S. 1394

At the request of Mr. ENSIGN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1523

At the request of Mrs. FEINSTEIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1523, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 1605

At the request of Mr. CONRAD, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 1605, a bill to amend title XVIII of the Social Security Act to provide for payment under the Medicare Program for four hemodialysis treatments per week for certain patients, to provide for an increased update in the composite payment rate for dialysis treatments, and for other purposes.

S. 1679

At the request of Mr. CONRAD, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1679, a bill to amend title XVIII of the Social Security Act to accelerate the reduction on the amount of beneficiary copayment liability for medicare outpatient services.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from New Jersey (Mr. TORRICELLI) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 2027

At the request of Mr. DURBIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2027, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 2268

At the request of Mr. MILLER, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2505

At the request of Mr. KENNEDY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2505, a bill to promote the national security of the United States through international educational and cultural exchange programs between the United States and the Islamic world, and for other purposes.

S. 2634

At the request of Mrs. CLINTON, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2634, a bill to establish within the National Park Service the 225th Anniversary of the American Revolution Commemorative Program, and for other purposes.

S. 2712

At the request of Mr. HAGEL, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2712, a bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 2762

At the request of Mr. THOMAS, the names of the Senator from Kansas (Mr. ROBERTS), the Senator from North Carolina (Mr. HELMS) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 2762, a bill to amend the Internal Revenue Code of 1986 to provide involuntary conversion tax relief for producers forced to sell livestock due to weather-related conditions or Federal land management agency policy or action, and for other purposes.

S. RES. 242

At the request of Mr. THURMOND, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 242, a resolution designating August 16, 2002, as ''National Airborne Day''.

AMENDMENT NO. 4326

At the request of Mr. MCCONNELL, the names of the Senator from Arkansas (Mr. HUTCHINSON) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of amendment No. 4326 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH of New Hampshire (for himself, Mr. CRAPO, and Mr. INHOFE):

S. 2813. A bill to improve the financial and environmental sustainability of the water programs of the United States; to the Committee on Environment and Public Works.

Mr. SMITH of New Hampshire. Mr. President, I am pleased to be joining my colleagues on the Environment and Public Works Committee to introduce the Water Quality Investment Act of 2002. When I because Chairman of the Committee in 1999, one of my top priorities was a renewed commitment to our Nation's water systems and the Americans served by them. Senator CRAPO, as Chairman of the Fisheries, Wildlife and Water Subcommittee shared my commitment and made this issue a focus of his subcommittee.

Earlier this year, I joined with Chairmen JEFFORDS and GRAHAM, as well as Senator CRAPO, to introduce S. 1961, the Water Investment Act. This was a strong bipartisan bill that took compromise by all four members to achieve. Unfortunately, the bill that was reported out of Committee was a partisan proposal that added several provisions that will prevent the bill from moving forward. Our majority colleagues insisted on changing the principled funding formula included in S. 1961 for a politically driven one that has no hope of surviving the lengthy legislative process while also compromising the needs of the country's small States. Further, they added Davis Bacon, an onerous labor provision that continues to divide the Senate and only serves to cloud the future of an otherwise strong bill.

While I can no longer support S. 1961, clean water remains one of my top priorities as the Ranking Republican on the EPW Committee. Therefore, I join Senators INHOFE and CRAPO today in introducing a streamlined bill that is free of the controversies that now plague S. 1961.

I am a strong advocate of limited government and when it comes to water infrastructure, I do not believe the primary responsibility of financing local water needs lies with the Federal Government. I am equally adamant, however, that the Federal Government should not place unfunded mandates on our local communities. This bill strikes a responsible balance between meeting Federal obligations and maintaining local responsibility and state flexibility.

So much of our Nation's water infrastructure is aging and in desperate need of replacement. Coupled with the aging problem is the cost burden that local communities face in order to comply with ever increasing State and Federal clean water mandates. This bill addresses these problems and makes structural changes to ensure that we avoid a national crisis now and in the future.

The legislation authorizes $35 billion over the next 5 years in Federal contribution to the total water infrastructure need to help defray the cost of the mandates placed on communities. This is a substantial increase in Federal commitment, but not nearly as high as some would have preferred.

This commitment does not come without additional responsibilities. When the Clean Water Act was amended by Congress in 1987, a debate I remember well, we set up a revolving fund so more Federal money would not be required. The fund would continually revolve providing a continual pool of money for water needs. Unfortunately, appropriations have not kept pace with the Federal share and the funds have not been able to revolve at levels necessary to meet the increasing need. Further, as more Federal mandates have been imposed on local communities, facilities have exhausted their useful life while local officials have found raising water rates unpalatable. Thus, what was not to be

Federal responsibility became a Federal necessity. Now we are faced with a near crisis situation.

This bill makes certain that we do not go down that road again. The Federal government will help to defray the costs of Federal mandates, but with the new money comes a new requirement that all utilities do a better job of managing their funds and plan for future costs. The bill requires utilities to assess the condition of their facility and pipes and develop a plan to pay for the long-term repair and replacement of these assets. That plan will include Federal assistance, but it will be limited assistance.

We also make additional structural changes to the law both to address financial concerns and to help achieve improved management of these water systems. One such change to the Clean Water Act is to incorporate a Drinking Water Act provision that allows States, at their discretion, to provide principal forgiveness on loans and to extend the repayment period for loans to disadvantaged communities. This flexibility will provide help to communities struggling with high combined sewer overflow cost to secure additional financial help. This bill also promotes other important cost saving measures that many communities are already experimenting with throughout the country. It will also provide much needed information and planning tools to communities across the country who are experiencing a months-long drought.

Again, I am disappointed I could not maintain my support for S. 1961, the Water Investment Act. However, the bill that passed the Committee took several steps in the wrong direction by including not only a formula but new mandates and regulatory requirements that will prevent the bill from moving forward. Clean water should be a priority for every member of the Senate. We need to come together around a bill that can go forward. S. 1961 is no longer that bill.

I look forward to working with my colleagues to enact the Water Quality Investment Act this year and commemorate the 30th Anniversary of the Clean Water Act with a renewed commitment to the nation's waterways and the people who depend on them.

Mr. CRAPO. Mr. President, I rise with my colleague, Senator BOB SMITH, to introduce the Water Quality Investment Act of 2002. We are introducing this legislation to reinvigorate the debate on investing in our Nation's water and wastewater infrastructure.

When I became Chairman of the Fisheries, Wildlife, and Water Subcommittee, I began the long process of assessing the performance of our water and wastewater infrastructure statutes and exploring needed improvements to address outstanding problems. With the able partnership of Senator SMITH, over the past 3 years, I convened many hearings and meeting with the stakeholders and agency officials to better understand how to address the problems of communities with unmet water and wastewater infrastructure needs.

Earlier this year, Senator SMITH and I joined with Senator BOB GRAHAM and Senator JIM JEFFORDS to introduce S. 1961, the Water Investment Act. As introduced, this measure represented a strong and principled bipartisan measure. The major facets of the bill, heightened investment levels in our infrastructure, increased flexibility to states, and strong accountability by utilities, reflect the commonalities of need and recommendations by stakeholders, experts, and communities. I commend my colleagues for their hard work and the partnership we established in putting together a model bill, which was closely followed by our colleagues in the House of Representatives.

I am proud of the overwhelming support that bill generated. As introduced, S. 1961 represented the collaboration and hard work of many who recognize that the goal of assisting communities should be our guiding principle. Too many communities are waiting for the assistance this bill will provide to see the legislation brought down by difficult, unnecessary proposals.

While by no means perfect, I hoped the committee process would not turn this legislation into a vehicle for individual proposals and controversial concepts. Against my hope, S. 1961 started to unravel as some worked to undermine the compromise and the bipartisan nature of the legislation. As you are well aware, the markup for S. 1961 was contentious and divisive. It was unfortunate that S. 1961, which started out as a bipartisan effort between the four principals, ended up in partisan votes. Despite many warnings, some felt it necessary to bring this legislation down simply to advance narrow agendas.

I have welcomed the opportunity to work again with committed stakeholders and others to craft this carefully-balanced measure. This new bill builds upon the foundations of S. 1961 as introduced and adds important refinements brought forward by the affected communities and stakeholders. It is a proposal that serves the critical needs of our nation's water and wastewater infrastructure in a cost-effective and responsible manner.

I look forward to the Senate's consideration of a sound, balanced, and carefully-deliberated bill to address the water and wastewater needs of the Nation. I believe all of us share that goal and we should all rally around the Water Quality Investment Act as the means to achieve that goal.

By Mr. DORGAN (for himself, Mr. ROBERTS, Mr. CONRAD, Mr. JOHNSON, and Mr. BROWNBACK):

S. 2814. A bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DORGAN. Mr. President, today, along with Senators ROBERTS, CONRAD, JOHNSON and BROWNBACK, I am introducing legislation to clarify Congressional intent regarding minor oilseed loan rates in the Farm Security and Rural Investment Act, FSRIA, of 2002.

In early June, the United States Department of Agriculture incorrectly interpreted the intent of the new farm bill when the Farm Service Agency arbitrarily announced a wide range of minor oilseed loan rates. For some crops, the loan rate increased substantially, while for others, the rates plunged.

Not once during the farm bill debate was there ever discussion of splitting apart minor oilseed loan rates. In fact, the minor oilseed industry and farmers alike anticipated a county-level increase in loan rates from $9.30 to $9.60/cwt. The announcement by the Farm Service Agency caught virtually everyone in the agriculture community by surprise.

This legislation is intended to correct this misinterpretation of the new farm bill, and to prevent what will certainly be extreme acreage shifts among these crops in the coming years should these rates be allowed to stand. These acreage shifts will destroy segments of the minor oilseed industry that have been painstakingly developed over a number of years.

For instance, already, users of the oil derived from oil sunflowers anticipate supply shortages next year and have indicated they may remove sunflower oil from their product mix. Conversely, incentives caused by the much higher confectionery sunflower loan rate could deluge USDA with massive loan forfeitures of low quality confectionery sunflowers if farmers simply grow for the loan rate rather than a quality crop that has a market.

The legislation amends the new farm bill by simply—and redundantly—listing each minor oilseed's loan rate separately. The legislation also reinstates the crambe and sesame seed loan rates that were eliminated by USDA.

This legislation should not be needed. USDA could easily repeal the current announcement of minor oilseed loan rates in favor of rates consistent with this legislation and the new farm bill, as I and my colleagues have asked in recent letters on this issue.

I request unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2814

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

SECTION 1. MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR OTHER OILSEEDS.

(a) DEFINITION OF OTHER OILSEED.—Section 1001(9) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901(9)) is

amended by inserting ''crambe, sesame seed,'' after ''mustard seed,''.

(b) LOAN RATES FOR NONRECOURSE MARKETING ASSISTANCE LOANS.—Section 1202 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7932) is amended—

(1) in subsection (a), by striking paragraph (10) and inserting the following:

''(10) In the case of other oilseeds:

''(A) In the case of oil sunflower seed, confectionery sunflower seed, and other types of sunflower seed, $.0960 per pound, except that the Secretary shall establish a single sunflower loan rate in each county for all seed described in this subparagraph.

''(B) In the case of rapeseed, $.0960 per pound.

''(C) In the case of canola, $.0960 per pound.

''(D) In the case of safflower, $.0960 per pound.

''(E) In the case of flaxseed, $.0960 per pound.

''(F) In the case of mustard seed, $.0960 per pound.

''(G) In the case of crambe, $.0960 per pound.

