II

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;

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

''(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;

''(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;

''(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;

''(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;

''(15) exposure to ozone damages vegetation and ecosystems;

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

''(17) impaired food production leads to reduced plant growth and reproduction, resulting in reduced forestry production, crop yields, and overall plant vigor;

''(18) loss of vigor can result in increased susceptibility of plants to insect attack, disease, harsh weather, and interspecies competition;

''(19) all of those adverse effects of ozone have implications for global crop production and food security; and

''(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 2011.

''(b) EXCEPTIONS.—

''(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 2012 and thereafter.

''(3) REVISIONS.—

''(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 nonelectric generating units; 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).

''(4) ELIMINATION OF FUEL ADJUSTMENT FACTORS.—Not later than 90 days after the date of enactment of this section, the Administrator 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) ESTABLISHMENT.—Not later than January 1, 2011, the Administrator shall promulgate regulations to establish, for affected units in the 48 contiguous States and the District of Columbia, a sulfur dioxide allowance trading program to reduce sulfur dioxide emissions from affected units.

''(b) APPLICABILITY.—After January 1, 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.

''(c) LIMITATIONS ON EMISSIONS.—

''(1) PROHIBITION.—

"(A) IN GENERAL.—Beginning on January 1, 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 (d) shall be held in order to meet the requirements of subparagraph (A).

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

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

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

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

"(D) for calendar year 2021 and each calendar year thereafter—

''(i) 1,500,000 tons; or

''(ii) a lesser quantity, if the Administrator determines that emissions should be reduced further—

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

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

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

''(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.

''(d) ALLOWANCES.—

''(1) IN GENERAL.—Not later than January 1, 2011, the Administrator shall promulgate regulations providing for the distribution of sulfur dioxide allowances issued in accordance with subsection (c)(2).

''(2) DISTRIBUTION.—The regulations shall provide that—

''(A) 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 in each of vintage years 2012 through 2017;

''(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 in 2 pools that are determined by the Administrator to provide for a fair and equitable distribution of allowances between—

''(i) affected units that received Phase II allowance allocations under sections 403 and 405; and

''(ii) affected units that did not receive any Phase II allowance allocations under sections 403 and 405.

''(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 facility and each general account in the allowance tracking system under section 403(c), 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) LIMITATION ON NUMBER OF ALLOWANCES.—In no case may the total number of allowances distributed under paragraph (2)(C) exceed the annual tonnage limitation for emis-

sions of sulfur dioxide from affected units specified in subsection (c)(2).

''(4) TIMING OF ALLOCATIONS.—Not later than January 1, 2011, and each year thereafter, the Administrator shall allocate allowances to affected units.

''(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 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 YEAR 2010 OR 2011.—Each sulfur dioxide emission allowance issued for vintage year 2010 or 2011 shall authorize a quantity of sulfur dioxide emissions equal to ½ ton of sulfur dioxide.

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

''(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 2012 or any calendar year thereafter.

''(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 (c)(1), as implemented in the regulations promulgated under subsection (c)(3), shall be a 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, 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, 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, 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 dur-

ing 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, 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.—The Administrator shall issue allow-

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

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

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

"(C) for calendar year 2020 and each calendar year thereafter—

"(i) 1,300,000 tons; or

"(ii) a lesser quantity, if the Administrator determines that emissions should be reduced further—

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

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

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

"(4) ZONE 2 STATE LIMITATIONS ON TOTAL EMISSIONS.—The Administrator shall issue 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—

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

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

"(C) for calendar year 2020 and each calendar year thereafter—

"(i) 320,000 tons; or

"(ii) a lesser quantity, if the Administrator determines that emissions should be reduced further—

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

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

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

"(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).

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

''(3) TIMING OF ALLOCATIONS.—Not later than January 1, 2011, and each year thereafter, the Administrator shall allocate allowances to affected units.

''(4) DISTRIBUTION OF ALLOWANCES.—

''(A) 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—

''(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.

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

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

''(5) PREVIOUSLY BANKED ALLOWANCES.—

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

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

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

''(g) EFFECT ON OTHER REQUIREMENTS.—

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

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 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.''.

(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).

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

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

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

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

"(C) FAILURE TO PROMULGATE LIMITATIONS.—If the Administrator fails to promulgate nationally applicable emission limitations under this paragraph for electric utility steam generating units by January 1, 2012, electric utility steam generating units in existence as of that date shall be required to meet, by not later than January 1, 2015, maximum achievable control technology emission limitations, as determined on a case-by-case basis under section 112(j).".

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

"(t) MERCURY MONITORING AND REPORTING PROGRAM.—

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

"(A) the operation, reporting, and certification of continuous emission monitoring systems to accurately measure the quantity of

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

''(B) verification and reporting of mercury emissions at each electric coal utility steam generating unit.

''(2) REPORTING.—

''(A) IN GENERAL.—Not less often than quarterly, the owner or operator of an affected unit that is an electric coal utility steam generating unit shall submit to the Administrator a report on the monitoring of emissions of mercury carried out by the owner or operator in accordance with the regulations promulgated under paragraph (1).

''(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be authorized by a responsible official of the electric coal utility steam generating 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 emission of mercury from each electric coal utility steam generating unit.''.

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).

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