISSIONS.—

“(1) PROHIBITION.—

“(A) IN GENERAL.—Beginning on January 1, 2015, 2012, it shall be unlawful for the affected units at an affected source to emit a total number of tons of sulfur dioxide during a calendar year in excess of the number of tons authorized by the sulfur dioxide allowances held for the affected source for that year by the owners and operators of the affected source and affected units.

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

“(2) LIMITATION ON TOTAL EMISSIONS.—

“(A) IN GENERAL.—The Administrator shall issue allowances authorizing an annual tonnage of emissions of sulfur dioxide from affected units in the United States equal to—

“(i) (A) for each of calendar years 2015 2012 through 2017, 2014, 3,500,000 tons;

“(ii) (B) for each of calendar years 2018 2015 through 2020 2017, 2,000,000 tons;



~~“(iii) (C) for each calendar years 2021 2018 through 2024, 2020,~~  
1,500,000 tons; and

~~“(iv) (D) for calendar year 2025 2021 and each calendar year thereafter—~~

~~“(I) (i) 1,500,000 tons; or~~

~~“(II) (ii) a lesser quantity, only to the extent that if the Administrator determines that sulfur dioxide emissions should be reduced further from electric generating units within a State in order to lower significantly peak ambient concentrations of fine particulate matter in a corresponding nonattainment area within any other State, as provided in section 420.—~~

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

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

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

~~“(B) PROHIBITION.—Prior to January 1, 2025, the Administrator shall not—~~

~~“(i) reduce the annual tonnage of emissions of sulfur dioxide, as specified in subparagraph (A); or~~

~~“(ii) otherwise further limit the sulfur dioxide emissions from any affected unit in order to carry out the requirements of sections 110(a)(2)(D) and 126 (42 U.S.C 7410(a)(2)(D), 7426).~~

~~“(3) REGULATIONS.—The regulations promulgated by the Administrator to carry out this section shall establish requirements for the allowance trading program under this section, including requirements concerning—~~

~~“(A) the selection of a designated representative for each affected source, who shall make all submissions to the Administrator under this section for the affected source;~~

“(B) the issuance, recording, tracking, holding, transfer, auction, and use of sulfur dioxide allowances;

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

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

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

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

“(ii) allowances under subsection (d);

“(F) provisions that require—

“(i) a statement submitted by the designated representative of an owner or operator that the owner or operator will hold allowances authorizing emissions equaling not less than the actual emissions of the affected units at the affected source, in accordance with this section, to be considered to meet the compliance planning requirements of title V; and

“(ii) recording by the Administrator of a transfer of allowances to amend automatically all applicable permit applications, compliance plans, and permits; and

“(G) the public availability of all information concerning the activities described in subparagraphs (A) through (E) that is not confidential or is emission data that, pursuant to section 114(c), cannot be confidential.

“(e) ~~(d)~~ ALLOWANCES.—

“(1) IN GENERAL.—Not later than January 1, ~~2012~~, 2011, the Administrator shall promulgate regulations providing for the distribution of sulfur dioxide

allowances issued for vintage year 2015 and each vintage year thereafter, in accordance with subsection (d) (2),-(e)(2).

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

“(A) 3 percent of the total annual sulfur dioxide allowances available for distribution under subsection (d)(2) the same total number of allowances issued under section 405 that are required to be offered for sale at auction in calendar year 2011 under subsection (c)(7), and paragraphs (1) and (2) of subsection (d), of section 416 shall be auctioned for vintage year 2015 and each vintage year thereafter; each of vintage years 2012 through 2017;

“(B) the proceeds from the sulfur dioxide allowances auctioned under subparagraph (A) shall be transferred to the owners or operators of affected units and general account holders on a pro rata basis, based on the number of sulfur dioxide allowances allocated to each recipient under this subsection for a particular year; and

“(B) for vintage year 2018 and each calendar year thereafter, the number of allowances auctioned shall increase by 10 percent each year; and

“(C) subject to paragraph (3), the remaining allowances shall be distributed divided into 2 pools, as provided in paragraph (3), and distributed without cost to recipients, as provided in paragraph (4), that are determined by the Administrator to provide for a fair and equitable distribution of allowances between—

“(3) ALLOWANCE POOLS.—Of the sulfur dioxide allowances that are not auctioned under paragraph (2), the Administrator shall—

“(A) (i) set aside 3 percent of the allowances each calendar year for distribution to affected units that did not received any Phase II allowance allocations under sections 403 and 405; and

“(B) (ii) make available the remaining allowances each calendar year for distribution to—

“(I) affected units that did not received any Phase II allowance allocations under sections 403 and 405; and.