''(H) In the case of sesame seed, $.0960 per pound.

''(I) In the case of another oilseed designated by the Secretary, $.0960 per pound.''; and

(2) in subsection (b), by striking paragraph (10) and inserting the following:

''(10) In the case of other oilseeds:

''(A) In the case of oil sunflower seed, confectionery sunflower seed, and other types of sunflower seed, $.0930 per pound, except that the Secretary shall establish a single sunflower loan rate in each county for all seed described in this subparagraph.

''(B) In the case of rapeseed, $.0930 per pound.

''(C) In the case of canola, $.0930 per pound.

''(D) In the case of safflower, $.0930 per pound.

''(E) In the case of flaxseed, $.0930 per pound.

''(F) In the case of mustard seed, $.0930 per pound.

''(G) In the case of crambe, $.0930 per pound.

''(H) In the case of sesame seed, $.0930 per pound.

''(I) In the case of another oilseed designated by the Secretary, $.0930 per pound.''.

(c) REPAYMENT OF LOANS.—Section 1204 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7934) is amended—

(1) in subsection (a), by striking ''and extra long staple cotton'' and inserting ''extra long staple cotton, oil sunflower seed, confectionery sunflower seed, or any other type of sunflower seed'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) REPAYMENT RATES FOR SUNFLOWER SEEDS.—The Secretary shall permit the producers on a farm to repay a marketing assistance loan under section 1201 for oil sunflower seed, confectionery sunflower seed, or any other type of sunflower seed at a rate that is the lesser of—

''(1) the loan rate established for the commodity under section 1202, plus interest (determined in accordance with section 163 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7283)); or

''(2) the repayment rate established (on the basis of the prevailing market price) for oil sunflower seed.''.

By Mr. SMITH of New Hampshire (by request):

S. 2815. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade programs, and for other purposes; to the Committee on Environment and Public Works.

Mr. SMITH of New Hampshire. Mr. President, today, at the request of the President of the United States, I am introducing his proposal to address power plant pollution in the Nation. Introduction of his bill is an important step forward in the long progress of amending the Clean Air to ensure that we are both improving air quality and building upon the most successful environmental program in Federal law, the Acid Rain Program.

One of the first goals that I announced when I became Chairman of the Environment and Public Works Committee in 1999 was to craft a multi-emissions bill for the utility sector. It was a new idea at the time, and we have had to work hard since then to build support for the concept. Recently the Environment and Public Works Committee held a markup during which four separate legislative approaches to a multi-pollutant system were considered, one of those was a complete substitute that I presented to my colleagues.

Today the President offers us a fifth option for our consideration. Each of these legislative drafts contain worthy and groundbreaking ideas as to how we can move forward on the difficult area of reducing air pollution without harming our economy. None is exactly like the others, and there are some clear policy differences among them. I am obviously partial to my own approach, but all five should be discussed. I am confident that the Senate can, if we work together in a bipartisan fashion, find a consensus approach that will be acceptable to a majority of Senators.

I look forward to that process, and I welcome the President to that debate.

I ask unanimous consent to print in the RECORD a summary of the President's legislation that was provided by the Administration, and that the text of the bill also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF CLEAR SKIES ACT OF 2002

The Clear Skies Act of 2002 (Clear Skies Act) amends Title IV of the Clean Air Act to establish new cap-and-trade programs requiring reductions of sulfur dioxide, nitrogen oxides, and mercury emissions from electric generating facilities and amends Title I of the Clean Air Act to provide an alternative regulatory classification for units subject to the cap and trade programs.

Common Provisions: The Clear Skies Act establishes a new Part A, which contains the program elements shared by the sulfur dioxide, nitrogen oxides, and mercury programs. A cap-and-trade program will be implemented for each pollutant. Common definitions, allowance system procedures, monitoring, permitting and compliance requirements, penalties for non-compliance, and auction procedures apply to the new trading programs and are modeled largely after the existing Acid Rain Program.

Under Section 403, the Administrator must establish an allowance system for sulfur dioxide, nitrogen oxide, and mercury that is essentially the same as in the existing Acid Rain Program but that provides for safety valve, i.e., a direct sale of allowances by the Administrator at a fixed price for use in meeting the requirement to hold allowances at least equal to annual emissions.

Under Section 404, the new trading programs must be reflected in Title V permits. This is similar to the permitting provisions of the existing Acid Rain Program.

Under Section 405, affected units must meet essentially the same type of continuous emission monitoring and reporting requirements under the new trading programs as under the Acid Rain Program.

Under Section 406, a graduated, automatic excess emissions penalty replaces the existing single, automatic penalty under the Acid Rain Program.

Under Section 407, fossil-fuel fired boilers, turbines, and integrated gasification combined cycle plants that are not otherwise subject to the new sulfur dioxide, nitrogen oxides, and mercury trading programs may opt into these program if certain requirements are met. Once a unit opts into the new trading programs, it cannot withdraw.

Section 409 requires the Administrator to promulgate regulations for auctions of allowances under the new sulfur dioxide, nitrogen oxides, and mercury trading programs. All auction proceeds will go to the general Treasury.

Section 410 establishes criteria and the process by which the Administrator may recommend to Congress adjustment of the total amounts of allowances available (whether through allocation or auction) starting in 2018 under the new sulfur dioxide, nitrogen oxides, and mercury trading programs.

Sulfur Dioxide Emissions Reductions: The Clear Skies Act establishes Part B, which retains in Sections 411–419, with few changes, the relevant requirements of the existing Acid Rain Program through December 31, 2009 and contains in Sections 421–434 the new, lower annual caps on total sulfur dioxide emissions and new allocation procedures starting January 1, 2010.

Under Section 421, the new sulfur dioxide trading program covers units in the U.S. and its territories. The program includes existing fossil fuel-fired electricity generating boilers and turbines and integrated gasification combined cycle plants with generators having a nameplate capacity of greater than 25 MW with certain exceptions for cogeneration units. The program also includes new fossil fuel-fired electricity generating boilers and turbines and integrated gasification combined cycle plants regardless of size, except for gas-fired units serving one or more generators with total nameplate capacity of 25 MW of less and certain new cogeneration units. In addition, solid waste incineration units and units for treatment, storage, or disposal of hazardous waste are exempted.

Under Section 422, compliance with the requirement to hold allowances covering sulfur dioxide emissions in the new trading program will be determined on a facility-wide basis. The owner or operator must hold allowances for all the affected units at a facility at least equal to the total sulfur dioxide emissions for those units during the year.

Under Section 423, annual sulfur dioxide emissions for affected units are capped at 4.5 million tons starting in 2010 and 3.0 million tons starting in 2018. During the first year of the program, 99 percent of the allowances will be allocated to affected units with an auction for the remaining 1 percent. Each subsequent year, an additional 1 percent of the allowances for twenty years, and then an additional 2.5 percent thereafter, will be auctioned until eventually all the allowances are auctioned.

Under Section 424, allowances are allocated to affected units previously receiving allowances under the Acid Rain Program based on their proportion of the total post-2009 Acid Rain sulfur dioxide allowances currently recorded in their Acid Rain Program allowance accounts. Units that received no allocations under the Acid Rain Program are allocated allowances based on the product of their baseline heat input and a standard emission rate reflective of fuel type. If the Administrator does not promulgate final allocations on a timely basis a default provision takes effect that allocates allowances to Acid Rain Program units based on heat input data collected under that program and auctions other allowances.

Under Section 425, once the Administrator places sulfur dioxide allowances under the new trading program into accounts in the Allowance Tracking System, all year 2010 and later allowances allocated under the Acid Rain Program will be removed from the accounts. All pre-2010 allowances under the Acid Rain Program that have not been used will remain in accounts and may be used to meet the requirement to hold allowances in the new trading program.

Under Section 426, a reserve of 250,000 allowances is established for affected units that combusted bituminous and that, before 2008, install and operate sulfur dioxide control technology and continue to combust such coal. The procedure established for submission of applications by owners and operators and approval of applications and award of allowances by the Administrator is designed to ensure that approval of those projects will result in the largest amount of sulfur dioxide emission reductions achieved per allowance awarded.

Under Sections 431–434, a separate emission limitation and cap-and-trade program are provided for the States in the Western Regional Air Partnership (WRAP). The cap-and-trade program for the WRAP States goes into effect the third year after the year 2018 or later when sulfur dioxide emissions for these units exceed 271,000 tons. This cap-and-trade program is analogous to the new nation-wide sulfur dioxide trading program but establishes a second sulfur dioxide emission limitation only for these WRAP units, which will be subject to both the regional and the nationwide programs.

Nitrogen Oxides Emissions Reductions: The Clear Skies Act establishes Part C, which retains in Sections 431–432 the requirements of the existing Acid Rain Program for nitrogen oxides and in Sections 461–465 the requirements of the existing NO_X State Implementation (SIP) call under Section 110 of the Clean Air Act through December 31, 2007; and contains in Sections 451–454 the new, annual caps on total allowances and new, allocation procedures starting January 1, 2008.

Under Section 451, the new nitrogen oxides trading program covers the same units in the U.S. and its territories as the new sulfur dioxide trading program, but separate cap-and-trade systems are established for Zone 1 (largely the eastern and part of the central portions of the U.S.) and Zone 2 (the remainder of the U.S. and territories).

Under Section 452, compliance with the requirement to hold allowances covering nitrogen oxides emissions will be determined on a facility-wide basis, analogous to the way compliance is determined under the new sulfur dioxide trading programs. Only allowances issued for the zone in which the facility is located can be used for compliance for that facility.

Under Section 453, annual NO_X emissions for affected units in Zone 1 are capped at 1.562 million tons starting in 2008 and 1.162 million tons starting in 2010. Zone 2 annual emissions are capped at 538,000 tons. Each year, the percentages of allowances allocated and auctioned each year are the same as under the new sulfur trading program.

Under Section 454, allowances are allocated to affected units based on the proportionate share of their baseline heat input to total heat input of the units in their respective zone. If the Administrator does not promulgate final allocations on a timely basis, a default provision, like that under the new sulfur dioxide trading program, takes effect.

Sections 461–456 contains provisions that codify the emission reduction requirements of the NO_X SIP Call that covers the eastern U.S. The SIPs are required to be consistent with the NO_X emission budgets established under the NO_X SIP Call. SIPs must be submitted for certain full States and for certain portions of some States as determined proposed by the Administrator in the rulemaking that commenced February 22, 2002.

Mercury Emission Reductions: The Clear Skies Act establishes Part D, which contains the new, annual caps on total mercury allowances and new, allocation procedures starting January 1, 2010.

Under Section 471, the new mercury trading program covers coal-fired units that are covered by the new sulfur dioxide and nitrogen oxides trading programs.

Under Section 472, compliance with the requirement to hold allowances covering mercury emissions will be determined on a facility-wide basis, analogous to the way compliance is determined under the new sulfur dioxide and nitrogen oxides trading programs.

Under Section 473, annual mercury emission are capped at 26 tons starting in 2010 and 15 tons starting in 2018. Each year, the percentages of allowances allocated and auctioned each year are the same as under the new sulfur and nitrogen oxides trading programs.

Under Section 474, allowances are allocated to affected units based on the proportionate share of their baseline heat input to total heat input of all affected units. For purposes of allocating the allowances, each unit's baseline heat input is adjusted to reflect the types of coal combusted by the unit during the baseline period. If the Administrator does not promulgate final allocations on a timely basis, a default provision, like that under the new sulfur dioxide and nitrogen oxides trading programs, takes effect.

