

112TH CONGRESS
1ST SESSION

S. _____

To provide for coordination of certain new Federal environmental requirements to achieve environmental goals and objectives while promoting a sound national energy policy, ensuring the supply of affordable, reliable electricity in all regions of the United States, minimizing loss of jobs and other adverse economic impacts on the United States economy, and enhancing the international competitiveness and the productive capacity of the United States manufacturing industry, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To provide for coordination of certain new Federal environmental requirements to achieve environmental goals and objectives while promoting a sound national energy policy, ensuring the supply of affordable, reliable electricity in all regions of the United States, minimizing loss of jobs and other adverse economic impacts on the United States economy, and enhancing the international competitiveness and the productive capacity of the United States manufacturing industry, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Electric Power Regulatory Coordination Act of 2011”.

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

- Sec. 1. Short title.
- Sec. 2. Purpose.
- Sec. 3. Definitions.

TITLE I—COORDINATION OF NEW ENVIRONMENTAL
REQUIREMENTS

- Sec. 101. Alternative compliance program.
- Sec. 102. well-controlled units.
- Sec. 103. Regulation of hazardous air pollutants.
- Sec. 104. Regulation of sulfur dioxide and nitrogen oxide emissions.

TITLE II—OTHER PROVISIONS FOR COORDINATION AND
IMPLEMENTATION

- Sec. 201. Regulation of coal combustion residuals.
- Sec. 202. Performance standards for carbon dioxide.
- Sec. 203. Pollution control projects and efficiency improvements.
- Sec. 204. Expedited review of Federal authorizations.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to coordinate new Federal
8 environmental requirements that apply to electric utility
9 steam generating units in a balanced and even-handed
10 manner that—

- 11 (1) achieves the environmental goals and objec-
12 tives of the new Federal environmental require-
13 ments, while minimizing adverse economic impacts;
- 14 (2) promotes sound national energy policy, in-
15 cluding the continued reliance of coal to meet the
16 growing energy needs of the United States;

1 (3) ensures the supply of affordable, reliable
2 electricity in all regions of the country;

3 (4) limits the premature retirement of the exist-
4 ing fleet of electric utility steam generating units;

5 (5) minimizes loss of jobs and other adverse
6 economic impacts on the United States economy, in-
7 cluding reductions in production levels and labor de-
8 mands in manufacturing, commercial, and other sec-
9 tors of the economy; and

10 (6) enhances, to the maximum extent prac-
11 ticable, the international competitiveness and the
12 productive capacity of the United States manufac-
13 turing industry.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) ADMINISTRATOR.—The term “Adminis-
17 trator” means the Administrator of the Environ-
18 mental Protection Agency.

19 (2) AFFECTED UNIT.—The term “affected
20 unit” means an electric generating unit that is sub-
21 ject to regulation under the Clean Air Interstate
22 Rule or any subsequent rule that the Administrator
23 may promulgate to remedy or otherwise address the
24 interstate transport of air pollution under sections

1 110(a)(2)(D) and 126 of the Clean Air Act (42
2 U.S.C. 7410(a)(2)(D), 7426).

3 (3) AUXILIARY POWER DEMAND.—The term
4 “auxiliary power demand” means the total quantity
5 of electricity and thermal energy generated by an
6 electric utility steam generating unit that is—

7 (A) consumed by equipment, activities, or
8 other processes that are necessary to operate a
9 pollution control project; or

10 (B) lost as a result of conversion of a once-
11 through cooling system to either a wet or dry
12 cooling tower system in which cooling water is
13 constantly recirculated from the condenser to a
14 cooling tower where the water cools by evapo-
15 ration or convection.

16 (4) CLEAN AIR INTERSTATE RULE.—The term
17 “Clean Air Interstate Rule” means the regulations
18 to regulate sulfur dioxide and nitrogen oxide emis-
19 sions from affected units that the Administrator pro-
20 mulgated on May 12, 2005 (70 Fed. Reg. 25162),
21 April 28, 2006 (71 Fed. Reg. 25288 and 25328),
22 October 19, 2007 (72 Fed. Reg. 59190), November
23 2, 2007 (72 Fed. Reg. 62338), April 28, 2008 (73
24 Fed. Reg. 22818), and November 3, 2009 (74 Fed.
25 Reg. 56721).

1 (5) COAL COMBUSTION RESIDUALS.—The term
2 “coal combustion residuals” means fly ash, bottom
3 ash, flue gas desulfurization byproducts, and boiler
4 slag that are produced by a coal-fired electric utility
5 steam generating unit.

6 (6) DESIGNATED UNIT.—The term “designated
7 unit” means an existing electric utility steam gener-
8 ating unit for which the owner or operator of the
9 unit has submitted to the Administrator a compli-
10 ance plan that contains a legally binding commit-
11 ment to perform, by not later than December 31,
12 2020, 1 or more of the alternative control options
13 specified in section 101(c)(2).

14 (7) DISPOSAL FACILITY.—The term “disposal
15 facility” means a landfill or surface impoundment
16 that receives for disposal large volumes of coal com-
17 bustion residuals from coal-fired electric utility
18 steam generating units.

19 (8) ELECTRIC UTILITY STEAM GENERATING
20 UNIT.—The term “electric utility steam generating
21 unit” has the meaning given the term in section
22 112(a)(8) of the Clean Air Act (42 U.S.C.
23 7412(a)(8)).

24 (9) ELIGIBLE PROJECT.—The term “eligible
25 project” means any project—

1 (A) to perform 1 of the alternate control
2 options specified in section 101(c)(2)(B) at a
3 designated unit;

4 (B) to construct a new electric utility
5 steam generating unit that replaces a des-
6 ignated unit that is being permanently retired
7 under section 101(c)(2)(A); or

8 (C) to undertake a project to install and
9 operate an advanced coal-fueled technology at a
10 new or existing electric utility steam generating
11 unit.

12 (10) EXISTING ELECTRIC UTILITY STEAM GEN-
13 ERATING UNIT.—

14 (A) IN GENERAL.—The term “existing
15 electric utility steam generating unit” means an
16 electric utility steam generating unit that com-
17 menced commercial operation before the date of
18 enactment of this Act.

19 (B) INCLUSIONS.—The term “existing
20 electric utility steam generating unit” includes
21 a electric utility steam generating unit that—

22 (i) commenced commercial operation
23 before the date of enactment of this Act;
24 and

1 (ii) is modified, reconstructed, or re-
2 powered after that date.

3 (11) EXISTING ENVIRONMENTAL REQUIRE-
4 MENTS.—The term “existing environmental require-
5 ments” means any rule, regulation, permit condition,
6 or other requirement that—

7 (A) is established pursuant to Federal or
8 State law;

9 (B) pertains to air pollution control, waste-
10 water and thermal discharges, regulation of
11 cooling water intake structures, disposal of solid
12 waste, or any other environmental matter; and

13 (C) applied to an affected unit as of Janu-
14 ary 1, 2010.