“(II) general account holders of sulfur dioxide allowances.

“(4) DISTRIBUTION OF ALLOWANCES.—

“(A) IN GENERAL.—The Administrator shall distribute without cost to—

“(i) eligible owners or operators of affected units, sulfur dioxide allowances set aside under paragraph (3)(A) by using the same or similar allocation methodologies that were used for distributing allowances prior to calendar year 2015 under sections 403 and 405; and

“(ii) eligible owners or operators of affected units and general account holders, the remaining sulfur dioxide allowances available for distribution under subparagraph (3)(B) in accordance with the methodology described in paragraph (4)(B).

“(B) METHODOLOGY.—The sulfur dioxide allowances referred to in clause (B)(ii) of this paragraph shall be distributed based the quantity of sulfur dioxide allowances that owners or operators of affected units hold in their compliance accounts and other recipients hold in their general accounts under the allowance tracking system, as of the date that is 180 days after the date of enactment of this section. Each distribution of sulfur dioxide allowances to a recipient under this subparagraph shall be equal to the product of—

“(i) the ratio that—

“(I) the quantity of sulfur dioxide allowances that the recipient holds in its account for a particular year; bears to

“(II) the total quantity of sulfur dioxide allowances that all recipients hold in their accounts for the same year; and

“(ii) the total quantity of allowances that are available for distribution in clause (B)(ii) of paragraph (4) for the same year.

(3) REQUIREMENTS RELATING TO POOLS.—

~~“(A) IN GENERAL.—The Administrator shall determine the fairness and equitability of the size of the pools described in paragraph (2)(C) based on the Phase II allowance allocations and not on the current ownership of those allowances.~~

~~“(B) DISTRIBUTION.—~~

~~“(i) ACCOUNTS.—Allowances in the pool described in paragraph (2)(C)(i) shall be distributed to the account of each affected unit facility and the each general account in the allowance tracking system under section 403(e), without cost to the recipients, in a quantity equal to, as of the date that is 180 days after the date of enactment of this section, the proportion that —~~

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

~~“(II) the total number of allowances that were held in all such accounts.~~

~~“(ii) SIMILAR METHODOLOGY.—Allowances in the pool described in paragraph (2)(C)(ii) shall be distributed using the same or similar allocation methodology as was used under sections 403 and 405.~~

~~“(C) UNALLOCATED ALLOWANCES.—To the extent that sulfur dioxide allowances set aside under subparagraph (3)(A) are unallocated for a particular vintage year, the Administrator shall distribute, on a pro rata basis, such allowances to those recipients that receive allowances under subparagraph (4)(B).~~

~~“(5) (C) LIMITATION ON NUMBER OF ALLOWANCES.—In no case may the total number of allowances distributed under this subsection ~~paragraph (2)(C)~~ exceed the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in subsection (d)(2), ~~(e)(2)~~.~~

~~“(6) (4) TIMING OF ALLOCATIONS.—~~

“(A) INITIAL ALLOCATION.—Not later than January 1, 2012, ~~2011,~~ and each year thereafter, the Administrator shall allocate without cost sulfur dioxide allowances to affected units for vintage years 2015 through 2019.

“(B) SUBSEQUENT ALLOCATIONS.—Not later than January 1, 2016, and the January 1 of each 5 years thereafter, the Administrator shall allocate sulfur dioxide allowances without cost to affected units for the next 5 vintage years.

“(7) (5) PREVIOUSLY BANKED ALLOWANCES.—

“(A) IN GENERAL.—Any sulfur dioxide allowances issued under sections 403 through 416 or the rules referred to in section 417(a) for any vintage year before 2015 ~~2012~~ that are not used to meet any requirements under sections 403 through 416 or those rules, and that are not otherwise retired by the Administrator, may be used to meet requirements under this section.

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

“(C) VINTAGE YEARS 2010-2014, ~~OR 2011.~~—Each sulfur dioxide emission allowance issued for vintage years 2010 through 2014 ~~or 2011~~ shall authorize a quantity of sulfur dioxide emissions equal to 1/2 ton of sulfur dioxide.

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

“(f) (e) REPLACEMENT OF SULFUR DIOXIDE PROGRAM.—Except as expressly provided in this section, the provisions and requirements of sections 404, subsections (a) through (f), paragraphs (1) through (5) of subsection (g), and subsections (h) through (j), of section 405, sections 406 through 410, and sections 412 through 416, concerning emissions of sulfur dioxide shall not apply to any such emissions in calendar year 2015 ~~2012~~ or any calendar year thereafter.