Performance Standards for New Sources: To ensure that all new affected units have appropriate controls, Part E establishes, in section 481, performance standards for all new boilers, combustion turbines, and integrated gasification combined cycle plants (IGCCs) covered under the Act.

''New'' units are those that commence construction or reconstruction after the date of enactment. The standards also apply to ''modified'' units that opt to meet the applicable performance standard in lieu of case-specific BACT.

These statutory performance standards include emission limits for four pollutants: nitrogen oxides (NO_X); sulfur dioxide (SO_2); mercury (Hg); and particulate matter (PM). The Hg emission limit applies only to coal. In addition, a PM emission limit is established for existing oil-fired boilers to ensure reductions of nickel from such units. All units subject to a performance standard must monitor emissions using CEMS and use averaging times similar to current NSPS.

Boilers and IGCCs are subject to a SO_2 emission limit of 2.0 lb/MWh; a NO_X emission limit of 1.0 lb/MWh; and a PM emission limit of 0.20 lb/MWh. Coal-fired boilers and IGCCs are subject to a Hg emission limit of 0.015 lb/GWh; however, alternative standards would apply in some circumstances. Coal-fired combustion turbines are subject to the same NO_X, SO_2, PM, and Hg emission limits as boilers and IGCCs. Oil-fired combustion turbines are subject to NO_X emission limits ranging from 0.289 lb/MWh to 1.01 lb/MWh, an SO_2 emission limit of 2.0 lb/MWh, and a PM emission limit of 0.20 lb/MWh. Gas-fired combustion turbines are subject to NO_X emission limits ranging from 0.084 lb/MWh to 0.56 lb/MWh. Existing oil-fired boilers are subject to a PM emission limit of 0.30 lb/MWh.

Research, Environmental Monitoring, and Assessment: Section 482 contains provisions for evaluating and reporting the efficacy of the new sulfur dioxide, nitrogen oxides, and mercury trading programs; and providing information concerning whether the total amounts of allowances under these programs starting in 2018 should be adjusted under Section 410.

Exemption from Major Source Reconstruction Review Requirements and Best Available Retrofit Control Technology Requirements: Section 483 exempts units from the requirements of New Source Review (NSR). The section also exempts these sources from the requirement to install best available retrofit technology (BART). These exemptions are created by excluding affected sources from being ''major stationary sources'' for purposes of Part C and D of the Clean Air Act.

Affected units constructed after enactment of the Clear Skies Act must meet the performance standards for NO_X, SO_2, PM, and CO specified in Section 481, but a case-by-case review of the appropriate control technology such as BACT or LAER is no longer required. Similarly, modifications at existing affected units must either comply with the performance standards for NO_X, SO_2, PM, and CO established in section 481 or comply with BACT. However, to qualify for this exemption from NSR, an existing sources must either commit within three years to meet the existing NSPS limit for PM of 0.03 lb/MMbtu in the future, or have begun to properly operate any existing control technology to reduce PM emissions or otherwise minimize PM emissions according to best operational practices. To qualify for the exemption, an existing source must also use good combustion practices to minimize emissions of carbon monoxide. Permits issued in the past to comply with the requirements of Parts C and D, however, will remain in effect.

To ensure that national parks and other Class I areas are protected, affected units located within 50 km of such an area will remain subject to the requirements in Part C for the protection of such areas.

States must ensure that the construction of new or modified affected units will not cause or contribute to a violation of the NAAQS or interfere with the programs to assure that the NAAQS are met. States also must provide the public with an opportunity to comment on the impact of the affected unit on the NAAQS, or on any Class I areas within 50 km of the facility.

For affected units, the definition of modification is defined to mean changes that increases the hourly emissions of any air pollutant.

S. 2815

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clear Skies Act of 2002''.

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

Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651, et seq.) is amended to read as follows:

''TITLE IV—EMISSION REDUCTION PROGRAMS

PART A. GENERAL PROVISIONS

SEC. 401. (Reserved)

SEC. 402. DEFINITIONS.

As used in this title—

(1) The term ''affected EGU'' shall have the meaning set forth in section 421, 431, 451, or 471, as appropriate.

(2) The term ''affected facility'' or ''affected source'' means a facility or source that includes one or more affected units.

(3) The term ''affected unit'' means—

(A) Under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, it applicable, under a specified part or subpart or

(B) Under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

(4) The term ''allowance'' means—

(A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or

(B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

(5)(A) The term ''baseline heat input'' means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period 1997 through 2001.

(B) Notwithstanding subparagraph (A),

(i) if a unit commenced operation during 2000, then ''baseline heat input'' means the average annual heat input used by the unit during 2000–2001; and

(ii) if a unit commenced or commences operation during 2001–2004, then ''baseline heat input'' means the manufacturer's design heat input capacity for the unit multiplied by eighty percent for coal-fired units, fifty for combined cycle combustion turbines, and five percent for simple cycle combustion turbines.

(C) A unit's heat input for a year shall be the heat input—

(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

(ii) reported to the Energy Information Administration for the unit, if the unit was not required to report heat input under section 405;

(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

(D) By July 1, 2003, the Administrator shall promulgate regulations, without notice and opportunity for comment, specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. By January 1, 2004, the owner or operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

(6) The term ''clearing price'' means the price at which allowances are sold at an auction conducted by the Administrator or, if allowances are sold at an auction conducted by the Administrator at more than one price, the lowest price at which allowances are sold at the auction.

(7) The term ''coal'' means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(8) The term ''coal-derived fuel'' means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(9) The term ''coal-fired'' with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone or in combination with any mount of any other fuel in any year.

(10) The term ''cogeneration unit'' means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy:

(A) electricity; and

(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

(11) The term ''combustion turbine'' means any combustion turbine that is not self-propelled. The term includes, but is not limited to, a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine. The term does not include a combined turbine in an integrated gasification combined cycle plant.

(12) The term ''commence operation'' with regard to a unit means start up the unit's combustion chamber.

(13) The term ''compliance plan means either—

(A) a statement that the facility will comply with all applicable requirements under this title, or

(B) under subpart 1 of part B or subpart 1 of part C, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

(14) The term ''continuous emission monitoring system'' (CEMS) means the equipment as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 405.

(15) The term ''designated representative'' means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, and the submission of and compliance with permits, permit applications, and compliance plans.

(16) The term ''duct burner'' means a combustion device that uses the exhaust from a combustion turbine to burn fuel for heat recovery.

(17) The term ''facility'' means all buildings, structures, or installations located on

one or more adjacent properties under common control of the same person or persons.

(18) The term ''fossil fuel'' means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(19) The term ''fossil fuel-fired'' with regard to a unit means combusting fossil fuel, alone or in combination with any amount of other fuel or material.

(20) The term ''fuel oil'' means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

(21) The term ''gas-fired'' with regard to a unit means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at lease ninety percent, and fuel oil comprising no more than ten percent, of the unit's total heat input in any year.

(22) The term ''gasify'' means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

(23) The term ''generator'' means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

(24) The term ''heat input'' with regard to a specific period of time means the product (in mmBtu/time) of the gross calorific value of the fuel (in mmBtu/lb) and the fuel feed rate into a unit (in lb of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

(25) The term ''integrated gasification combined cycle plant'' means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

(26) The term ''oil-fired'' with regard to a unit means, except under section 424 and 434, combusting fuel oil for more than ten percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year.

(27) The term ''owner or operator'' with regard to a unit or facility means, except for subpart 1 of part B and subpart 1 of part C, any person who owns, leases, operates, controls, or supervises the unit or the facility.

(28) The term ''permitting authority'' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under title V of the Act.

(29) The term ''potential electrical output'' with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

(30) The term ''source'' means, except for sections 410, 481, and 482, all buildings, structures, or installations located on one or more adjacent properties under common control of the same person or persons.

(31) The term ''State'' means—

(A) one of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Amercian Samoa, or the Commonwealth of the Northern Mariana Islands; or

(B) under subpart 1 of part B and subpart 1 of part C, one of the 48 contiguous States or the District of Columbia; or

(C) under subpart 3 of part B, Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

(32) The term ''unit'' means—

(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plan; or

(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device.

(33) The term ''utility unit'' shall have the meaning set forth in section 411.

(34) The term ''year'' means calendar year.

SEC. 403. ALLOWANCE SYSTEM.

(a) ALLOCATION IN GENERAL.—(1) For the emission limitation programs under this title, the Administrator shall allocate annual allowances for an affected unit, to be held or distributed by the designated representative of the owner or operator in accordance with this title as follows—

(A) sulfur dioxide allowances in an amount equal to the annual tonnage emission limitation calculated under section 413, 414, 415, or 416 except as otherwise specifically provided elsewhere in subpart 1 of part B, or in an amount calculated under section 424 or 434.

(B) nitrogen oxides allowances in an amount calculated under section 454, and

(C) mercury allowances in an amount calculated under section 474.

(2) Notwithstanding any other provision of law to the contrary, the calculation of the allocation for any unit, and the determination of any values used in such calculation, under sections 424, 434, 454, and 474 shall not be subject to judicial review.

(3) Allowances shall be allocated by the Administrator without cost to the recipient, and shall be auctioned or sold by the Administrator, in accordance with this title.

(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated, auctioned, or sold by the Administrator under this title may be transferred among designated representatives of the owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated or auctioned and shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, except as otherwise provided in section 425. Such regulations shall provide, or shall be amended to provide, that transfers of allowances shall not be effective until certification of the transfer, signed by a responsible official of the transferor, is received and recorded by the Administrator.

(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by January 1, 2008, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's or facility's permit requirements pursuant to section 404, without any further permit review and revision.

(d) NATURE OF ALLOWANCES.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated, auctioned, or sold by the Administrator under this title is a limited authorization to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury, as the case may be, in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated or auctioned to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V or section 404 with respect to the unit for which such allowance was originally allocated and recorded.

(e) PROHIBITION.—(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated, auctioned, or sold by the Administrator under this title, except in accordance with regulations promulgated by the Administrator.

(2) It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a year in excess of the number of allowances held for that unit or facility for that year by the owner or operator as provided in sections 412(c), 422, 432, 452, and 472.

(3) The owner or operator of a facility may purchase allowances directly from the Administrator to be used only to meet the requirements of sections 422, 432, 452, and 472, as the case may be, for a specified year. Not later than thirty-six months after the date of enactment of the Clear Skies Act of 2002, the Administrator shall promulgate regulations providing for direct sales of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances to an owner or operator of a facility. The regulations shall provide that—

(A) such allowances may be used only to meet the requirements of section 422, 432, 452, and 472, as the case may be, for such facility and for a year specified by the Administrator,

(B) each such sulfur dioxide allowance shall be sold for $4,000, each such nitrogen oxides allowance shall be sold for $4,000, and each such mercury allowance shall be sold

for $2,187.50, with such prices adjusted for inflation based on the Consumer Price Index on the date of enactment of the Clear Skies Act of 2002 and annually thereafter,

(C) the proceeds from any sales of allowances under subparagraph (B) shall be deposited in the United States Treasury.

(D) the allowances directly purchased for use for a specified year shall be taken from, and reduce, the amount of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that would otherwise be auctioned under section 423, 453, or 473 starting for the year after the specified year and continuing for each subsequent year as necessary.

(E) if an owner or operator does not use any such allowance in accordance with paragraph (A),

(i) the owner or operator shall hold the allowance for deduction by the Administrator and

(ii) the Administrator shall deduct the allowance, without refund or other form of recompense, and offer it for sale in the auction from which it was taken under subparagraph (D) or a subsequent relevant auction as necessary.