15 (12) FEDERAL AUTHORIZATION.—

16 (A) IN GENERAL.—The term “Federal au-
17 thorization” means any authorization required
18 under Federal law, whether administered by a
19 Federal or State agency, with respect to the
20 siting, construction, or operation of an eligible
21 project.

22 (B) INCLUSIONS.—The term “Federal au-
23 thorization” includes any permit, license, spe-
24 cial use authorization, certification, opinion,
25 concurrence, or other approval that may be re-

1 performance standard for existing sources
2 under section 111(d) (42 U.S.C. 7411(d));

3 (iv) regional haze or reasonably attrib-
4 utable visibility impairment under section
5 169A or section 169B of the Clean Air Act
6 (42 U.S.C. 7491, 7492);

7 (v) hazardous air pollutants under
8 section 112 of the Clean Air Act (42
9 U.S.C. 7412);

10 (vi) greenhouse gas emissions under
11 title I and title V of the Clean Air Act (42
12 U.S.C. 7401 et seq.), including the require-
13 ments for—

14 (I) new source performance
15 standards under section 111 of the
16 Clean Air Act (42 U.S.C. 7411), in-
17 cluding a performance standard for
18 existing sources under section 111(d)
19 of that Act (42 U.S.C. 7411(d)); and

20 (II) preconstruction review per-
21 mits under section 165 of the Clean
22 Air Act (42 U.S.C. 7475);

23 (vii) cooling water intake structures
24 under section 316(b) of the Federal Water
25 Pollution Control Act (33 U.S.C. 1326(b));

1 (viii) effluent guidelines for regulating
2 the discharge of pollutants under section
3 304 of the Federal Water Pollution Con-
4 trol Act (33 U.S.C. 1314); or

5 (ix) the handling and disposal of coal
6 combustion residuals under subtitle C or D
7 of the Solid Waste Disposal Act (42
8 U.S.C. 6921 et seq.).

9 (14) NEW ELECTRIC UTILITY STEAM GENER-
10 ATING UNIT.—The term “new electric utility steam
11 generating unit” means an electric utility steam gen-
12 erating unit that commences commercial operation
13 on or after the date of enactment of this Act.

14 (15) POLLUTION CONTROL PROJECT.—

15 (A) IN GENERAL.—The term “pollution
16 control project” means any activity or project
17 undertaken at an electric utility steam gener-
18 ating unit that involves—

19 (i) the installation, replacement, or
20 upgrade of an eligible pollution control
21 technology that is listed under subpara-
22 graph (B); or

23 (ii) the switching (or partially switch-
24 ing) to an inherently less polluting fuel.

1 (B) ELIGIBLE TECHNOLOGIES.—Eligible
2 pollution control technologies under subpara-
3 graph (A) shall include—

4 (i) carbon capture and sequestration
5 technologies that are used for the capture,
6 compression, transportation, or injection of
7 carbon dioxide into underground forma-
8 tions;

9 (ii) conventional or advanced flue gas
10 desulfurization or sorbent injection systems
11 for the control of sulfur dioxide or other
12 air pollutants;

13 (iii) electrostatic precipitators or
14 baghouses for the control of particulate
15 matter or other air pollutants;

16 (iv) selective noncatalytic reduction,
17 selective catalytic reduction, and burner
18 systems designed for the control of nitro-
19 gen oxides or other air pollutants;

20 (v) the injection of activated carbon or
21 other sorbent designed to control mercury
22 or other air pollutants; or

23 (vi) any other control technology,
24 technique, or measure that reduces emis-
25 sions of air pollutants from an electric util-

1 ity steam generating unit, as determined
2 by the Administrator.

3 (16) QUALIFIED EFFICIENCY OR MAINTENANCE
4 PROJECT.—The term “qualified efficiency or mainte-
5 nance project” means any physical change, or
6 change in method of operation, to an existing elec-
7 tric utility steam generating unit that—

8 (A) is implemented for the purpose of
9 maintaining, restoring, or improving the gener-
10 ating efficiency of the electric utility steam gen-
11 erating unit, measured in terms of net elec-
12 tricity generated per energy consumed; and

13 (B) does not result in an increase in the
14 maximum hourly emissions of any regulated air
15 pollutant, as compared to the maximum hourly
16 emissions of that air pollutant that was achiev-
17 able at that unit during the 5-year period be-
18 fore the change.

19 (17) SECRETARY.—The term “Secretary”
20 means the Secretary of Energy.

21 (18) TRANSPORT RULE.—The term “Transport
22 Rule” means the regulations to reduce the sulfur di-
23 oxide and nitrogen oxide emissions from affected
24 units that the Administrator may promulgate based

1 on the proposed rule published on August 2, 2010
2 (75 Fed. Reg. 45210).

3 (19) WELL-CONTROLLED UNIT.—The term
4 “well-controlled unit” means an existing coal-fired
5 electric utility steam generating unit that enters into
6 a binding commitment to achieve the emission con-
7 trol requirements that are established for sulfur di-
8 oxide, nitrogen oxides, and mercury under section
9 102(b).

10 **TITLE I—COORDINATION OF**
11 **NEW ENVIRONMENTAL RE-**
12 **QUIREMENTS**

13 **SEC. 101. ALTERNATIVE COMPLIANCE PROGRAM.**

14 (a) IN GENERAL.—The Administrator shall establish
15 an alternative compliance program for existing electric
16 utility steam generating units in accordance with the pro-
17 visions of this section to establish alternative compliance
18 options that the owner or operator of any existing electric
19 utility steam generating unit may elect to perform in lieu
20 of complying with applicable new Federal environmental
21 requirements.

22 (b) ELECTION.—

23 (1) IN GENERAL.—By not later than January
24 1, 2014, the owner or operator of an existing electric
25 utility steam generating unit may elect to classify

1 the unit as a designated unit for purposes of meet-
2 ing the applicable new Federal environmental re-
3 quirements.

4 (2) SUBMISSION OF PLAN.—An election under
5 this subsection shall be made through the submis-
6 sion of a compliance plan for the particular unit to
7 the Administrator in accordance with the require-
8 ments and procedures specified in subsection (c).

9 (c) COMPLIANCE PLAN.—

10 (1) IN GENERAL.—A compliance plan submitted
11 to the Administrator under subsection (b) shall es-
12 tablish the alternative regulatory compliance obliga-
13 tions and conditions that shall apply to a designated
14 unit in lieu of the new Federal environmental re-
15 quirements that would otherwise apply to the des-
16 ignated unit under current Federal and State law,
17 which compliance obligations and conditions shall in-
18 clude—

19 (A) a requirement for the designated unit
20 to perform 1 of the alternative control options
21 identified in paragraph (2); and

22 (B) an alternative compliance schedule, as
23 described in paragraph (3).

24 (2) ALTERNATIVE CONTROL OPTIONS.—Each
25 compliance plan submitted under subsection (b) shall

1 contain a binding commitment that requires the
2 owner or operator of the designated unit to perform
3 1 of the following alternative compliance options by
4 not later than December 31, 2020:

5 (A) Permanent retirement of the des-
6 igned unit, along with the surrender of all
7 permits, licenses, and other Federal or State
8 authorizations necessary for the operation of
9 the unit.