~~“(g) (f) EFFECT ON OTHER REQUIREMENTS.—~~

~~“(1) NO EXEMPTION OR EXCLUSION.—~~

~~“(A) IN GENERAL.—Nothing in this section exempts or excludes the owner or operator of any affected source or affected unit from compliance with any other applicable requirements of this Act.~~

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

~~“(2) SEPARATE VIOLATIONS.—“(A) IN GENERAL.—Each ton of sulfur dioxide emitted in violation of subsection (d)(1), (e)(1), as implemented in the regulations promulgated under subsection (d)(3), (e)(3), shall be a separate violation of this title.~~

~~“(B) SEPARATE DAYS.—For a calendar year during which an emission described in subparagraph (A) occurs, each day of that year shall be a violation of this title.~~

**“SEC. 419. NITROGEN OXIDE CONTROL AND TRADING PROGRAM.**

“(a) DEFINITIONS.—In this section:

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

“(A) on or after January 1, 1985, served as a generator with a nameplate capacity greater than 25 megawatts; and

“(B) produces electricity for sale.

“(2) 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.

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

“(b) ESTABLISHMENT.—Not later than January 1, ~~2012, 2011~~, the Administrator shall promulgate regulations to establish 2 nitrogen oxide allowance trading programs to reduce nitrogen oxide emissions for affected units—

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

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

“(c) APPLICABILITY.—Beginning on January 1, ~~2015, 2012~~, each source that includes 1 or more affected units shall be an affected source under this section.

“(d) LIMITATIONS ON EMISSIONS.—

“(1) ZONE 1 PROHIBITION.—

“(A) IN GENERAL.—Beginning on January 1, ~~2015, 2012~~, it shall be unlawful for the affected units at an affected source in a Zone 1 State to emit a total quantity of nitrogen oxides during a calendar year in excess of the number of nitrogen oxide allowances held for the affected source for that year by the owners and operators of the affected source and the affected units.

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

“(2) ZONE 2 PROHIBITION.—

“(A) IN GENERAL.—Beginning on January 1, ~~2015, 2012~~, it shall be unlawful for the affected units at an affected source in a Zone 2 State to emit a total quantity of nitrogen oxides during a calendar year in excess of the number of nitrogen oxide allowances held for the affected source for that year by the owners and operators of the affected source and the affected units.

“(B) LIMITATION.—Only nitrogen oxide allowances described in subsection (f)(1)(B) shall be held in order to meet the requirements of subparagraph (A).



“(3) ZONE 1 STATE LIMITATIONS ON TOTAL EMISSIONS.—

“(A) In General.—The Administrator shall issue allowances authorizing an annual tonnage of emissions of nitrogen oxides from affected units in the Zone 1 States that are equal, in the aggregate, to—

“(i) ~~(A)~~ for each of calendar years 2015 ~~2012~~ through 2017, ~~2014~~, 1,390,000 tons;

“(ii) ~~(B)~~ for each of calendar years 2018 ~~2015~~ through 2022, ~~2019~~, 1,300,000 tons; and

“(iii) ~~(C)~~ for calendar year 2023 ~~2020~~ and each calendar year thereafter—

“(I) ~~(i)~~ 1,300,000 tons; or

“(II) ~~(ii)~~ a lesser quantity, only to the extent that if the Administrator determines that emissions should be reduced further from electric generating units within a State in order to lower significantly peak ambient concentrations of fine particulate matter or ozone in a corresponding nonattainment area within any other State, as provided in section 420.

“(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).~~

“(B) PROHIBITION.—Prior to January 1, 2023, the Administrator shall not—

“(i) reduce the annual tonnage of emissions of nitrogen oxides, as specified in subparagraph (A); or

“(ii) otherwise limit the nitrogen oxide emissions from any affected unit in order to carry out the requirements of sections 110(a)(2)(D) and 126 (42 U.S.C 7410(a)(2)(D), 7426).