(F) if the direct sales of allowances result in the removal of all sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, from auctions under section 423, 453, or 473 for three consecutive years, the Administrator shall conduct a study to determine whether revisions to the relevant allowance trading program are necessary and shall report the results to the Congress.

(4) Allowances may not be used prior to the calendar year for which they are allocated or auctioned. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected facilities of their requirements and liabilities under the Act.

(f) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(g) APPLICABILITY OF THE ANTITRUST LAWS.—

(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, ''antitrust laws'' means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

(h) PUBLIC UTILITY HOLDING COMPANY ACT.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

(i) INTERPOLLUTANT TRADING.—Not later than July 1, 2009, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

(j) INTERNATIONAL TRADING.—Not later than 24 months after the date of enactment of the Clear Skies Act of 2002, the Administrator shall furnish to the Congress a study evaluating the feasibility of international trading of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances.

SEC. 404. PERMITS AND COMPLIANCE PLANS.

(a) PERMIT PROGRAM.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units and facilities subject to this title and enforced in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide, nitrogen oxides, and mercury in excess of the number of allowances required to be held in accordance with sections 412(c), 422, 432, 452, and 472,

(2) exceedances of applicable emissions rates under section 441.

(3) the use of any allowance prior to the year for which it was allocated or auctioned, and

(4) contravention of any other provision of the permit. No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

(b) COMPLIANCE PLAN.—Each initial permit application shall be accompanied by a compliance plan for the facility to comply with its requirements under this title. Where an affected facility consists of more than one affected unit, such plan shall cover all such units, and such facility shall be considered a ''facility'' under section 502(c). Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances.

(1) submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 412(c), 413, 414, and 441, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 412(c), 413, and 414, the owners and operators will hold sulfur dioxide allowances in the amount required by section 412(c), shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized under section 413 (b), (c), (d), or (f), section 416, and section 441 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

(2) Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitation requirements of sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide allowances, nitrogen oxide allowances, and mercury allowances, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

(3) Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits.

(c) PERMITS.—The owner or operator of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

(d) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

(e) PROHIBITION.—It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this title to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any facility subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for facilities subject to this title shall be deemed compliance with this subsection as well as section 502(a).

(3) In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section, except that any such unit may be subject to the applicable enforcement provisions of section 113.

(f) CERTIFICATE OF REPRESENTATION.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

SEC. 405. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.

(a) APPLICABILITY.—(1)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS on each affected unit subject to subpart 1 of part B or subpart 1 of part C at the facility, and to quality assure the data, for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each such unit.

(B) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timelines as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(2)(A) The owner and operator of any facility subject to this title shall be required to

install and operate CEMS to monitor the emissions from each affected unit at the facility, and to quality assure the data for—

(i) sulfur doxide, opacity, and volumetric flow for all affected units subject to subpart 2 of part B at the facility,

(ii) nitrogen oxides for all affected units subject to subpart 2 of part C at the facility, and

(iii) mercury for all affected units subject to part D at the facility.

(B)(i) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, for recordkeeping and reporting of information from such systems, and if necessary under section 474, for monitoring, recordkeeping, and reporting of the mercury content of fuel.

(ii) Notwithstanding the requirements of clause (i), the regulations under clause (i) may specify an alternative monitoring system for determining mercury emissions to the extent that the Administrator determines that CEMS for mercury with appropriate vendor guarantees are not commercially available.

(iii) The regulations under clause (i) may include limitation on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title.

(iv) Except as provided in clausse (v), the regulations under clause (i) shall not require a separate CEMS for each unit where two or more units utilize a single stack and shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for such units.

(v) The regulations under clause (i) may require a separate CEMS for each unit where two or more units utilize a single stack and another provision of the Act requires data under subparagraph (A) for an individual unit.

(b) DEADLINES.—(1). Upon commencement of commercial operation of each new utility unit under subpart I of part B, the unit shall comply with the requirements of subsection (a)(1).

(2) By the later of January 1, 2009 or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide, opacity, and volumetric flow.

(3) By the later of January 1 of the year before the first covered year or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 3 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide and volumetric flow.

(4) By the later of January 1, 2007 or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part C shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to nitrogen oxides, and

(5) By the later of January 1, 2009 or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

(c) UNAVAILABILITY OF EMISSIONS DATA.—If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this Act.

(d) With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2001), amended as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing regulations not later than January 1, 2008.

(e) PROHIBITION.—It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without complying with the requirements of this section, and any regulations implementing this section.

SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLIANCE WITH OTHER PROVISIONS; ENFORCEMENT

(a) EXCESS EMISSIONS PENALTY.—(1) The owner or operator of any unit subject to the requirements of section 441 that emits nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement shall be liable for the payment of an excess emissions penalty, except where such emission were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement multiplied by $2,000.

(2) The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

(A) the product of the unit's excess emissions (in tons) multiplied by the clearing price of sulfur dioxide allowances sold at the most recent auction under section 417, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide allowances—

(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

(ii) the Administrator receives the penalty required under this subparagraph.

(B) if the requirements of clause (A)(i) or (A)(ii) are not met, three hundred percent of the product of the unit's excess emissions (in tons) multiplied by the clearing price of sulfur dioxide allowances sold at the most recent auction under section 417.

(3) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

(4) If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

(A) the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the clearing price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold at the most recent auction under section 423, 453, or 473, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide, nitrogen oxides allowance, or mercury allowances as the case may be—

(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

(ii) the Administrator receives the penalty required under this subparagraph.

(B) if the requirements of clause (A)(i) or (A)(ii) are not met, three hundred percent of the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the clearing price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold at the most recent auction under section 423, 453, or 473.

(5) Any penalty under paragraph 1, 2, 3, or 4 shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator. With regard to the penalty under paragraph 1, the Administrator shall implement this paragraph under 40 CFR 77 (2001), amended as appropriate by the administrator. With regard to the penalty under paragraphs 2, 3, and 4, the Administrator shall implement this paragraph by issuing regulations no later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. Any such payment shall be deposited in the United States Treasury. Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this Act.

(b) EXCESS EMISSIONS OFFSET.—(1) The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide during any calendar year before 2008 in excess of the sulfur dioxide allowances held for the unit for the calendar year shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess tonnage from those held for the facility for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(2) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for a year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for

use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess emissions in tons from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(3) If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons or, for mercury, ounces in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances, nitrogen oxide allowances, or mercury allowances, as the case may be, equal to the excess emissions in tons or, for mercury, ounces from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a)(1) for inflation, based on the Consumer Price Index, on November 15, 1990 and annually thereafter.

(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable for a penalty and offset under this section to fail—

(1) to pay the penalty under subsection (a) or

(2) to offset excess emissions as required by subsection (b).

(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the application of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

(f) Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any facility subject to this title from compliance with any other applicable requirements of this Act. Notwithstanding any other provision of the Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

(g) Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected units at a facility to emit sulfur dioxide, nitrogen oxides, or mercury in violation of section 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.

SEC. 407. ELECTION FOR ADDITIONAL UNITS.

(a) APPLICABILITY.—The owner or operator of any unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate such unit as an affected unit under subpart 2 of part B and subpart 2 of part C. If the owner or operator elects to designate a unit that is coal-fired and emits mercury vented only through a stack or duct, the owner or operator shall also designate the unit as an affected unit under part D.

(b) APPLICATION.—The owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

(c) APPROVAL.—If an application for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C and, if applicable, under part D, subject to the requirements in subsections (d) through (g).

(d) ESTABLISHMENT OF BASELINE.—(1) After approval of the designation under subsection (c), the owner or operator shall install and operate CEMS on the unit, and shall quality assure the data, in accordance with the requirements of paragraph (a)(2) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each unit.

(2) The baselines for heat input and sulfur dioxide, nitrogen oxides, and mercury emission rates, as the case may be, for the unit shall be the unit's heat input and the emission rates of sulfur dioxide, nitrogen oxides, and mercury for a year starting after approval of the designation under subsection (c). The Administrator shall issue regulations requiring all the unit's baselines to be based on the same year and specifying minimum requirements concerning the percentage of the unit's operating hours for which quality assured CEMS data must be available during such year.

(e) EMISSION LIMITATIONS.—After approval of the designation of the unit under paragraph (c), the unit shall become:

(1) an affected unit under subpart 2 of part B, and shall be allocated sulfur dioxide allowances under paragraph (f), starting the later of January 1, 2010 or January 1 of the year after the year on which the unit's baselines are based under subsection (d);

(2) an affected unit under subpart 2 of part C, and shall be allocated nitrogen oxides allowances under paragraph (f), starting the later of January 1, 2008 or January 1 of the year after the year on which the unit's baselines are based under subsection (d); and

(3) if applicable, an affected unit under part D, and shall be allocated mercury allowances, starting the later of January 1, 2010 or January 1 of the year after the year on which the unit's baselines are based under subsection (d).

(f) ALLOCATIONS AND AUCTION AMOUNTS.—(1) The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for each year during which a unit is an affected unit under subsection (e). The regulations shall provide for allocations equal to fifty percent of the following amounts, as adjusted under paragraph (2):

(A) the lesser of the unit's baseline heat input under subsection (d) or the unit's heat input for the year before the year for which the Administrator is determining the allocations; multiplied by

(B) the lesser of—

(i) the unit's baseline sulfur dioxide emission rate, nitrogen oxides emission rate, or mercury emission rate, as the case may be,

(ii) the unit's sulfur dioxide emission rate, nitrogen oxides emission rate, or mercury emission rate, as the case may be, during 2002, as determined by the Administrator based, to the extent available, on information reported to the State where the unit is located; or

(iii) the unit's most stringent State or federal emission limitation for sulfur dioxide, nitrogen oxides, or mercury applicable to the year on which the unit's baseline heat input is based under subsection (d).

(2) the Administrator shall reduce the allocations under paragraph (1) by 1.0 percent in the first year for which the Administrator is allocating allowances to the unit, by an additional 1.0 percent of the allocations under paragraph (1) each year starting in the second year through the twentieth year, and by an additional 2.5 percent of the allocations under paragraph (1) each year starting in the twenty-first year and each year thereafter. The Administrator shall make corresponding increases in the amounts of allowances auctioned under sections 423, 453, and 473.

(g) WITHDRAWAL.—The Administrator shall promulgate regulations withdrawing from the approved designation under subsection (c) any unit that qualifies as an affected EGU under subpart 2 of part B, subpart 2 of part C, or part D after the approval of the designation of the unit under subsection (c).

(h) The Administrator shall promulgate regulations implementing this section within 24 months of the date of enactment of the Clear Skies Act of 2003.

SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

(a) DEFINITION.—For purposes of this section, ''clean coal technology'' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading ''Department of Energy—Clean Coal Technology'', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. the Federal contribution for qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA REGULATIONS.—Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to

all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit (1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory on November 15, 1990, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent, (3) is equipped with low-NOx burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this Act.

SEC. 409 AUCTIONS.

(a) Commencing in 2005 and in each year thereafter, the Administrator shall conduct auctions, as required under sections 423, 424, 426, 453, 454, 473, and 474, at which allowances shall be offered for sale in accordance with regulations promulgated by the Administrator no later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. Such regulations may provide allowances to be offered for sale before or during the year for which such allowances may be used to meet the requirement to hold allowances under section 422, 452, and 472. Such regulations shall specify the frequency and timing of auctions and may provide for more than one auction of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances during a year. Each auction shall be open to any person. A person wishing to bid for allowances in the auction shall submit to the Administrator (by a date set, and on a bid schedule provided, by the Administrator) offers to purchase specified numbers of allowances at specified prices. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this title.