10 (B) In the case of a designated unit that
11 combusts coal for more than **[90]** percent of
12 the average annual heat input during the 3 con-
13 secutive calendar years immediately before the
14 date of the election under subsection (b), the
15 replacement or repowering of that designated
16 unit with a new or modified electric generating
17 unit that—

18 (i) consumes natural gas, biomass, or
19 other renewable fuel; or

20 (ii) employs an advanced coal-fueled
21 technology.

22 (3) ALTERNATIVE COMPLIANCE SCHEDULE.—

23 (A) IN GENERAL.—The compliance plan
24 shall contain a federally enforceable alternative
25 compliance schedule, as described in subpara-

1 graph (B), that shall apply to the designated
2 unit in lieu of the otherwise applicable new
3 Federal environmental requirements, from the
4 date that owner or operator submitted the com-
5 pliance plan for the designated unit, to a date
6 that is not later than December 31, 2020.

7 (B) KEY ELEMENTS.—An alternative com-
8 pliance schedule required under subparagraph
9 (A) shall contain the following elements:

10 (i) Legally binding conditions that re-
11 quire the owner or operator of the des-
12 ignated unit—

13 (I) to perform 1 of the alter-
14 native compliance options specified in
15 paragraph (2) by not later than De-
16 cember 31, 2020;

17 (II) to submit periodic progress
18 reports on the achievement of reason-
19 able milestones for the completion of
20 the alternative compliance option for
21 which the owner or operator has made
22 a binding commitment to perform
23 under this subsection;

24 (III) to limit annual emissions of
25 sulfur dioxide and nitrogen oxide from

1 the designated unit to the annual av-
2 erage emissions levels of the unit dur-
3 ing the base period, as determined
4 under paragraph (4); and

5 (IV) to comply with all applicable
6 Federal and State environmental re-
7 quirements in existence on January 1,
8 2010.

9 (ii) A regulatory variance providing
10 that the designated unit is considered to be
11 in compliance with all new applicable Fed-
12 eral environmental requirements so long as
13 the designated unit remains in compliance
14 with the applicable existing environmental
15 requirements.

16 (iii) An exemption from the new
17 source review permitting requirements that
18 are established under parts C and D of
19 title I of the Clean Air Act (42 U.S.C.
20 7470 et seq.) for all physical or operational
21 changes undertaken at the designated unit
22 that do not result in an increase in the
23 maximum hourly emissions of any regu-
24 lated air pollutant, as compared to the
25 maximum hourly emissions of that air pol-

1 lutant that was achievable at that unit
2 during the 5-year period before the change.

3 (4) **BASE PERIOD.**—The base period shall be
4 any 3 consecutive years during the period of cal-
5 endar years 2005 through 2010 that the owner or
6 operator of the designated unit selects to establish
7 the annual emission limitations for sulfur dioxide
8 and nitrogen oxides under paragraph (3)(B)(i)(III).

9 **SEC. 102. WELL-CONTROLLED UNITS.**

10 (a) **CLASSIFICATION.**—Each existing coal-fired elec-
11 tric utility steam generating unit that is not a designated
12 unit under section 101 shall be classified as a well-con-
13 trolled unit that is subject to the emission control require-
14 ments established under this section.

15 (b) **EMISSION CONTROL REQUIREMENTS.**—

16 (1) **ESTABLISHMENT.**—The Administrator shall
17 establish by rule federally enforceable emission con-
18 trol requirements for limiting the emissions of sulfur
19 dioxide, nitrogen oxides, and mercury from each
20 well-controlled unit that require the unit to
21 achieve—

22 (A) with respect to emission control levels
23 for sulfur dioxide—

24 (i) a 90-percent reduction in sulfur di-
25 oxide emissions on an annual basis, as

1 compared to uncontrolled emissions,
2 through the operation of either a wet flue
3 gas desulfurization system or a spray dryer
4 flue gas desulfurization system; or

5 (ii) an annual emission rate of 0.2 lbs/
6 MMBtu for sulfur dioxide;

7 (B) with respect to emission control levels
8 for nitrogen oxides—

9 (i) an 80-percent reduction in nitro-
10 gen oxide emissions on an annual basis, as
11 compared to uncontrolled emissions,
12 through the operation of a selective cata-
13 lytic reduction system; or

14 (ii) an annual emission rate of 0.1 lbs/
15 MMBtu for nitrogen oxides; and

16 (C) with respect to emission control levels
17 for mercury through the operation of pollution
18 control equipment or the performance of other
19 emission control measures or techniques—

20 (i) in the case of a coal-fired electric
21 utility steam generating unit that primarily
22 combusts bituminous coal, a 85-percent re-
23 duction in mercury emissions on an annual
24 basis, as compared to uncontrolled levels;

1 (ii) in the case of a coal-fired electric
2 utility steam generating unit that primarily
3 combusts subbituminous coal, a 80 percent
4 reduction in mercury emissions on an an-
5 nual basis, as compared to uncontrolled
6 levels; or

7 (iii) in the case of a coal-fired electric
8 utility steam generating unit that primarily
9 combusts lignite coal, a 70-percent reduc-
10 tion in mercury emissions on an annual
11 basis, as compared to uncontrolled levels.

12 (2) LIMITATION.—The Administrator may not
13 set any performance standard, emissions limitation,
14 or other requirement for a well-controlled unit that
15 could have the effect of requiring the installation of
16 any additional pollution control technology or the
17 achievement of emission reductions that are more
18 stringent than the applicable emission control re-
19 quirements established for the well-controlled unit
20 under this subsection.

21 (c) PHASE-IN OF EMISSION CONTROL REQUIRE-
22 MENTS.—

23 (1) COMPLIANCE PLAN.—By not later than
24 January 1, 2014, the owner or operator of each ex-
25 isting coal-fired electric utility steam generating unit

1 that is classified as a well-controlled unit under sub-
2 section (a) shall submit to the Administrator a com-
3 pliance plan for phasing in the emission control re-
4 quirements established under subsection (b) that—

5 (A) applies to all of the well-controlled
6 units that are under the common control of the
7 owner or operator;

8 (B) identifies, for each well-controlled unit
9 covered under the compliance plan, the pollu-
10 tion control equipment and other control meas-
11 ures or techniques that the owner or operator
12 plans to use to meet the emission control re-
13 quirements that are applicable to that par-
14 ticular unit under subsection (b); and

15 (C) contains a phase-in schedule that es-
16 tablishes the date by which each well-controlled
17 unit covered under the plan shall comply with
18 the applicable emission control requirements of
19 subsection (b) in accordance with timetable es-
20 tablished under paragraph (2).