“(4) ZONE 2 STATE LIMITATIONS ON TOTAL EMISSIONS.—

“(A) In General.—The Administrator shall issue allowances authorizing an annual tonnage limitation for emissions of nitrogen oxides from affected units in the Zone 2 States that are equal, in the aggregate, to—

“(i) ~~(A)~~ for each of calendar years 2015 ~~2012~~ through 2017, ~~2014~~, 510,000 tons;

“(ii) ~~(B)~~ for each of calendar years 2018 ~~2015~~ through 2022, ~~2019~~, 320,000 tons; and

“(iii) ~~(C)~~ for calendar year 2023 ~~2020~~ and each calendar year thereafter—

“(I) ~~(i)~~ 320,000 tons; or

“(II) ~~(ii)~~ a lesser quantity, only to the extent that ~~if~~ the Administrator determines that emissions should be reduced further from electric generating units within a State in order to lower significantly peak ambient concentrations of ozone or fine particulate matter in a corresponding nonattainment area within any other State, as provided in section 420.

~~“(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).~~

“(B) PROHIBITION.—Prior to January 1, 2023, the Administrator shall not—

“(i) reduce the annual tonnage of emissions of nitrogen oxides, as specified in subparagraph (A); or

“(ii) otherwise further limit the nitrogen oxide emissions from any affected unit in order to carry out the requirements of sections 110(a)(2)(D) and 126 (42 U.S.C 7410(a)(2)(D), 7426).

“(e) REGULATIONS.—The regulations promulgated by the Administrator to carry out this section shall establish requirements for the allowance trading program under this section, including requirements concerning—

“(1) the selection of a designated representative for each affected source, who shall make all submissions to the Administrator under this section for the affected source;

“(2) the issuance, recording, tracking, holding, transfer, auction, and use of nitrogen oxide allowances;

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

“(4) excess emission penalties and offsets in accordance with section 411;

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

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

“(B) allowances under subsection (f);

“(6) provisions that require—

“(A) a statement submitted by the designated representative of an owner or operator that the owner or operator will hold allowances authorizing emissions equaling not less than the actual emissions of the affected units at the affected source, in accordance with this section, to be considered to meet the compliance planning requirements of title V; and

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

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

“(f) ALLOWANCES.—

“(1) IN GENERAL.—Not later than January 1, 2012, the Administrator shall promulgate regulations to establish a methodology for 2 distributions of the nitrogen oxide allowances to—

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

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

The Administrator shall make the distributions of nitrogen oxide allowances under this subsection for vintage year 2015 and each vintage year thereafter.

“(2) ACCOUNTING.—The Administrator shall account in the nitrogen oxide allowance distribution methodology for two separate a-reserves of allowances for new units in Zone 1 States and Zone 2 States. The quantity of nitrogen oxide allowances set aside each calendar year for each reserve shall be equal to 3 percent of the nitrogen oxide allowances that are available for distribution to Zone 1 States and Zone 2 States under this subsection.

“(3) TIMING OF ALLOCATIONS.—

“(A) INITIAL ALLOCATION.—Not later than January 1, 2012, 2011, and each year thereafter, the Administrator shall allocate without cost nitrogen oxide allowances to affected units for vintage years 2015 through 2019.

“(B) SUBSEQUENT ALLOCATIONS.—Not later than January 1, 2016, and the January 1 of each 5 years thereafter, the Administrator shall allocate allowances without cost to affected units for the next 5 vintage years.

“(4) DISTRIBUTION OF ALLOWANCES.—

“(A) AUCTION.—IN GENERAL.—The regulations promulgated under paragraph (1) shall provide that the Administrator shall—

“(i) establish an auction for distributing nitrogen oxide allowances to affected units; ~~and~~

“(ii) require that the auction in calendar year 2015, and each calendar year thereafter, offer for sale 3 percent of the total annual

nitrogen oxide allowances available for distribution under paragraphs (3) and (4) of subsection (d); and

“(iii) provide that the proceeds from the nitrogen oxide allowances auctioned under this subparagraph shall be transferred to the owners or operators of affected units on a pro rata basis, based on the number of nitrogen oxide allowances allocated to each affected unit under this subsection for a particular year.

“(B) ALLOWANCE POOLS.—Of the remaining nitrogen oxide allowances that are not auctioned under subparagraph (A), the Administrator shall—

“(i) divide the allowances into 2 separate pools of nitrogen oxide allowances in accordance with paragraph (f)(1);

“(ii) set aside nitrogen oxide allowances for new units for each pool established under clause (i) in accordance with paragraph (f)(2); and

(iii) allocate without cost to each affected unit the nitrogen oxide allowances contained in each pool in accordance with subparagraph (C).