(b) DEFAULT AUCTION PROCEDURES.—If the Administrator is required to conduct an auction of allowances under subsection (a) before regulations have been promulgated under that subsection, such auction shall be conducted as follows—

(1) The auction shall be held on the first business day in October of the year in which the auction is required or, in the absence of such a requirement, of the year before the first year for which the allowances may be used to meet the requirements of section 403(e)(2).

(2) The auction shall be open to any person.

(3) In order to bid for allowances included in the auction, a person shall submit, and the Administrator must receive by the date three business days before the auction, one or more offers to purchase a specified amount of such allowances at a specified price on a sealed bid schedule to be provided by the Administrator. The bidder shall state in the bid schedule that the bidder is willing to purchase at the specified price fewer allowances than the specified amount and shall identify the account in the Allowance Tracking System under section 403(c) in which the allowances purchased are to be placed. Each bid must include a certified check or, using a form to be provided by the Administrator, a letter of credit for the specified amount of allowances multiplied by the bid price payable to the U.S. EPA. The bid schedule, and check or letter of credit, shall be sent to the address specified on the bid schedule.

(4) The Administrator shall auction the allowances by:

(A) determining whether each bid meets the requirements of paragraph (3);

(B) listing the bids (including the specified amounts of allowances and the specified bid prices) meeting the requirements of paragraph (3) in order, from highest to lowest bid price;

(C) for each bid price, summing the amounts of allowances specified in the bids listed under subparagraph (B) with the same or a higher bid price;

(D) identifying the bid price with the highest sum of allowances under subparagraph (C) that does not exceed the total amount of allowances available for auction;

(E) setting as the sales price in the auction:

(i) the bid price identified under subparagraph (D) if that bid price has a sum of allowances under subparagraph (C) equal to the total amount of allowances available for auction; or

(ii) the next lowest bid price after the bid price identified under subparagraph (D), if the bid price identified under subparagraph (D) has a sum of allowances under subparagraph (C) less than the total amount of allowances available for auction; and

(F) starting with the first bid listed under subparagraph (B) and ending with the bid listed immediately before the bid with a bid price equal to the sales price, selling the amounts of allowances specified in each bid to the person who submitted the bid.

(i) If the amount of remaining allowances available for auction equals or is less than the amount of allowances specified in the bid with a bid price equal to the sales price, the Administrator shall sell the amount of remaining allowances to the person who submitted that bid.

(ii) If there is more than one bid with a bid price equal to the sales price and the amount of remaining allowances available for auction is less than the total of the amounts of allowances specified in such bids, the Administrator shall sell the amount of the remaining allowances to the persons who submitted those bids on a pro rata basis.

(5) After the auction, the Administrator will publish the names of winning and losing bidders, their bids, and the sales price. The Administrator will provide the successful bidders notice of the allowances that they have purchased within thirty days after payment is collected by the Administrator. After the conclusion of the auction, the Administrator will return payment to unsuccessful bidders and the appropriate portion of payment to successful bidders who offered to purchase a larger amount of allowances than the amount that they are sold or to pay a bid price exceeding the sales price and will add any unsold allowances to the next relevant auction.

(c) The Administrator may by delegation or contract provide for the conduct of auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(d) The proceeds from any auction conducted under this title shall be deposited in the United States Treasury.

SEC. 410. EVALUATION OF LIMITATIONS ON TOTAL SULFUR DIOXIDE, NITROGEN OXIDES, AND MERCURY EMISSIONS THAT START IN 2018.

(a) EVALUATION.—(1) The Administrator, in consultation with the Secretary of Energy, shall study whether the limitations on the total annual amounts of allowances available starting in 2018 for sulfur dioxide under section 423, nitrogen oxides under section 453, and mercury under section 473 should be adjusted.

(2) As part of the study, the Administrator shall address the following factors concerning the pollutants under paragraph (a)(1):

(A) the need for further emission reductions from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and other sources to attain or maintain the national ambient air quality standards;

(B) whether the benefits of the limitations on the total annual amounts of allowances available starting in 2018 justify the costs and whether adjusting any of the limitations would provide additional benefits which justify the costs of such adjustment, taking into account both quantifiable and nonquantifiable factors;

(C) the marginal cost effectiveness of reducing emissions for each pollutant;

(D) the relative marginal cost effectiveness of reducing sulfur dioxide and nitrogen oxide emissions from affected EGUs under subpart 2 of part B and subpart 2 of part C, as compared to the marginal cost effectiveness of controls on other sources of sulfur dioxide, nitrogen oxides and other pollutants that can be controlled to attain or maintain national ambient air quality standards;

(E) the feasibility of attaining the limitations on the total annual amounts of allowances available starting in 2018 given the available control technologies and the ability to install control technologies by 2018, and the feasibility of attaining alternative limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1) for each pollutant, including the ability to achieve alternative limitations given the available control technologies, and the feasibility of installing the control technologies needed to meet the alternative limitation by 2018;

(F) the results of the most current research and development regarding technologies and strategies to reduce the emissions of one or more of these pollutants from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D, as applicable and the results of the most current research and development regarding technologies for other sources of the same pollutants;

(G) the projected impact of the limitations on the total annual amounts of allowances available starting in 2018 and the projected impact of adjusting any of the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1) on the safety and reliability of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and on fuel diversity within the power generation section;

(H) the most current scientific information relating to emissions, transformation and deposition of these pollutants, including studies evaluating:

(i) the role of emissions of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D in the atmospheric formation of pollutants for which national ambient air quality standards exist;

(ii) the transformation, transport, and fate of these pollutants in the atmosphere, other media, and biota;

(iii) the extent to which effective control programs in other countries would prevent air pollution generated in those countries

from contributing to nonattainment, or interfering with the maintenance of any national ambient air quality standards;

(iv) whether the limitations starting in 2010 or 2018 will result in an increase in the level of any other pollutant and the level of any such increase; and

(v) speciated monitoring data for particulate matter and the effect of various elements of fine particulate matter on public health;

(I) the most current scientific information relating to emissions, transformation and deposition of mercury, including studies evaluating:

(i) known and potential human health and environmental effects of mercury;

(ii) whether emissions of mercury from affected EGUs under part D contribute significantly to elevated levels of mercury in fish;

(iii) human population exposure to mercury;

(iv) the relative marginal cost effectiveness of reducing mercury emissions from affected EGUs under part D, as compared to the marginal cost effectiveness of controls on other sources of mercury.

(J) a comparison of the extent to which sources of mercury not located in the United States contributed to adverse affects on terrestrial or aquatic systems as opposed to the contribution from affected EGUs under part D, and the extent to which effective mercury control programs in other countries could minimize such impairment; and

(K) an analysis of the effectiveness and efficiency of the sulfur dioxide allowance program under subpart 2 of part B, the nitrogen oxides allowance program under subpart 2 of part C, and the mercury allowance program under part D.

(3) As part of the study, the Administrator shall take into account the most current information available pursuant to the review of the air quality criteria for particulate matter under section 108.

(b) PEER REVIEW PROCEDURES.—The draft results of the study under subsection (a) and related technical documents shall be subject to an independent and external peer review in accordance with this section. Any documents that are to be considered by the Administrator in the study must be independently peer reviewed no later than July 1, 2008. The peer review required under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.). The Administrator shall:

(1) conduct the peer review in an open manner. Such peer review shall

(A) be conducted through a formal panel that is broadly representative and involves qualified specialists who

(i) are selected primarily on the basis of their technical expertise relevant to the analyses required under this section and to the decision whether or not to adjust the total annual amounts of allowances available starting in 2018 under paragraph (a)(1);

(ii) are independent of the agency;

(iii) disclose to the agency prior technical or policy positions they have taken on the issues under consideration; and

(iv) disclose to the agency their sources of personal and institutional funding from the private or pubic sectors;

(B) contain a balanced presentation of all considerations, including minority reports;

(C) provide adequate protections for confidential business information and trade secrets, including requiring panel members or participants to enter into confidentiality agreements;

(D) afford an opportunity for public comment; and

(E) be complete by no later than January 1, 2009.

(2) respond, in writing, to all significant peer review and public comments; and

(3) certify that

(A) each peer review participant has the expertise an independence required under this section; and

(B) the agency has adequately responded to the peer review comments as requires under this section.

(c) RECOMMENDAITON TO CONGRESS.—The Administrator, in consultation with the Secretary of Energy, should submit to Congress no later than July 1, 2009, a recommendation whether to revise the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1). The recommendation shall include the final results of the study under subsections (a) and (b) and shall address the factors described in paragraph (a)(2). The Administrator may submit separate recommendations addressing sulfur dioxide, nitrogen oxides, or mercury at any time after the study has been completed under paragraph (a)(2) and the peer review process has been completed under subsection (b).

PART B. SULFUR DIOXIDE EMISSION REDUCTIONS

Subpart 1. Acid Rain Program.

SEC. 411. DEFINITIONS.

For purposes of this subpart—

(1) the term ''actual 1985 emission rate'', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version, 2 National Utility reference File. For nonutility units, the term ''actual 1985 emission rate'' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(2) The term ''allowable 1985 emissions rate'' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions

(3) The term ''alternative method of compliance'' means a method of compliance in accordance with one or more of the following authorities:

(A) a substitution plan submitted and approved in accordance with subsections 413(b) and (c); or

(B) a Phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology as determined by the Administrator in accordance with that section.

(4) The term ''baseline'' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units (''mmBtu's''), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-utility units, the baseline in the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than eighteen months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subpart. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term ''basic Phase II allowance allocations'' means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 414.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 414.

(6) The term ''capacity factor'' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(7) The term ''commenced'' as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(8) The term ''commenced commercial operation'' means to have begun to generate electricity for sale.

(9) The term ''construction'' means fabrication, erection, or installation of an affected unit.

(10) The term ''existing unit'' means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 which is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of this subpart. For the purposes of this subpart, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25 MWe or less.

(11) The term ''independent power producer'' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(12) The term ''new'' independent power production facility'' means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) in nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990); and

(C) is a new unit required to hold allowances under this subpart.

(13) The term ''industrial source'' means a unit that does not serve a generator that produces electricity, a ''non-utility unit'' as defined in this section, or a process source.

(14) The term ''life-of-the-unit, firm power contractual arrangement'' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(15) The term ''new unit'' means a unit that commences commercial operation on or after November 15, 1990.

(16) The term ''nonutility unit'' means a unit other than a utility unit.

(17) The term ''Phase II bonus allowance allocations'' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 412, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 414, and section 415.

(18) The term ''qualifying phase I technology'' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(19) The term ''repowering'' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(2)) The term ''reserve'' means any bank of allowances established by the Administrator under this subpart.

(21)(A) The term ''utility unit'' means—

(i) a unit that serves a generator in any State that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operations during 1985, but

(ii) did not during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subpart.

(C) A unit that congenerates steam and electricity is not a ''utility unit'' for purposes of this subpart unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one-third of its potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale.

SEC. 412. ALLOWANCE ALLOCATION.

(a)(1) Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual missions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not to take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting he restrictions imposed in the preceding sentence, he Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject tot he requirements of section 414. Subject to the provisions of section 417, the Administrator shall allocate allowances for each affected until at an affected source annually, as provided in paragraphs (2) and(3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

(b) NEW UTILITY UNITS.—(1) After January 1, 2000 and through December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator.