21 (2) TIMETABLE.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the phase-in schedule con-
24 tained in each compliance plan submitted under
25 paragraph (1) shall require the owner or oper-

1 ator to comply with the applicable emission con-
2 trol requirements of subsection (b) for all well-
3 controlled units covered under the compliance
4 plan in accordance with the following timetable:

5 (i) 60 percent of the total nameplate
6 generating capacity of all of the well-con-
7 trolled units within the compliance plan by
8 December 31, 2016.

9 (ii) 80 percent of the total nameplate
10 generating capacity of all of the well-con-
11 trolled units within the compliance plan by
12 December 31, 2018.

13 (iii) 100 percent of the total name-
14 plate generating capacity of all of the well-
15 controlled units within the compliance plan
16 by December 31, 2020.

17 (B) EXCEPTION FOR SMALL GENERATING
18 SYSTEMS.—In the case of an electric utility sys-
19 tem with a combined nameplate generating ca-
20 pacity of less than **[1500]** MW, the phase-in
21 schedule contained in the compliance plan sub-
22 mitted under paragraph (1) shall require com-
23 pliance with the applicable emission control re-
24 quirements of subsection (b) for all well-con-
25 trolled units within the electric utility system

1 and covered under the compliance plan such
2 that the electric utility system has—

3 (i) by not later than December 31,
4 2017—

5 (I) 50 percent of the total name-
6 plate generating capacity of all well-
7 controlled units within compliance
8 plan; or

9 (II) 50 percent of the total num-
10 ber of well-controlled units within the
11 compliance plan; or

12 (ii) by not later than December 31,
13 2020, 100 percent of the total nameplate
14 generating capacity of all affected units
15 within the compliance plan.

16 (3) MULTIPLE OWNERS.—

17 (A) IN GENERAL.—Only 1 compliance plan
18 may be submitted under paragraph (1) for a
19 well-controlled unit that has multiple owners.

20 (B) REPRESENTATIVE.—In a case in
21 which a well-controlled unit has multiple owners
22 as described in subparagraph (C), the multiple
23 owners of the well-controlled unit shall select a
24 designated representative to submit 1 compli-
25 ance plan for phasing in the emission control

1 requirements of subsection (b) for that well-con-
2 trolled unit.

3 (C) DESCRIPTION OF MULTIPLE OWN-
4 ERS.—

5 (i) IN GENERAL.—For purposes of
6 this paragraph, a well-controlled unit shall
7 be considered to have multiple owners if—

8 (I) there are multiple holders of
9 a legal or equitable title to, or a lease-
10 hold interest in, the well-controlled
11 unit; or

12 (II) some or all of the electricity
13 generated by a well-controlled unit is
14 sold to another entity under a long-
15 term power purchase contract.

16 **[(ii) EXCLUSION.—A passive lessor,**
17 **or a person who has an equitable interest**
18 **through such a lessor, whose rental pay-**
19 **ments are not based, either directly or in-**
20 **directly, upon the revenues or income from**
21 **the well-controlled unit shall not be consid-**
22 **ered to be a holder of a legal, equitable,**
23 **leasehold, or contractual interest in that**
24 **well-controlled unit under this paragraph.]**

25 (d) EMISSION AVERAGING.—

1 (1) SULFUR DIOXIDE AND NITROGEN OX-
2 IDES.—Any owner or operator of well-controlled unit
3 may elect to comply with the applicable emission
4 control requirements for sulfur dioxide or nitrogen
5 oxides under subsection (b) through an averaging
6 plan that—

7 (A) allows for the averaging of emissions
8 of sulfur dioxide or nitrogen oxides (as the case
9 may be) among multiple well-controlled units,
10 each of which is—

11 (i) subject to the emission control re-
12 quirements that are established for sulfur
13 dioxide and nitrogen oxides under sub-
14 section (b);

15 (ii) under the control of the same
16 owner or operator; and

17 (iii) included in only 1 averaging plan
18 for sulfur dioxide or nitrogen oxides (as
19 the case may be);

20 (B) establishes for sulfur dioxide or nitro-
21 gen oxides (as the case may be) an alternative
22 contemporaneous emission control level for each
23 well-controlled unit that is included in the aver-
24 aging plan; and

1 (C) demonstrates, for sulfur dioxide or ni-
2 trogen oxides (as the case may be), that the ac-
3 tual emission control level averaged over all of
4 the well-controlled units included in the aver-
5 aging plan is less than, or equal to, the Btu
6 weighted average emission control level for the
7 same units if the units had been operated, dur-
8 ing the same period of time, in compliance with
9 the applicable emission control levels established
10 under subsection (b).

11 (2) MERCURY.—Any owner or operator of a
12 well-controlled unit may elect to comply with the ap-
13 plicable mercury emission control requirements of
14 subsection (b) through an averaging plan that—

15 (A) meets each of the criteria established
16 under paragraph (1); and

17 (B) requires that each of the well-con-
18 trolled units included in the averaging plan
19 shall be located at the same facility.

20 (e) DELEGATION TO STATES.—

21 (1) IN GENERAL.—Each State may develop and
22 submit to the Administrator a plan for admin-
23 istering and enforcing the emission control require-
24 ments that are established sulfur dioxide, nitrogen
25 oxides, and mercury under subsection (b).

1 (2) DELEGATION.—If the Administrator deter-
2 mines that a State plan submitted under paragraph
3 (1) is adequate, the Administrator shall delegate to
4 the State the authority necessary to administer and
5 enforce emission control requirements for well-con-
6 trolled units located within the State.

7 (3) NO EFFECT ON AUTHORITY OF ADMINIS-
8 TRATOR.—Nothing in this paragraph prevents the
9 Administrator from enforcing any applicable emis-
10 sion control requirements or other obligations that
11 may apply under this section.

12 **SEC. 103. REGULATION OF HAZARDOUS AIR POLLUTANTS.**

13 (a) MERCURY.—The mercury emission control re-
14 quirements established for well-controlled units under sec-
15 tion 102(b) shall apply in lieu of any performance stand-
16 ards or other emission reduction requirements that may
17 otherwise apply to mercury emitted from those well-con-
18 trolled units under section 112 of the Clean Air Act (42
19 U.S.C. 7412).

20 (b) NONMERCURY HAZARDOUS AIR POLLUTANTS.—
21 Except as provided for mercury under section 102, the Ad-
22 ministrator shall not regulate hazardous air pollutants
23 that are listed under section 112(b) of the Clean Air Act
24 (42 U.S.C. 7412(b)) and emitted from coal-fired electric

1 utility steam generating units under that section 112 of
2 that Act (42 U.S.C. 7412) until such time as—

3 (1) emission reductions required by this Act
4 have been fully implemented;

5 (2) the Administrator has performed an assess-
6 ment of the remaining risks to human health, as de-
7 scribed in subsection (c), that demonstrates that the
8 regulation of 1 or more nonmercury hazardous air
9 pollutants is necessary and appropriate to ensure the
10 protection of human health, taking into account en-
11 ergy, economic, environmental, and other relevant
12 factors;

13 (3) based on the risk assessment performed de-
14 scribed in paragraph (2), the Administrator has sub-
15 mitted to Congress a report that contains rec-
16 ommendations for the enactment of Federal legisla-
17 tion to regulate 1 or more specified nonmercury haz-
18 ardous air pollutants; or

19 (4) Congress has failed to enact into law legis-
20 lation requiring the regulation of each identified
21 nonmercury hazardous air pollutant by the date that
22 is 2 years after the date on which the Administrator
23 submitted that report to Congress.