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

~~“(II) that the total number of nitrogen oxide allowances to be offered for sale at auction in calendar year 2014 shall—~~

~~“(aa) be the same as the total number of sulfur dioxide allowances issued under section 418(d)(2)(A) for that calendar year; and~~

~~“(bb) increase by 10 percent for each calendar year thereafter; and~~

~~“(III) subject to subparagraph (B), that the remaining allowances shall be distributed in 2 pools that are determined~~

by the Administrator to provide for a fair and equitable distribution of allowances between—

~~“(aa) affected units that shall receive Zone 1 allowances; and~~

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

~~“(C) (B) NO ALLOCATION BASED ON CERTAIN FUEL ADJUSTMENT FACTORS.—The Administrator shall determine the allocation methodology for use in implementing subparagraph (A)(ii)(III), but shall not allocate nitrogen oxide allowances without cost to affected units under subparagraph (B)(ii) based on baseline heat input fuel adjustment factors, as provided under sections 96.140, 96.142, 96.340, and 96.342 of title 40, Code of Federal Regulations (or successor regulations).~~

~~“(D) UNALLOCATED ALLOWANCES.—To the extent that nitrogen oxide allowances set aside for new units under clause (B)(ii) of this paragraph are unallocated for a particular vintage year, the Administrator shall distribute, on a pro rata basis, such allowances to the owners or operators of existing affected units.~~

~~“(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 2015 ~~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 any other applicable requirements of this Act, and any liability for excess emission penalties under this section shall not limit the application of section 113, 114, 120, or 304 to the owner or operator.

“(2) SEPARATE VIOLATIONS.—Each ton of nitrogen oxides emitted in violation of paragraph (1) or (2) of subsection (d), as implemented in the regulations promulgated under subsection (e), shall be a separate violation of this title., and, for a calendar year during which the emission occurs, each day of that year shall be a violation of this title.”.

**“SEC. 420. CONTROL OF INTERSTATE AIR POLLUTION.**

“(a) IN GENERAL.—Except as provided in subsection (b), the Administrator shall not seek to remedy or otherwise address the interstate transport of air pollution under sections 110(a)(2)(D) and 126 (42 U.S.C 7410(a)(2)(D), 7426) by reducing—

“(1) the seasonal tonnage of emissions of nitrogen oxides, as codified in subsections 417(a) and (b);

“(2) the annual tonnage of emissions of sulfur dioxide, as specified in subsection 418(d)(2); and

“(3) the annual tonnage of emissions of nitrogen oxides for Zone 1 States and Zone 2 States, as specified in subsection 419(d).

“(b) ADDITIONAL REDUCTIONS.—The Administrator may reduce the seasonal and annual tonnage limitations referred to in subsection (a), or otherwise further limit the sulfur dioxide or nitrogen oxide emissions from any affected unit, in order to carry out the requirements of sections 110(a)(2)(D) and 126 (42 U.S.C 7410(a)(2)(D), 7426)—

“(1) only on or after—

“(A) January 1, 2020 in the case of the seasonal nitrogen oxide tonnage limitations codified in subsections 417(a) and (b);

“(B) January 1, 2025 in the case of the annual sulfur dioxide tonnage limitations specified in subsection 418(d)(2); and

“(C) January 1, 2023 in the case of the annual nitrogen oxide tonnage limitations specified for Zone 1 States and Zone 2 States in subsection 419(d); and

“(2) only to the extent that—

“(A) the Administrator determines that additional reductions in emissions from electric generating units within a State will significantly contribute to the attainment of an area within any other State that is designated nonattainment for fine particulate matter or ozone; and

“(B) the improvements in air quality under subparagraph (A) can be achieved at least as cost-effectively as such air quality improvements that can be achieved by reductions in emissions compounds from other principal source categories of such emissions.

“(c) DETERMINATION.—The Administrator shall make its determination under paragraph (b)(2) based on—

“(1) a comparison of the incremental cost of improving air quality in any nonattainment area of a State by requiring additional emissions reductions from electric generating units and other principal source categories of emissions; and

“(2) the use of the best available peer-reviewed models and methodology that—

“(A) consider the proximity of the source or sources to the nonattainment area in any State; and

“(B) incorporate other source characteristics relevant for assessing air quality impacts of emissions from such sources.

The Administrator shall develop an appropriate peer-reviewed methodology for making determinations under this subparagraph by no later than January 1, 2015, and update periodically thereafter.”.