(2) Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (c)(3).

(3) New utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of subsection (b)(1) or subsection(c)(3) shall be liable for fulfilling the obligations specified in section 406.

(c) PROHIBITIONS.—(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator.

(2) For any year 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit.

(3) Starting January 1, 2008, it shall be unlawful for the affected units at a source to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the source for that year by the owner or operator of the source.

(4) Upon the allocation of allowances under this subpart, the prohibition in paragraphs (2) and (3) shall supersede any other emission limitation applicable under this subpart to the units for which such allowances are allocated.

(d) In order to insure electric reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and this subpart shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned, including for calendar years after 2007, allowances held for such units by the owner or operator of the sources where the units are located.

(e) Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate of representation required under section 404(f) shall state (1) that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances under this subpart received by the unit are deemed to be held for that person.

SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.

(a) EMISSION LIMITATIONS.—(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under section 413(d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d), or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 414. The owner or operator of any unit in violation of this section be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 406.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar

year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000, and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subpart that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 404 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 411(4), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.—(1) The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 404. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 412. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the unit's total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 406. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

(d) ELIGIBLE PHASE I EXTENSION UNITS.—(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 404 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 404, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 404, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the subpart.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of the allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraph (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to.

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline miltipled by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emission tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (4), the Administrator shall allocate for each eligible Phase I extension unit

employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000 exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this Act, including under section 406, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (2) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e)(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements:

(A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 414 (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 414 for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000 exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 414 described in subparagraph (A), the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quality of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000 exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A) may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impractibility or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E. W. Stout	5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5.050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

(1) DEFINITIONS.—As used in this subsection:

(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term ''qualified energy conservation measure'' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) QUALIFIED RENEWABLE ENERGY.—The term ''qualified renewable energy'' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) ELECTRIC UTILITY.—The term ''electric utility'' means any person, State agency, or Federal agency, which sells electric energy.

(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii) (I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subpart (including those sources that elect to become affected by this title, pursuant to section 417).

(D) DETERMINATION OF AVOIDED EMISSIONS.—

(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions,

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met. Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004, and dividing by 2,000.

(F) AVOIDED EMISSIONS FROM THE USE OF QUALIFIED RENEWABLE ENERGY.—The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by (ii) 0.004, and dividing by 2,000.

(G) PROHIBITIONS.—

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) SAVINGS PROVISION.—Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) REGULATIONS.—The Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility and from State to State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

(g) Conservation and Renewable Energy Reserve.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Nothwithstanding the prior sentence, if allowances remain in the reserve one year after the date of enactment of the Clear Skies Act of 2002, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 414, the term ''pro rata basis'' refers to the ratio which the reductions made in such unit's allowances in order

to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITED IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu, at the election to the owner or operator of such unit, the unit's baseline may be calculated

(i) as provided under section 411, or

(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 412(a), this section, and section 414 (as Basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 414.

SEC. 414. PHASE II SULFUR DIOXIDE REQUIREMENTS.

(a) APPLICABILITY.—(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subpart. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this Act for fulfilling the obligations specified in section 406.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2),(c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 415.

(3) In addition to basic Phase II allowances allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 413 (other than units at Kyger Creek, Clifty Creek, and Joppa Stream) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky , or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Stream). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 412(a).

(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND 1.20 LBS/MMBTU.—(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, it shall be unlawful for a cola or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(3) After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990 to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than

2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, is shall be unlawful for any existing unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired unites of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the project of its baseline multiplied by an emissions rate of 1.20lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs.mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 111 of the Act in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil-and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(f) OIL AND GAS-FIRED UNITS LESS THAN 0.60 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowance 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowance 1985 emissions, and (b) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 412(a), beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) UNITS THAT COMMENCE OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowance 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 411 to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

Table B

Unit	*Allowances*
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, provided that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq, repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(6)(A) Unless the Administrator has approved a designation of such facility under section 417, the provisions of this subpart shall not apply to a ''qualifying small power production facility'' or ''qualifying cogeneration facility'' (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a ''new independent power production facility'' if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) OIL AND GAS-FIRED UNITS LESS THAN 10 PERCENT OIL CONSUMED.—(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 412(a), beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) UNITS IN HIGH GROWTH STATES.—(1) In addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988, in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: Provided, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1), (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

SEC. 415. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

(a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 414(a)(2) to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 412(a), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such state fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 414.

(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.

SEC. 416. ELECTION FOR ADDITIONAL SOURCES.

(a) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 404.

The Administrator shall approve a designation that meets the requirements of this section, and such designated unit shall be allocated allowances, and be an affected unit for purposes of this subpart.

(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) EMISSION LIMITATIONS.—(1) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) before January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(2) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 4,000.

(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c), in accordance with section 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

(e) LIMITATIONS.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subpart, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

(f) IMPLEMENTATION.—The Administrator shall implement this section under 40 CFR part 74 (2001), amended as appropriate by the Administrator.

SEC. 417 AUCTIONS, RESERVE.

(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(b) AUCTION SALES.—(1) Subaccount for auctions.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

(2) ANNUAL AUCTIONS.—Commencing in 1993 and in each year thereafter until 2010, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowance sat specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subpart and subpart 2.

TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of sale	Spot auction (same year)	Advance auction
1993	50,000	100,000
1994	50,000	100,000
1995	50,000	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000	125,000	125,000
2001	125,000	125,000
2002	125,000	125,000
2003–2009	125,000	0

(3) PROCEEDS.—(A) Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld. With 170 days after the date of enactment of the Clear Skies Act of 2002, any allowance withheld under paragraph (a)(2) but not offered for sale at an auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

(c) CHANGES IN AUCTIONS AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance auctions) and 2005 (in the case of spot auctions) decrease the number of allowances withheld and sold under this section.

(d) TERMINATION OF AUCTION.—The Administrator shall terminate the withholding of allowances and the auction sales under this section on December 31, 2009. Pursuant to regulations under this section, the Administrator may be delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(e) The Administrator shall implement this section under 40 CFR part 73 (2001), amended as appropriate by the Administrator.

SEC. 418. INDUSTRIAL SO_2 EMISSIONS.

(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in section 411(11)), including units subject to section 414(g)(2), for all years for which data are available, as well as the likely trend in such emission over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214.

(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 414(g)(2), and may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such

actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 414(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 414(g)(2), under authority of this section. For an existing source regulated under this section, ''standard of performance'' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

(c) ELECTION.—Regulations promulgated under section 414(b) shall not prohibit a source from electing to become an affected unit under section 417.

SEC. 419. TERMINATION.

Starting January 1, 2010, the owners or operators of affected units and affected facilities under sections 412(b) and (c) and 416 and shall no longer be subject to the requirements of sections 412 through 417.

Subpart 2. Sulfur Dioxide Allowance Program

SEC. 421 DEFINITIONS.

For purposes of this subpart—

(1) The term ''affected EGU'' means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it serves, during each year starting with the year the unit commences services of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term ''affected EGU'' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) The term ''coal-fired'' with regard to a unit means, for purposes of section 424, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during 1997 through 2001 or, for a unit that commenced operation during 2001–2004, a unit designed to combust coal or any coal-derived fuel alone or in combination with any other fuel.

(3) The term ''Eastern bituminous'' means bituminous that is from a mine located in a State east of the Mississippi River.

(4) The term ''general account'' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any person under 40 CFR §73.31(c) (2001), amended as appropriate by the Administrator.

(5) The term ''oil-fired'' with regard to a unit means, for purposes of section 424, combusting fuel oil for more than ten percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1997 through 2001 or, for a unit that commenced operation during 2001–2004, a unit designed to combust oil for more than ten percent of the unit's total heat input and not to combust any coal or coal-derived fuel coal.

(6) The term ''unit account'' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any unit under 40 CFR §73.31(a) and (b) (2001), amended as appropriate by the Administrator.

SEC. 422. APPLICABILITY.

Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate sulfur dioxide allowances under section 424, and shall conduct auctions of sulfur dioxide allowances under section 409, in the amounts in Table A.

TABLE A.—TOTAL SO_2 ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

Year	SO_2 allowances allocated	SO_2 allowances auctioned
2010	4,371,666	45,000
2011	4,326,667	90,000
2012	4,281,667	135,000
2013	4,320,000	180,000
2014	4,275,000	225,000
2015	4,230,000	270,000
2016	4,185,000	315,000
2017	4,140,000	360,000
2018	2,730,000	270,000
2019	2,700,000	300,000
2020	2,670,000	330,000
2021	2,640,000	360,000
2022	2,610,000	390,000
2023	2,580,000	420,000
2024	2,550,000	450,000
2025	2,520,000	480,000
2026	2,490,000	510,000
2027	2,460,000	540,000
2028	2,430,000	570,000
2029	2,400,000	600,000
2030	2,325,000	675,000
2031	2,250,000	750,000
2032	2,175,000	825,000
2033	2,100,000	900,000
2034	2,025,000	975,000
2035	1,950,000	1,050,000
2036	1,875,000	1,125,000
2037	1,800,000	1,200,000
2038	1,725,000	1,275,000
2039	1,650,000	1,350,000
2040	1,575,000	1,425,000
2041	1,500,000	1,500,000
2042	1,425,000	1,575,000
2043	1,350,000	1,650,000
2044	1,275,000	1,725,000
2045	1,200,000	1,800,000
2046	1,125,000	1,875,000
2047	1,050,000	1,950,000
2048	975,000	2,025,000
2049	900,000	2,100,000
2050	825,000	2,175,000
2051	750,000	2,250,000
2052	675,000	2,325,000
2053	600,000	2,400,000
2054	525,000	2,475,000
2055	450,000	2,550,000
2056	375,000	2,625,000
2057	300,000	2,700,000
2058	225,000	2,775,000
2059	150,000	2,850,000
2060	75,000	2,925,000
2061	0	3,000,000

SEC. 424. EGU ALLOCATIONS.

(a) By January 1, 2007, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 through 2060. The regulations shall provide that—

(1)(A) Ninety-five percent of the total amount of sulfur dioxide allowances allocated each year to affected EGUs under section 423 shall be allocated based on the sulfur dioxide allowances that were allocated under subpart 1 for 2010 or thereafter and are held in unit accounts and general accounts in the Allowance Tracking System under section 403(c).

(B) The Administrator shall allocate sulfur dioxide allowances to each facility's account and each general account in the Allowance Tracking System under section 403(c) as follows:

(i) The Administrator shall determine the amount of sulfur dioxide allowances allocated under subpart 1 for 2010, and each subsequent year, that are recorded in each unit account and each general account in the Allowance Tracking System as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2002. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2001), amended as appropriate by the Administrator, except that the Administrator shall discount all sulfur dioxide allowances allocated for 2011 or later at a rate of 7% per year.

(ii) The Administrator shall determine for each unit account and each general account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the allocation amount under subparagraph (A) multiplied by the ratio of the amount of sulfur dioxide allowances determined to be recorded in that account under clause (i) to the total amount of sulfur dioxide allowances determined to be recorded in all unit accounts and general accounts in the Allowance Tracking System under clause (i).

(iii) The Administrator shall allocate to each facility's account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account.

(2)(A) Three and one-half percent of the total amount of sulfur dioxide allowances allocated each year for affected EGUs under section 423 shall be allocated for units at a facility that are affected EGUs as of December 31, 2004, that commenced operation before January 1, 2001, and that are not allocated any sulfur dioxide allowances under subpart 1.