24 (c) RISK ASSESSMENT.—

1 (1) IN GENERAL.—The Administrator shall as-
2 sess, on a pollutant-by-pollutant basis, the remaining
3 risks to human health that are reasonably antici-
4 pated to occur as a result of nonmercury hazardous
5 air pollutants emitted from coal-fired electric utility
6 steam generating units.

7 (2) METHODOLOGY.—

8 (A) IN GENERAL.—In performing the risk
9 assessment under paragraph (1), the Adminis-
10 trator shall make an affirmative determination
11 to regulate 1 or more nonmercury hazardous
12 air pollutants only if the Administrator deter-
13 mines that such regulation is necessary and ap-
14 propriate to address any significant remaining
15 risks to human health resulting from the emis-
16 sions from coal-fired electric utility steam gen-
17 erating units.

18 (B) REQUIREMENTS.—A risk assessment
19 performed under paragraph (1) shall—

20 (i) be based on the projected actual
21 emissions from coal-fired electric utility
22 steam generating units after full imple-
23 mentation of the emission reductions and
24 other obligations required by this Act;

1 (ii) evaluate only incremental protec-
2 tion of human health that is expected to
3 occur as a result of additional reductions
4 of nonmercury hazardous air pollutants
5 emitted from coal-fired electric utility
6 steam generating units, if the Administrator
7 were to require further emission reductions
8 of nonmercury hazardous air pollutants
9 under this section; and

10 (iii) take into account the energy, eco-
11 nomic, environmental, and other relevant
12 factors of regulating nonmercury haz-
13 ardous air pollutants.

14 (3) PUBLIC NOTICE AND COMMENT.—The Ad-
15 ministrator shall provide public notice and an oppor-
16 tunity to comment on the results of the risk assess-
17 ment performed under paragraph (1).

18 (4) REPORT TO CONGRESS.—By not later than
19 January 1, 2020, the Administrator shall submit to
20 Congress a report that—

21 (A) presents the findings of the risk as-
22 sessment performed under paragraph (1); and

23 (B) contains recommendations on whether
24 Congress should enact into law Federal legisla-
25 tion that regulates 1 or more specified nonmer-

1 cury hazardous air pollutants from coal-fired
2 electric utility steam generating units.

3 (d) EMISSION STANDARDS.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 the Administrator may promulgate emission stand-
6 ards under this section for each nonmercury haz-
7 ardous air pollutant—

8 (A) that is emitted from coal-fired electric
9 utility steam generating units within the listed
10 source category; and

11 (B) for which the Administrator has made
12 an affirmative determination that such regula-
13 tion is necessary and appropriate under sub-
14 section (b).

15 (2) CONDITIONS.—The Administrator may pro-
16 mulgate emission standards under paragraph (1)
17 only if—

18 (A) 2 or more years have passed since the
19 date on which the Administrator submitted the
20 report to Congress under subsection (c)(4); and

21 (B) during that same 2-or-more-year pe-
22 riod, Congress has not enacted into law specific
23 legislation to regulate the particular nonmer-
24 cury hazardous air pollutant emitted from coal-
25 fired electric utility steam generating units.

1 **SEC. 104. REGULATION OF SULFUR DIOXIDE AND NITRO-**
2 **GEN OXIDE EMISSIONS.**

3 (a) REGIONAL TRANSPORT CONTROL REQUIRE-
4 MENTS.—

5 (1) CLEAN AIR INTERSTATE RULE.—Notwith-
6 standing any other provision of law and except as
7 otherwise provided under this section, the Clean Air
8 Interstate Rule shall remain in force and effect with
9 respect to all provisions relating to the regulation of
10 sulfur dioxide and nitrogen oxide emissions from af-
11 fected units.

12 (2) SUBSEQUENT TRANSPORT RULES.—Neither
13 the Transport Rule nor any other regulation that
14 the Administrator may promulgate after January 1,
15 2011, to remedy interstate transport of air pollution
16 under sections 110(a)(2)(D) and 126 of the Clean
17 Air Act (42 U.S.C. 7410(a)(2)(D), 7426) shall take
18 effect or otherwise impose an enforceable require-
19 ment on affected units until not earlier than the
20 dates that are specified under subsection (d).

21 (b) REVISIONS TO THE CLEAN AIR INTERSTATE
22 RULE.—

23 (1) IN GENERAL.—The Administrator shall pro-
24 mulgate regulations to revise and implement the
25 Clean Air Interstate Rule in accordance with this
26 subsection.

1 (2) DESIGNATED UNITS AND WELL-CON-
2 TROLLED UNITS.—

3 (A) TERMINATION OF CLEAN AIR INTER-
4 STATE RULE.—Beginning on January 1, 2021,
5 designated units and well-controlled units shall
6 not be subject to the allowance holding require-
7 ments of the Clean Air Interstate Rule for—

8 (i) annual sulfur dioxide emissions;

9 (ii) annual nitrogen oxide emissions;

10 and

11 (iii) ozone season nitrogen oxide emis-
12 sions during the 5-month period beginning
13 on May 1st and ending on September 30th
14 of any calendar year.

15 (B) ADJUSTMENT OF EMISSION BUDG-
16 ETS.—

17 (i) IN GENERAL.—For calendar year
18 2021 and each year thereafter, the Admin-
19 istrator shall reduce the State emission
20 budgets for annual sulfur dioxide, annual
21 nitrogen oxides, and ozone-season nitrogen
22 oxides to reflect the termination of the al-
23 lowance-holding requirements for des-
24 igned units and well-controlled units
25 under subparagraph (A).

1 (ii) REDUCTION.—The amount of the
2 reduction from each State budget shall be
3 equal to tonnage quantity of allowances al-
4 located to the designated units and well-
5 controlled units within the particular State
6 for calendar year 2020 under the Clean
7 Air Interstate Rule.

8 (3) OIL-FIRED AND GAS-FIRED AFFECTED
9 UNITS.—

10 (A) IN GENERAL.—The Administrator
11 shall not terminate the allowance-holding re-
12 quirements applicable to oil-fired and gas-fired
13 affected units under the Clean Air Interstate
14 Rule.

15 (B) NO EXPIRATION.—Requirements for
16 oil-fired and gas-fired units shall not expire, but
17 shall remain in full force and effect until the
18 Administrator determines that the emission re-
19 duction requirements for annual sulfur dioxide,
20 annual nitrogen oxides, and ozone season nitro-
21 gen oxides under the Clean Air Interstate Rule
22 are not necessary to ensure attainment and
23 maintenance of any national ambient air quality
24 standard.