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

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



“(a) EXCESS EMISSIONS PENALTY.—The owner or operator of any unit or process source subject to the requirements of sections 403, 404, 405, 406, 407, 409, 410, 417, or 418, or designated under section 419, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the emission limitation requirement applicable to the unit or source or in excess of the allowances the owner or operator holds for use for the unit or source for that calendar year, shall be liable for the payment of an excess emissions penalty, except in a case in which the emissions were authorized pursuant to section 110(f). The excess emission penalty for the phase II sulfur dioxide requirements under section 418 and for the nitrogen oxide control and trading program requirements under section 419 shall be calculated on the basis of the number of tons emitted in excess of the allowances the operator holds for use for the unit for that year, multiplied by 2 times the market price of such allowances for the same vintage year emission allowances. Any such penalty shall be immediately due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator under sections 418 and 419. For the requirements established under title IV of the Clean Air Act Amendments of 1990, that penalty’”; and

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

“(b) EXCESS EMISSION OFFSET.—The owner or operator of any affected source or any affected unit that emits sulfur dioxide or nitrogen oxides during any calendar year in excess of the emissions limitation requirement of the unit or of the allowances held for the unit for the calendar year shall be liable to offset the excess emission by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source or the unit shall.”.

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

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

“(11) ELECTRIC UTILITY STEAM GENERATING UNITS.—

“(A) IN GENERAL.—The Administrator shall regulate coal- and oil-fired electric utility steam generating units ~~under section 112(d)~~ in accordance with the provisions of this paragraph.

“(B) MINIMUM PERCENT REDUCTION IN MERCURY EMISSIONS.—In promulgating mercury emission standards for the coal-fired electric utility steam generating units under this paragraph, section, the Administrator shall—

“(i) ensure that such standards achieve at least a 90-percent reduction in annual emissions of mercury when—

“(I) the standards are applied—

“(aa) to coal-fired electric utility steam generating units within the listed category as a whole; and

“(bb) without making adjustments to account for alternative the compliance methods authorized under subparagraphs (D) and (E); and

“(II) the mercury emissions reductions are measured by comparing—

“(aa) the uncontrolled mercury emissions that are attributable to all sources within the listed category based on the total quantity of mercury present in the coal consumed by all such sources during calendar year 1999; to

“(bb) the mercury emissions that would have been achieved by applying the applicable mercury emissions standards to sources within the listed category based on the total average annual quantity of mercury present in the coal consumed by all such sources during calendar years 2009 through 2012;

“(ii) subcategorize the sources within the listed category based on type and characteristics of the coal, size of the source,

method of fuel combustion, emissions characteristics, and control technology effectiveness;

“(iii) establish for each subcategory of units within the listed category a performance standard for controlling mercury that is averaged over each 12-month period;

“(iv) consult with States that already have a coal-fired electric utility steam generating unit mercury reduction program in place before setting the standard; and

“(v) consult with the Secretary of the Department of Energy on the mercury reduction levels that have been achieved in practice for types of coal and classes of sources within the listed category.

“(C) FAILURE TO PROMULGATE MERCURY STANDARDS

LIMITATIONS.—

“(i) IN GENERAL.—If the Administrator fails to promulgate nationally applicable mercury emission standards ~~limitations~~ under this paragraph for coal-fired electric utility steam generating units by July ~~January~~ 1, 2012, the owner or operator of each electric utility steam generating units in existence as of that date shall be required to submit within 18 months after such date a permit application to establish a mercury emission standard for the unit, as described in clause (ii).

“(ii) EQUIVALENT CASE-BY-CASE STANDARDS.—No later than 1 year from the date that a complete permit application has been submitted for any coal-fired electric utility steam generating unit under clause (i), the Administrator (or the State) shall issue a permit that contains a mercury emission standard for that unit. The mercury standard shall establish an annual emission limitation that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to a nationally applicable emission standard that would apply to the unit if the Administrator had established such a standard in accordance with the provisions of this paragraph.

“(iii) COMPLIANCE DATE.—Any permit issued under this subparagraph shall require the installation and operation of the appropriate control technology to comply with the applicable emission standard—

“(I) in the case of a new coal-fired electric utility steam generating unit, immediately upon commencement of commercial operation of the unit; and

“(II) in the case of an existing coal-fired electric utility steam generating unit, by not later than the date that is 5 years after the permit is issued for the existing unit.

“(iv) SUBSEQUENT PROMULGATION OF MERCURY EMISSIONS STANDARDS.—

“(I) PRIOR TO PERMIT ISSUANCE.—If the Administrator promulgates an applicable mercury emissions standard under this subparagraph (B) prior to the date on which the emission standard is issued by permit for a coal-fired electric utility steam generating unit under this subparagraph, the standard promulgated under subparagraph (B) shall apply in lieu of issuing a standard by permit under this subparagraph.