(B) The Administrator shall allocate each year for the units under subparagraph (A) an amount of sulfur dioxide allowances determined by—

(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i), (ii), and (iii) to the total of the amounts for all facilities under clause (i), (ii), and (iii); and

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall add to the amount of sulfur dioxide allowances allocated under paragraph (3) any unallocated allowances under this paragraph.

(3)(A) One and one-half percent of the total amount of sulfur dioxide allowances allocated each year for affected EGUs under section 423 shall be allocated for units that are affected EGUs as of December 31, 2004, that commence operation on or after January 1, 2001 and before January 1, 2005, and that are not allocated any sulfur dioxide allowances under subpart 1.

(B) The Administrator shall allocate each year for the units under subparagraph (A) an amount of sulfur dioxide allowances determined by—

(i) For such units at the facility that are coal-fired or oil-fired, multiplying 0.19 lb/mmBtu by the total baseline heat imput of such units and converting to tons;

(ii) For all such other units at the facility that are not covered by clause (i), multiplying 0.02 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(iv) If the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i) and (ii) to the total of the amounts for all facilities under clauses (i) and (ii); and

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i) and (ii) or, if the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall allocate to the facilities under paragraphs (1) and (2) on a pro rata basis (based on the allocations under those paragraphs) any unallocated allowances under this paragraph.

(b) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a) by July 1 that is eighteen months before January 1 of such year, then—

(1) The Administrator shall:

(A) allocate, for such year, to each unit with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of sulfur dioxide allowances determined by multiplying eighty percent of the allocation amount under section 423 by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units with coal as their primary or secondary fuel or residual oil as their primary fuel;

(B) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of sulfur dioxide allowances for the units at such facility determined under subparagraph (A); and

(C) auction an amount of sulfur dioxide allowances equal to five percent of the allocation amount under section 423 and conduct the auction on the first business day in October following the respective promulgation deadline under subsection (b) and in accordance with section 400.

(2) Notwithstanding any other provision of law to the contrary, the determination of the amount of sulfur dioxide allowances under subparagraph (1)(A) and the recording of sulfur dioxide allowances under subparagraph (1)(B) shall not be subject to judicial review.

(3) Notwithstanding the provisions to the contrary in section 423, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 423 for such year.

SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.

(a) After allocating allowances under section 424(a)(1), the Administrator shall remove from the unit accounts and general accounts in the Allowance Tracking System under section 403(c) and from the Special Allowances Reserve under section 418 all sulfur dioxide allowances allocated or deposited under subpart 1 for 2010 or later.

(b) The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 422 may be met using sulfur dioxide allowances allocated under subpart 1 for 1995 through 2009.

SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.

(a) RESERVE.—The Administrator shall establish a reserve of 250,000 sulfur dioxide allowances comprising 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur dioxide allowances for 2011, and 83,333 sulfur dioxide allowances for 2012.

(b) APPLICATION.—By July 1, 2004 an owner or operator of an affected EGU that commenced operation before 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for sulfur dioxide allowances from the reserve under subsection (a). The application shall include—

(1) a statement that the owner or operator will install and commence operation of specified sulfur dioxide control technology at the unit within 24 months after approval of the application under subsection (c) if the unit is allocated the sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide description of the control technology.

(2) a statement that, during the period starting with the commencement of operation of sulfur dioxide technology under paragraph (1) through 2009, the unit will combust Eastern bituminous at a percentage of the unit's total heat input equal to or exceeding the percentage of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

(3) a demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide technology under subparagraph (1) through 2009. The tonnage of emission reductions shall be the difference between emissions monitored at a location at the unit upstream of the control technology described in paragraph (1) and emissions monitored at a location at the unit downstream of such control technology, while the unit is combusting fuel in accordance with paragraph (2).

(4) a request that EPA allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide technology under paragraph (1) through 2009.

(5) a statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

(c) APPROVAL OR DISAPPROVAL.—Through adjudicative determinations subject to notice and opportunity for comment, the Administrator shall—

(1) determine whether each application meets the requirements of subsection (b);

(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

(3) for each application listed under paragraph (2), multiply the amount of sulfur dioxide emission reductions requested by each allowance-to-emission-reduction ratio on the list that equals or is less than the ratio for the application;

(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

(5) based on the calculations in paragraph (4), determine which allowance-to-emission-reduction ratio on the list under paragraph (2) results in the highest total amount of allowances that does not exceed 250,000 allowances; and

(6) approve each application listed under paragraph (2) with a ratio equal to or less than the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

(d) MONITORING.—An owner or operator whose application is approved under subsection (c) shall install, and quality assure data from, a CEMS for sulfur dioxide located upstream of the sulfur dioxide control technology under paragraph (b)(1) at the unit and a CEMS for sulfur dioxide located downstream of such control technology at the unit during the period starting with the commencement of operation of such control technology through 2009. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(B) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stock, separate monitoring shall be required for each unit.

(f) ALLOCATIONS.—By July 1, 2010, for the units for which applications are approved under paragraph (c), the Administrator shall allocate sulfur dioxides allowances as follows:

(1) For each unit, the Administrator shall multiply the allowance-to-emission-reduction ratio of the last application that EPA approved under subsection (c) by the lesser of:

(A) the total tonnage of sulfur dioxide emissions reductions achieved by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

(3) The Administrator shall allocate to each unit the lesser of the amount determined for that unit under paragraph (1) or, if the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, under paragraph (2). The Administrator shall auction any unallocated allowances from the reserve under this section and conduct the auction by the first business

day in October 2010 and in accordance with section 409.

Subpart 3. Western Regional Air Partnership.

SEC. 431. DEFINITIONS.

For purposes of this subpart—

(1) The term ''adjusted baseline heat input'' means the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

(A) Notwithstanding paragraph (1), if a unit commences operation during such period and—

(i) on or after January 1 of the fifth year before the first covered year, then ''adjusted baseline heat input'' shall mean the average annual heat input used by the unit during the fifth and fourth years before the first covered year; and (ii) on or after January 1 of the fourth year before the first covered year, then ''adjusted baseline heat input'' shall mean the annual heat input used by the unit during the fourth year before the first covered year.

(B) A unit's heat input for a year shall be the heat input—

(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

(ii) reported to the Energy Information Administrator for the unit, if the unit was not required to report heat input under section 405;

(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

(2) The term ''affected EGU'' means an affected EGU under subpart 2 that is in a State and that:

(A) in 2000, emitted 100 tons or more of sulfur dioxide and was used to produce electricity for sale; or

(B) in any year after 2000, emits 100 tons or more of sulfur dioxide and is used to produce electricity for sale.

(3) The term ''coal-fired'' with regard to a unit means, for purposes of section 434, a unit combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during the period from the eighth through the fourth year before the first covered year.

(4) The term ''covered year'' means:

(A)(1) the third year after the year 2018 or later when the total annual sulfur dioxide emissions of all affected EGUs in the States first exceed 271,000 tons; or

(2) the third year after the year 2013 or later when the Administrator determines by regulation that the total annual sulfur dioxide emissions of all affected EGUs in the States are reasonably projected to exceed 271,000 tons in 2018 or any year thereafter. The Administrator may make such determination only if all the States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the States subject to the requirements of sections 432 through 434; and

(B) each year after the ''covered year'' under subparagraph (A).

(5) the Term ''oil-fired'' with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than ten percent of the unit's total heat input, and combusting no coal or coal-derived fuel, an any year during the period from the eight through the fourth year before the first covered year.

SEC. 432. APPLICABILITY.

Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for each covered year under section 434 shall equal 271,000 tons.

SEC. 434. EGU ALLOCATIONS.

(a) By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the units at a facility that are affected EGUs as of December 31 of the fourth year before the covered year by——

(1) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(2) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(3) For all such other units at the facility that are not covered by paragraph (1) or (2) multiplying 0.05 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons; and

(4) Multiplying the allocation amount under section 433 by the ratio of the total of the amounts for the facility under paragraphs (1), (2), and (3) to the total of the amounts for all facilities under paragraphs (1), (2), and (3).

(b) For each covered year, if the Administrator has not promulgated the regulations determining allocations under paragraph (a) by July 1 that is eighteen months before January 1 of such year, then—

(1) The Administrator shall:

(A) allocate, for such year, to each affected EGU with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of sulfur dioxide allowances determined by multiplying eighty percent of the allocation amount under section 433 by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all affected EGUs with coal as their primary or secondary fuel or residual oil as their primary fuel;

(B) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the sum of the amounts of sulfur dioxide allowances for the units at such facility determined under subparagraph (A); and

(C) auction an amount of sulfur dioxide allowances equal to five percent of the allocation amount under section 433 and conduct the auction on the first business day in October following the respective promulgation deadline under subsection (b) and in accordance with section 409.

(2) Notwithstanding any other provision of law to the contrary, the determination of the amount of sulfur dioxide allowances under subparagraph (1)(A) and the recording of sulfur dioxide allowances under subparagraph (1)(B) shall not be subject to judicial review.

(3) Notwithstanding the provisions to the contrary in section 433, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 433 for such year.

PART C—NITROGEN OXIDES EMISSION REDUCTIONS

Subpart 1—Acid Rain Program

SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.

(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) EMISSION LIMITATIONS.—

(1) The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: Provided, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_X burner technology. The Administrator shall implement this paragraph under 40 CFR §76.5 (2001). The maximum allowable emission rates are as follows:

(A) for tangentially fired boilers, 0.45 lb/mmBtu;

(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu. After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) The Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology;

(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). The Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_x burned technology is available: Provided, That, no unit that is an affected unit pursuant to section 413 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any. The Administrator shall implement that paragraph under 40 CFR §§76.6 and 76.7 (2001).

(c) ALTERNATIVE EMISSION LIMITATIONS.—The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

(1) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO_x burner technology; or

(2) a unit subject to subsection (b)(2) canot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) has specified an emission rate that such unit can meet on an annual average basis. The permitting authority shall issue an operating permit for the unit in question, in accordance with section 404 and title V—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_x burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_x control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 CFR part 76 (2001), amended as appropriate by the Administrator.

(d) EMISSIONS AVERAGING.—In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (c), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2).

If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 404 and title V, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits. The Administrator shall implement this subsection under 40 CFR part 76 (2001), amended as appropriate by the Administrator.

SEC. 442. TERMINATION.

Starting January 1, 2008, owner or operator of affected units and affected facilities under section 441 shall no longer be subject to the requirements of that section.

Subpart 2. Nitrogen Oxides Allowance Program.

SEC. 451. DEFINITIONS.

For purposes of this subpart—

(1) The term ''affected EGU'' means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it serves, during each year starting with the unit commences service of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term ''affected EGU'' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) The term ''Zone 1 State'' means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

(3) The term ''Zone 2 State'' means Alaska, American Samoa, Arizona, California, Colorado, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

SEC. 452. APPLICABILITY.

(a)(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 1 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

(2) Only nitrogen oxides allowances under section 453(a) shall be held in order to meet the requirements of paragraph (1), except as provided under section 465.

(b)(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

(2) Only nitrogen oxides allowances under section 453(b) shall be held in order to meet the requirements of paragraph (1).

SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.

(a) For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(a), and conduct auctions of nitrogen oxides allowances under section 409, in the amounts in Table A.