1 (c) EMISSION TRADING.—A State may implement the
2 emission reduction requirements of the Clean Air Inter-
3 state Rule, or other emission reduction requirements that
4 are necessary to carry out the requirements of sections
5 110(a)(2)(D) and 126 of the Clean Air Act (42 U.S.C.
6 7410(a)(2)(D), 7426), through a regional emission trad-
7 ing program that—

8 (1) places no restrictions on trading of emis-
9 sions allowances between affected units located with-
10 in different States; and

11 (2) contains other provisions and requirements
12 that are modeled after the sulfur dioxide allowance
13 trading program established under title IV of the
14 Clean Air Act (42 U.S.C. 7651 et seq.).

15 (d) PROHIBITION.—

16 (1) IN GENERAL.—Except as provided in sub-
17 section (b)(1)(B) and paragraph (2) of this sub-
18 section, the Administrator shall not seek to remedy
19 or otherwise address the interstate transport of air
20 pollution under sections 110(a)(2)(D) and 126 of
21 the Clean Air Act (42 U.S.C. 7410(a)(2)(D), 7426)
22 by reducing the State emission budgets that the
23 Clean Air Interstate Rule establishes for annual sul-
24 fur dioxide, annual nitrogen oxides, and ozone-sea-
25 son nitrogen oxides.

1 (2) ADDITIONAL REDUCTIONS.—The Adminis-
2 trator may reduce the State emission budgets re-
3 ferred to in paragraph (1), or otherwise further limit
4 annual sulfur dioxide emissions, annual nitrogen
5 oxide emissions, or ozone season nitrogen oxides
6 emissions from any affected unit, to carry out the
7 requirements of sections 110(a)(2)(D) and 126 of
8 the Clean Air Act (42 U.S.C. 7410(a)(2)(D),
9 7426)—

10 (A) only after—

11 (i) December 31, **[2017]**, in the case
12 of the State emission budgets that the
13 Clean Air Interstate Rule establishes for
14 ozone season nitrogen oxide; and

15 (ii) December 31, **[2020]**, in the case
16 of the State emission budgets that the
17 Transport Rule establishes for annual sul-
18 fur dioxide and annual nitrogen oxides;
19 and

20 (B) only to the extent that—

21 (i) the Administrator determines that
22 additional reductions in emissions from af-
23 fected units within a State will signifi-
24 cantly contribute to the attainment of an
25 area within any other State that is des-

1 ignated as nonattainment for ozone or fine
2 particulate matter; and

3 (ii) the improvements in air quality
4 under clause (i) could be achieved at least
5 as cost-effectively as such air quality im-
6 provements that could be achieved by re-
7 ductions in emission compounds from other
8 principal source categories of those emis-
9 sions.

10 (3) DETERMINATION.—

11 (A) IN GENERAL.—The Administrator
12 shall make a determination under paragraph
13 (2)(B) based on—

14 (i) a comparison of the incremental
15 cost of improving air quality in any non-
16 attainment area of a State by requiring
17 additional emission reductions from electric
18 utility steam generating units and other
19 principal source categories of emissions;
20 and

21 (ii) the use of the best available peer
22 reviewed models and methodology that—

23 (I) consider the proximity of the
24 source or sources to the nonattain-
25 ment area in any State; and

1 (II) incorporate other source
2 characteristics relevant for assessing
3 air quality impacts of emissions from
4 those sources.

5 (B) METHODOLOGY.—The Administrator
6 shall—

7 (i) develop an appropriate peer-re-
8 viewed methodology for making determina-
9 tions under this paragraph by not later
10 than January 1, 2015; and

11 (ii) update the methodology periodi-
12 cally thereafter.

13 (4) LIMITATION.—

14 (A) REQUIREMENT.—Neither the Adminis-
15 trator nor any State may adopt or implement
16 any rule, as specified in subparagraph (B), that
17 requires a well-controlled unit to achieve before
18 January 1, 2025, emission reductions in annual
19 sulfur dioxide, annual nitrogen oxides, or ozone
20 season nitrogen oxides that are more stringent
21 than the emission control requirements estab-
22 lished for well-controlled units under subsection
23 102(b).

24 (B) SPECIFIED RULES.—The rules subject
25 to the limitation under subparagraph (A) shall

1 include any rule, regulation, requirement, or in-
2 terpretative guidance that the Administrator or
3 a State may promulgate or adopt before Janu-
4 ary 1, 2025, to remedy or otherwise address—

5 (i) the interstate transport of air pol-
6 lution under sections 110(a)(2)(D) and
7 126 of the Clean Air Act (42 U.S.C.
8 7410(a)(2)(D), 7426); and

9 (ii) regional haze or reasonably attrib-
10 utable visibility impairment under section
11 169A or section 169B of the Clean Air Act
12 (42 U.S.C. 7491 and 7492).

13 **TITLE II—OTHER PROVISIONS**
14 **FOR COORDINATION AND IM-**
15 **PLEMENTATION**

16 **SEC. 201. REGULATION OF COAL COMBUSTION RESIDUALS.**

17 (a) ESTABLISHMENT OF GUIDELINES.—

18 (1) IN GENERAL.—Not later than 18 months
19 after the date of enactment of this Act, the Adminis-
20 trator shall by regulation establish Federal guide-
21 lines for States to regulate the disposal of coal com-
22 bustion residuals produced from coal-fired electric
23 utility steam generating units.

24 (2) REQUIRED CLASSIFICATION.—The guide-
25 lines shall require States to classify and regulate

1 coal combustion residuals described in paragraph (1)
2 as a nonhazardous waste under subtitle D of the
3 Solid Waste Disposal Act (42 U.S.C. 6941 et seq.)
4 in accordance with subsection (b).

5 (b) REQUIREMENTS FOR FEDERAL GUIDELINES.—

6 (1) PURPOSE.—The purpose of the Federal
7 guidelines established under subsection (a) is to en-
8 sure State implementation of nonhazardous waste
9 regulations for the disposal of coal combustion re-
10 siduals that—

11 (A) provide adequate protection to human
12 health and the environment;

13 (B) minimize the economic, energy, and
14 operational impacts of the regulations described
15 in subsection (a)(1) on the electric power sec-
16 tor;

17 (C) ensure the continued operation of each
18 existing disposal facility for the remainder of
19 the useful life of the facility so long as that fa-
20 cility does not pose any significant risk to
21 human health and the environment; and

22 (D) maximize the beneficial use of coal
23 combustion residuals for a wide variety of
24 bound and unbound applications in which the
25 coal combustion residuals could be safely used.

1 (2) CRITERIA.—

2 (A) IN GENERAL.—The Administrator
3 shall establish Federal guidelines under sub-
4 section (a) that meet each of the criteria de-
5 scribed in subparagraph (B).

6 (B) DESCRIPTION OF CRITERIA.—

7 (i) COAL COMBUSTION RESIDUALS.—

8 With respect to coal combustion residuals
9 produced from a coal-fired electric utility
10 steam generating unit—

11 (I) the coal combustion residuals
12 shall be classified as a nonhazardous
13 waste; and

14 (II) the disposal of the coal com-
15 bustion residuals shall be regulated
16 under Subtitle D of the Solid Waste
17 Disposal Act (42 U.S.C. 6941 et
18 seq.).