“(II) AFTER PERMIT ISSUANCE.— If the Administrator promulgates an applicable mercury emissions standard under subparagraph (B) after the date on which the emissions standard is issued by permit for a coal-fired electric utility steam generating unit under this subparagraph, the Administrator (or the State) shall—

“(aa) revise the permit for the unit upon the next renewal of the permit to reflect the standard promulgated by the Administrator; and

“(bb) require such unit to install and operate the appropriate control technology for complying

with the revised emissions standard by not later than 5 years after the date that such revised standard is issued.

~~meet, by not later than January 1, 2015, maximum achievable control technology emission standards, limitations, as determined on a case-by-case basis under section 112(j).~~

“(D) EMISSIONS AVERAGING.—Any owner or operator of a coal-fired electric utility steam generating unit may elect to comply with the applicable mercury emissions standard established under this paragraph through a mercury averaging plan that—

“(i) allows for the averaging of mercury emissions among multiple coal-fired electric utility steam generating units, each of which —

“(I) is subject to a mercury emission standard established under this paragraph;

“(II) is under the control of the same owner or operator; and

“(III) is included in only one mercury averaging plan; and

“(ii) requires that each of the coal-fired electric utility steam generating units included in the mercury averaging plan shall be located within—

“(I) the same State; or

“(II) a 200 mile geographic radius if such generating units are located in more than one State;

“(iii) establishes an alternative contemporaneous mercury emissions standard for each coal-fired electric utility steam generating unit included in the averaging plan;

“(iv) demonstrates that the actual annual mercury emissions rate in pounds of mercury per trillion Btu averaged over all of the coal-fired electric utility steam generating units included in the

averaging plan is less than, or equal to, the Btu-weighted average mercury emissions rate for the same units if they had been operated, during the same period of time, in compliance with the applicable mercury emissions standards established under this paragraph; and

“(v) provides credit for the mercury emissions reductions that were achieved by the permanent shutdown of any coal-fired electric utility steam generating unit in accordance with the following requirements—

“(I) the unit was permanently shut down on or after the date of enactment of the Clean Air Act Amendments of 2010;

“(II) the shutdown unit is included in the averaging plan for a period that shall not exceed 5 years;

“(III) in performing the calculation described in clause (iv), the shutdown unit shall have—

“(aa) a mercury emissions rate of 0 pounds per trillion Btu; and

“(bb) a heat input that is equal to 50 percent of the annual average heat input to the unit during the 2 calendar years prior to the shutdown.

“For purposes of this subparagraph, the terms “shut down” and “shutdown unit” refer to those situations where the unit is either permanently retired from service or continues to operate, but becomes subject to a federally enforceable limitation that prohibits the consumption of coal in any amount.

“(E) ALTERNATIVE EMISSIONS LIMITATIONS.—

“(i) IN GENERAL.—The Administrator shall adopt regulations that authorize the permitting authority to establish for any coal-fired electric utility steam generating unit an alternative emissions limitation that is less stringent than the applicable mercury emissions standard established under this paragraph. The regulations shall authorize the permitting authority to establish such

an alternative emissions limitation upon the request of the owner or operator of the coal-fired electric utility steam generating unit if the owner or operator—

“(I) has installed and properly operated a reference control technology identified in clause (iii), in accordance with good engineering practice, during a demonstration period of at least 12 months; and

“(II) demonstrates that the unit cannot achieve the applicable mercury emissions standard established under this paragraph based on operating and emissions data collected during the demonstration period that reference control technology was properly operated under subclause (I).

Coal-fired electric utility steam generating units for which an alternative emissions limitation is established under this subparagraph shall not be required to install any additional control technology or equipment beyond the appropriate reference control technology described in clause (iii).

“(ii) PERMITTING PROCEDURES.—In the case of each coal-fired electric utility steam generating unit for which the owner or operator has elected to make a request for an alternative emissions limitation under this subparagraph, the permitting authority shall—

“(I) authorize the unit to exceed its applicable mercury emissions standard prior to the establishment of an alternative emissions limitation under this paragraph; and

“(II) establish an alternative emission limitation that—

“(aa) is based on the operating and emissions data collected during the demonstration period under clause (i) of this paragraph; and

“(bb) reflects the mercury control levels that are achievable through proper operation of the applicable reference control technology under the full range foreseeable operating conditions at the unit.