19 (ii) PROTECTION.—The structure,
20 management, and operation of each new
21 disposal facility and existing disposal facil-
22 ity shall provide adequate protection to
23 human health and the environment.

24 (iii) COLLECTION AND REMOVAL SYS-
25 TEM.—Each new disposal facility shall em-

1 (II) surface water from surface
2 runoff contamination.

3 (vi) DESIGN AND INSPECTION STAND-
4 ARDS.—Appropriate design and inspection
5 standards shall be established to ensure
6 the stability and safety of surface im-
7 poundments that receive coal combustion
8 residuals.

9 (vii) SCHEDULES FOR MEETING RE-
10 QUIREMENTS.—Reasonable schedules shall
11 be established for existing disposal facili-
12 ties to meet the performance standards,
13 permitting requirements, and other provi-
14 sions that are required through the imple-
15 mentation of the Federal guidelines.

16 (c) STATE PLANS.—

17 (1) SUBMISSION.—

18 (A) IN GENERAL.—Not later than 2 years
19 after the date of promulgation of Federal guide-
20 lines under subsection (a), each State shall sub-
21 mit to the Administrator a plan for regulating
22 the disposal of coal combustion residuals from
23 a coal-fired electric utility steam generating
24 unit in any disposal facility located within the
25 State.

1 (B) REQUIREMENTS.—The State plan sub-
2 mitted under this paragraph—

3 (i) shall contain performance stand-
4 ards, permitting requirements, and other
5 provisions that are necessary to implement
6 the Federal guidelines for the disposal of
7 coal combustion residuals in the facilities;
8 but

9 (ii) may deviate from the Federal
10 guidelines to the extent that the Adminis-
11 trator determines that the State plan es-
12 tablishes alternate provisions that protect
13 human health and the environment with an
14 adequate margin of safety.

15 (2) ADEQUACY OF STATE PLANS.—

16 (A) REVIEW.—Not later than 180 days
17 after the date of submission of a State plan
18 under paragraph (1), the Administrator shall
19 review the plan to determine whether the plan
20 satisfies the minimum requirements of the Fed-
21 eral guidelines.

22 (B) APPROVAL AND DISAPPROVAL.—

23 (i) IN GENERAL.—The Administrator
24 shall approve a State plan submitted under
25 paragraph (1) if the plan satisfies the min-

1 imum requirements of the Federal guide-
2 lines, as determined by the Administrator.

3 (ii) PARTIAL APPROVAL AND DIS-
4 APPROVAL.—If a portion of a State plan
5 meets the requirements of the Federal
6 guidelines, the Administrator may approve
7 the plan in part and disapprove the plan in
8 part.

9 (iii) SUBSTANTIAL INADEQUACY.—If
10 the Administrator determines that a State
11 plan is substantially inadequate to imple-
12 ment the Federal guidelines and the State
13 fails to submit a revised plan to correct the
14 major inadequacies of the plan by the date
15 that is 18 months after the date of the
16 finding of the Administrator, the Adminis-
17 trator—

18 (I) may implement and enforce
19 the Federal guidelines for the disposal
20 of coal combustion residuals within
21 the State; and

22 (II) in any such case, shall have
23 the same authorities and powers as
24 those that are provided under sections
25 3007 and 3008 of the Solid Waste

1 Disposal Act (42 U.S.C. 6927, 6928)
2 to implement and enforce the Federal
3 guidelines promulgated under sub-
4 section (a) with respect to disposal fa-
5 cilities for coal combustion residuals
6 within the State.

7 **SEC. 202. PERFORMANCE STANDARDS FOR CARBON DIOX-**
8 **IDE.**

9 (a) WORK PRACTICE STANDARDS.—With respect to
10 carbon dioxide emitted from existing electric utility steam
11 generating units, any performance standard promulgated
12 under section 111(d) of the Clean Air Act (42 U.S.C.
13 7411(d)) before December 31, 2020, shall consist of work
14 practice standards that require the performance of—

15 (1) an annual tune-up of the boiler to optimize
16 the combustion process and the efficiency of the boil-
17 er in accordance with procedures specified by the
18 Administrator; and

19 (2) a periodic energy assessment that identifies
20 energy savings that can be achieved through con-
21 servation measures, optimization of the boiler and
22 associated equipment, and improved efficiencies of
23 major energy-consuming systems at the facility.

24 (b) IMPLEMENTATION.—The performance of an an-
25 nual boiler tune-up and the implementation of the energy

1 saving measures identified through the energy assessment,
2 as required by subsection (a), shall not be considered to
3 be a modification under sections 111(a)(4), 169(2)(C), or
4 171(4) of the Clean Air Act (42 U.S.C. 7411(a)(4),
5 7479(2)(C), and 7501(4)).

6 **SEC. 203. POLLUTION CONTROL PROJECTS AND EFFI-**
7 **CIENCY IMPROVEMENTS.**

8 (a) **PURPOSE.**—The purpose of this section is to en-
9 courage and expedite projects and measures undertaken
10 at any existing electric utility steam generating unit that
11 involve—

12 (1) the installation of pollution control equip-
13 ment to reduce air emissions from the unit; and

14 (2) the implementation of measures to restore
15 or enhance the efficiency of the existing electric util-
16 ity steam generating.

17 (b) **EXCLUSIONS.**—The implementation of any 1 of
18 the following activities at an existing electric utility steam
19 generating unit after the date of enactment of this section
20 shall not be considered to be a modification under sections
21 111(a)(4), 169(2)(C), or 171(4) of the Clean Air Act (42
22 U.S.C. 7411(a)(4), 7479(2)(C), and 7501(4)):

23 (1) A pollution control project.

1 (2) A project to restore electricity output that
2 was lost as a result of auxiliary power demand at
3 the site of the electric utility steam generating unit.

4 (3) A qualified efficiency or maintenance
5 project.

6 (4) Any physical change, or change in method
7 of operation, that—

8 (A) is undertaken at a designated unit;
9 and

10 (B) does not result in an increase in the
11 maximum hourly emissions of any regulated air
12 pollutant, as compared to the maximum hourly
13 emissions of that air pollutant that was achiev-
14 able at that unit during the 5-year period be-
15 fore the change.

16 (c) SAVINGS CLAUSE.—Except as provided in sub-
17 section (b), nothing in this section revises or otherwise af-
18 fects any Federal or State regulation for determining
19 whether any physical change in, or change in the method
20 of operation of, a major stationary source constitutes a
21 modification under sections 111(a)(4), 169(2)(C), and
22 171(4) of the Clean Air Act (42 U.S.C. 7411(a)(4),
23 7479(2)(C), and 7501(4)).