“(iii) REFERENCE CONTROL TECHNOLOGIES.—For purposes of this subparagraph, the reference control technology shall be—

“(I) in the case of a coal-fired electric utility steam generating unit with a nameplate generating capacity greater than 300 MW, the combination of—

“(aa) conventional or advanced flue gas desulfurization for the control of sulfur dioxide;

“(bb) electrostatic precipitator or baghouse for the control of particulate matter; and

“(cc) one of the following control technologies—

“(AA) selective catalytic reduction for the control of nitrogen oxides; or

“(BB) the injection of activated carbon or other sorbent designed to control mercury; and

“(II) in the case of a coal-fired electric utility steam generating unit with a nameplate generating capacity equal to, or less than, than 300 MW, one of the following—

“(aa) the combination of—

“(AA) electrostatic precipitator or baghouse; and

“(BB) the injection of activated carbon or other sorbent designed to control mercury; or

“(bb) the combination of—



“(AA) electrostatic precipitator or baghouse; and

“(BB) conventional or advanced flue gas desulfurization for the control of sulfur dioxide.

“Administrator may designate as a reference control technology other air pollution control technologies, techniques, or measures that are capable of achieving mercury emissions rates that are equivalent to the emissions rates that are achieved in practice by the combination of control technologies listed under this clause.

“(F) Regulation of Non-Mercury Hazardous Air Pollutants.—

“(i) IN GENERAL.—The Administrator shall not regulate hazardous air pollutants listed under subsection (b), other than mercury, from coal-fired electric utility steam generating units under this paragraph until after—

“(I) the emissions reduction requirements established by the Clean Air Act Amendments of 2010 have been fully implemented;

“(II) the Administrator has performed an assessment of the remaining risks to human health, as described in clause (ii); and

“(III) such risk assessment includes an affirmative determination that the regulation under this paragraph is necessary and appropriate for each identified non-mercury hazardous air pollutant.

“(ii) RISK ASSESSMENT.—The Administrator shall assess, on a pollutant-by-pollutant basis, the remaining risks to human health that are reasonably anticipated to occur as a result of non-mercury hazardous air pollutants emitted from coal-fired electric utility steam generating units based on the actual emissions from such units after full implementation of the reduction requirements imposed by the

Clean Air Act Amendments of 2010. The risk assessment performed under this clause shall include a determination on whether regulation of one or more non-mercury hazardous air pollutants under this paragraph is necessary and appropriate to address any significant remaining risks to human health resulting from the emissions from such units. The Administrator shall provide public notice and the opportunity to comment on the results of the risk assessment performed under this clause.

“(iii) Emissions Standards.—The Administrator may promulgate emissions standards under this paragraph for each non-mercury hazardous air pollutant—

“(aa) that is emitted from coal-fired electric utility steam generating units within the listed source category; and

“(bb) for which the Administrator has made an affirmative determination that such regulation is necessary and appropriate under clause (ii).

“(G) REGULATION OF OIL-FIRED UNITS.—

“(i) NICKEL.—By no later than July 1, 2012, the Administrator shall promulgate emissions standards for nickel emitted from oil-fired electric utility steam generating units under this paragraph.

“(ii) OTHER HAZARDOUS AIR POLLUTANTS.—The Administrator may promulgate emissions standards under this paragraph for each hazardous air pollutant, other than nickel, that is emitted from oil-fired electric utility steam generating units if the Administrator has made an affirmative determination for that air pollutant that such regulation is necessary and appropriate to address any significant remaining risks to human health.

“(H) SCHEDULE FOR COMPLIANCE.—The Administrator shall establish a schedule for compliance for each emissions standard that the Administrator may establish by rule under this paragraph. Such compliance

schedules shall be established in accordance with provisions of this subparagraph.

“(i) NEW SOURCES.—The provisions for establishing a schedule for compliance in paragraphs (1) and (2) of subsection (i) shall apply in the case of any new coal-fired or oil-fired electric utility steam generating unit that commences construction or reconstruction after the date that the applicable emission standard is proposed for such source under this paragraph.

“(ii) EXISTING SOURCES.—Any source that is not a new source under clause (i) shall be required to install and operate the appropriate control technology for complying with the applicable emission standard established under this paragraph or subsection (j) for—

“(I) coal-fired electric utility steam units by no later than the January 1 after the calendar year that is 5 years after such standard takes legal effect; and

“(II) oil-fired electric utility steam units by no later than the January 1 after the calendar year that is 3 years after such standard takes legal effect.”.

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

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