1 **SEC. 204. EXPEDITED REVIEW OF FEDERAL AUTHORIZA-**
2 **TIONS.**

3 (a) DESIGNATION AS LEAD AGENCY.—

4 (1) IN GENERAL.—The Department of Energy
5 shall act as the lead agency for the purposes of co-
6 ordinating all applicable Federal authorizations and
7 related environmental reviews with respect to an eli-
8 gible project, including any requirements under—

9 (A) the Endangered Species Act of 1973
10 (16 U.S.C. 1531 et seq.);

11 (B) the Federal Water Pollution Control
12 Act (33 U.S.C. 1251 et seq.);

13 (C) the Safe Drinking Water Act (42
14 U.S.C. 300f et seq.);

15 (D) the National Environmental Policy Act
16 of 1969 (42 U.S.C. 4321 et seq.); and

17 (E) the Clean Air Act (42 U.S.C. 7401 et
18 seq.).

19 (2) OTHER AGENCIES.—Each Federal and
20 State agency required to provide a Federal author-
21 ization for an eligible project shall cooperate with
22 the Secretary and comply with the deadlines estab-
23 lished by the Secretary under subsection (b).

24 (b) COORDINATION AND EXPEDITED REVIEW.—

1 (iii) coordinate, to the maximum ex-
2 tent practicable, any permitting and envi-
3 ronmental reviews that apply to the eligible
4 project only under State law.

5 (2) MEMORANDUM OF UNDERSTANDING.—Not
6 later than 1 year after the date of enactment of this
7 Act, the Secretary and the heads of all Federal
8 agencies with authority to issue Federal authoriza-
9 tions shall enter into a memorandum of under-
10 standing to ensure the coordinated and streamlined
11 review and prompt issuance of Federal authoriza-
12 tions for eligible projects.

13 (3) PREAPPLICATION REVIEW.—

14 (A) IN GENERAL.—The Secretary shall es-
15 tablish and facilitate a preapplication review
16 process to expedite the review of all Federal au-
17 thorizations, including permit decisions and re-
18 lated environmental reviews, for any eligible
19 project under applicable Federal laws.

20 (B) REQUIREMENTS.—The preapplication
21 review process shall require each agency in-
22 volved in the review process—

23 (i) to confer with prospective appli-
24 cants and identify each issue of major con-

1 cern to the agency and the general public
2 regarding the eligible project; and

3 (ii) to provide a written response to
4 an inquiry from a prospective applicant by
5 not later than 60 days after the completion
6 of the preapplication review process.

7 (4) CONSOLIDATION OF ENVIRONMENTAL RE-
8 VIEWS.—

9 (A) IN GENERAL.—The Secretary, in con-
10 sultation with affected agencies, shall prepare a
11 single environmental review document for as-
12 sessing all major Federal actions relating to
13 any eligible project under the National Environ-
14 mental Policy Act of 1969 (42 U.S.C. 4321 et
15 seq.).

16 (B) USE BY AGENCIES.—Each agency cov-
17 ered by environmental review requirements
18 under the National Environmental Policy Act of
19 1969 (42 U.S.C. 4321 et seq.) shall use the
20 document prepared by the Secretary under sub-
21 paragraph (A) as the basis for all decisions re-
22 lating to the eligible project.

23 (5) FAILURE TO MEET SCHEDULE.—If a Fed-
24 eral or State agency does not complete a proceeding
25 for an approval that is required for a Federal au-

1 thorization in accordance with the schedule estab-
2 lished by the Secretary under this subsection, the
3 applicant may pursue remedies under subsection (d).

4 (c) CONSOLIDATED RECORD.—

5 (1) IN GENERAL.—The Secretary shall, in co-
6 operation with Federal and State agencies, maintain
7 a complete consolidated record of all decisions made
8 or actions taken by the Secretary or by a Federal
9 agency (or State agency acting under delegated Fed-
10 eral authority) with respect to any Federal author-
11 ization.

12 (2) USE OF RECORD.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), a consolidated record described in
15 paragraph (1) shall be the record for judicial
16 review under subsection (d) of decisions made
17 or actions taken by Federal and State agencies.

18 (B) REMAND.—If a court of competent ju-
19 risdiction determines, with respect to an eligible
20 project, that the consolidated record described
21 in subparagraph (A) for the eligible project
22 does not contain sufficient information, the
23 court may remand the action to the Secretary
24 for further development of the consolidated
25 record.

1 (d) JUDICIAL REVIEW.—

2 (1) JURISDICTION.—

3 (A) IN GENERAL.—The United States
4 Court of Appeals for the circuit in which an eli-
5 gible project is proposed to be constructed shall
6 have original and exclusive jurisdiction over any
7 civil action for the review of—

8 (i) an order or action relating to a
9 Federal authorization issued or taken by a
10 Federal agency (other than the Secretary)
11 or by a State agency acting pursuant to
12 Federal law, including any order or action
13 to condition or deny any Federal author-
14 ization; and

15 (ii) an alleged failure to act by a Fed-
16 eral or State agency with respect to a Fed-
17 eral authorization.

18 (B) FAILURE TO ACT.—The failure of an
19 agency to take action on a Federal authoriza-
20 tion in accordance with the schedule established
21 by the Secretary under subsection (b)(1) shall
22 be considered to be inconsistent with Federal
23 law for the purposes of paragraph (2) of this
24 subsection.

25 (2) COURT ACTION.—

1 (A) IN GENERAL.—A court of jurisdiction
2 described in paragraph (1)(A) shall remand a
3 proceeding for a particular eligible project to
4 the appropriate agency if the court finds that—

5 (i) there has occurred either—

6 (I) an order or action described
7 in paragraph (1)(A) that is incon-
8 sistent with the Federal law governing
9 the Federal authorization for the eligi-
10 ble project; or

11 (II) a failure to act as described
12 in paragraph (1)(B) with respect to
13 the eligible project; and

14 (ii) the order, action, or failure to act
15 would prevent the siting, construction, or
16 operation of the eligible project.

17 (B) REMAND.—If the court remands the
18 order or action to the appropriate Federal or
19 State agency under subparagraph (A), the court
20 shall—

21 (i) provide specific direction to remedy
22 any inconsistency with Federal law; and

23 (ii) set a reasonable schedule and ap-
24 propriate deadlines for the agency to act
25 on remand.

1 (3) FILING CONSOLIDATED RECORD.—For any
2 civil action described in this subsection, the Sec-
3 retary shall promptly file with the court the consoli-
4 dated record of the order or action to which the ap-
5 peal relates, as compiled by the Secretary pursuant
6 to subsection (c).

7 (4) EXPEDITED REVIEW.—The court shall
8 schedule a civil action brought under this subsection
9 for expedited consideration.

10 (e) REGULATIONS.—Not later than 18 months after
11 the date of enactment of this Act, the Secretary shall,
12 after providing public notice and an opportunity to com-
13 ment, promulgate such regulations as are necessary to im-
14 plement this section.

15 (f) RELATIONSHIP TO OTHER LAWS.—Except as spe-
16 cifically provided in this section, nothing in this section
17 affects any requirement of any Federal or State law, in-
18 cluding the Federal laws described in subsection (a)(1).