TABLE A.—TOTAL NO_X ALLOWANCE ALLOCATED OR AUCTIONED FOR EGUS IN ZONE 1

Year	NO_X allowances allocated	NO_X allowances auctioned
2008	1,546,380	15,620
2009	1,530,760	31,240
2010	1,515,140	46,860
2011	1,499,520	62,480
2012	1,483,900	78,100
2013	1,468,280	93,720
2014	1,452,660	109,340
2015	1,437,040	124,960
2016	1,421,420	140,580
2017	1,405,800	156,200
2018	1,034,180	127,820
2019	1,022,560	139,440
2020	1,010,940	151,060
2021	999,320	162,680
2022	987,700	174,300
2023	976,080	185,920
2024	964,460	197,540
2025	952,840	209,160
2026	941,220	220,780
2027	929,600	232,400
2028	900,550	261,450
2029	871,500	290,500
2030	842,450	319,550
2031	813,400	348,600
2032	784,350	377,650
2033	755,300	406,700
2034	726,250	435,750
2035	697,200	464,800
2036	668,150	493,850
2037	639,100	522,900
2038	610,050	551,950
2039	581,000	581,000
2040	551,950	610,050
2041	522,900	639,100
2042	493,850	668,150
2043	464,800	697,200
2044	435,750	726,250
2045	406,700	755,300
2046	377,650	784,350
2047	348,600	813,400
2048	319,550	842,450
2049	290,500	871,500
2050	261,450	300,550
2051	232,400	929,550
2052	203,350	958,650
2053	174,300	987,700
2054	145,250	1,016,750
2055	116,200	1,045,800
2056	87,150	1,074,850
2057	58,100	1,103,900
2058	29,050	1,132,950
2059	0	1,162,000

(b) For affected EGUs in the Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b), and conduct auctions of nitrogen oxides allowances under section 409, in the amounts in Table B.

TABLE B.—TOTAL NO_X ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

Year	NOx allowance allocated	NOx allowance auctioned
2008	532,620	5,380
2009	527,240	10,760
2010	521,860	16,140
2011	516,480	21,520
2012	511,100	26,900
2013	505,720	32,280
2014	500,340	37,660
2015	494,960	43,040
2016	489,580	48,420
2017	484,200	53,800
2018	478,820	59,180
2019	473,440	64,560
2020	468,060	69,940
2021	462,680	75,320
2022	457,300	80,700
2023	451,920	86,080
2024	446,540	91,460
2025	441,160	96,840
2026	435,780	102,220
2027	430,400	107,600
2028	416,950	121,050
2029	403,500	134,500
2030	390,050	147,950
2031	376,600	161,400
2032	363,150	174,850
2033	349,700	188,300
2034	336,250	201,750
2035	322,800	215,200
2036	309,350	228,650
2037	295,900	242,100
2038	282,450	255,550
2039	269,000	269,000
2040	255,550	282,450
2041	242,100	295,900
2042	228,650	309,350
2043	215,200	322,800
2044	201,750	336,250
2045	188,300	349,700

TABLE B.—TOTAL NO_X ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2—Continued

Year	NOx allowance allocated	NOx allowance auctioned
2046	174,850	363,150
2047	161,400	376,600
2048	147,950	390,050
2049	134,500	403,500
2050	121,050	416,950
2051	107,600	430,400
2052	94,150	443,850
2053	80,700	457,300
2054	67,250	470,750
2055	53,800	484,200
2056	40,350	497,650
2057	26,900	511,100
2058	13,450	524,550
2059	0	538,000

SEC. 454. EGU ALLOCATIONS.

(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—(1) by January 1, 2006, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for each year during 2008 through 2058 for units at a facility in a Zone 1 State that are affected EGUs as of December 31, 2004. The regulations shall determine the allocation for such units for each year by multiplying the allocation amount under section 453(a) by the ratio of the total amount of baseline heat input of such units at the facility to the total amount of baseline heat input of all affected EGUs in the Zone 1 States.

(2)(A) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocation under paragraph (a)(1), but has promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking system for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such year, then—

(i) The Administrator shall:

(I) allocate, for such year, to each unit in the Zone 1 States listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of nitrogen oxides allowances determined by multiplying eighty percent of the allocation amount under section 453(a) by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units in the Zone 1 States;

(II) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of nitrogen oxides allowances for the units at such facility determined under subclause (I); and

(III) auction an amount of nitrogen oxides allowances equal to five percent of the allocation amount under section 453(a) and conduct the auction on the first business day in October following the respective promulgation deadline under subparagraph (A) and in accordance with section 409.

(ii) Notwithstanding any other provision of law to the contrary, the determination of the amount of nitrogen oxides allowances under subclause (i)(I) and the recording of nitrogen oxides allowances under subclause (i)(II) shall not be subject to judicial review.

(iii) Notwithstanding the provisions to the contrary in section 453, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 453(a) for such year.

(B) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (a)(1), and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for an affected EGU in the Zone 1 States to emit nitrogen oxides during such year in excess of 0.14 lb/mmBtu.

(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.)(1)—By January 1, 2006, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for each year during 2008 through 2058 for units at a facility in a Zone 2 State that are affected EGUs as of December 31, 2004. The regulations shall determine the allocation for such units for each year by multiplying the allocation amount under section 453(b) by the ratio of the total amount of baseline heat input of such units at the facility to the total amount of baseline heat input of all affected EGUs in the Zone 2 States,

(2)(A) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (b)(1), but has promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such years, then—

(i) The Administrator shall:

(I) allocate, for such year, to each unit in the Zone 2 States listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of nitrogen oxides allowances determined by mutiplying eighty percent of the allocation amount under section 453(b) by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units in the Zone 2 States;

(II) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of nitrogen oxides allowances for the units at such facility determined under subclause (I); and

(III) auction an amount of nitrogen oxides allowances equal to five percent of the allocation amount under section 453(b) and conduct the auction on the first business day in October following the respective promulgation deadline under subparagraph (A) and in accordance with section 409.

(ii) Notwithstanding any other provision of law to the contrary, the determination of the amount of nitrogen oxides allowances under subclause (i)(I) and the recording of nitrogen oxides allowances under subclause (i)(II) shall not be subject to judicial review.

(III) Notwithstanding the provisions to the contrary in section 453, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 453(b) for such year.

(B) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (b)(1), and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for any affected EGU in the Zone 2 States to emit nitrogen oxides during such year in excess of 0.25 lb/mmBtu.

Subpart 3. Ozone Season No_x Budget Program

SEC. 461. DEFINITIONS.

For purposes of this subpart—

(1) The term ''ozone season'' means:

(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

(B) with regard to all other States, the period May 30, 2004 through September 30, 2004 and the period May 1 through September 30 for each year thereafter.

(2) The term ''State'' means Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kennedy, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

(3) The term ''fine grid portions of Alabama, Georgia, Michigan, and Missouri'' means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 CFR §51.121 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).

SEC. 462. GENERAL PROVISIONS.

The provisions of sections 402 through 406 and section 409 shall not apply to this subpart.

SEC. 463. APPLICABLE IMPLEMENTATION PLAN.

(a) Except as provided in subsection (b), the applicable implementation plan for each State shall be consistent with the requirements, including the State's nitrogen oxides budget and compliance supplement pool, in 40 CFR §§51.121 and 51.122 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).

(b) Notwithstanding any provision to the contrary in 40 CFR §51.121 (2001), the applicable implementation plan for each State shall require full implementation of the required emission control measures starting no later than the first ozone season.

SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO_X TRADING PROGRAM.

(a) Starting January 1, 2008, the Administrator shall not administer any nitrogen oxides trading program in any State's applicable implementation plan under section 463.

(b) Nothing in subsection (a) shall preclude a State from administering any nitrogen oxides trading program in the State's applicable implementation plan under section 463.

SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES ALLOWANCES.

The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers in a State's applicable implementation plan under section 463.

PART D—MERCURY EMISSIONS REDUCTIONS

SEC. 471. DEFINITIONS.

For purposes of this subpart—

(1) The term ''adjusted baseline heat input'' with regard to a unit means the unit's baseline heat input multiplied by—

(A) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

(B) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

(C) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based; and

(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph (A), (B), or (C) or for the entire baseline heat

input if such baseline heat input is not based on the unit's heat input in specified years.

(2) The term ''affected EGU'' means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2002, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration unit that produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it serves, during each year starting with the year the unit commences service of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term ''affected EGU'' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

SEC. 472. APPLICABILITY.

Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in a State to emit a total amount of mercury during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility.

SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances under section 474, and conduct auctions of mercury allowances under section 409, in the amounts in Table A.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

Year	Mercury allowances allocated	Mercury allowances auctioned
2010	823,680	8,320
2011	815,360	16,640
2012	807,040	24,960
2013	798,720	33,280
2014	790,400	41,600
2015	782,080	49,920
2016	773,760	58,240
2017	765,440	66,560
2018	436,800	43,200
2019	432,000	48,000
2020	427,200	52,800
2021	422,400	57,600
2022	417,600	62,400
2023	412,800	67,200
2024	408,000	72,000
2025	403,200	76,800
2026	398,400	81,600
2027	393,600	86,400
2028	388,800	91,200
2029	384,000	96,000
2030	372,000	108,000
2031	360,000	120,000
2032	348,000	132,000
2033	336,000	144,000
2034	324,000	156,000
2035	312,000	168,000
2036	300,000	180,000
2037	288,000	192,000
2038	276,000	204,000
2039	264,000	216,000
2040	252,000	228,000
2041	240,000	240,000
2042	228,000	252,000
2043	216,000	264,000
2044	204,000	276,000
2045	192,000	288,000
2046	180,000	300,000
2047	168,000	312,000
2048	156,000	324,000
2049	144,000	336,000
2050	132,000	348,000
2051	120,000	360,000

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS—Continued

Year	Mercury allowances allocated	Mercury allowances auctioned
2052	108,000	372,000
2053	96,000	384,000
2054	84,000	396,000
2055	72,000	408,000
2056	60,000	420,000
2057	48,000	432,000
2058	36,000	444,000
2059	24,000	456,000
2060	12,000	468,000
2061	0	480,000

SEC. 474. EGU ALLOCATIONS.

(a) By January 1, 2007, the Administrator shall promulgate regulations determining allocations of mercury allowances for each year during 2010 through 2060 for units at a facility that are affected EGUs as of December 31, 2004. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying the allocation amount in section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

(b)(1) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a), but has promulgated the regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances, by July 1 that is eighteen months before January 1 of such year, then—

(A) The Administrator shall

(i) allocate, for such year, to each unit with coal as its primary or secondary fuel listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of mercury allowances determined by multiplying eighty percent of the allocation amount under section 473 by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units with coal as their primary or secondary fuel;

(ii) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of mercury allowances for the units at such facility determined under clause (i); and

(iii) auction an amount of mercury allowances equal to five percent of the allocation amount under section 473 and conduct the auction on the first business day in October following the respective promulgation deadline under paragraph (1) and in accordance with section 409.

(B) Notwithstanding any other provision of law to the contrary, the determination of the amount of mercury allowances under subparagraph (1)(A) and the recording of mercury allowances under subparagraph (1)(B) shall not be subject to judicial review.

(C) Notwithstanding the provisions to the contrary in section 473, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 473 for such year.

(2) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a), and has not promulgated the regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for any affected EGU to emit mercury during such year in excess of 30 percent of the mercury content (in ounces per mmBtu) of the coal and coal-derived fuel combusted by the unit.

PART E—NATIONAL EMISSION STANDARDS; RESEARCH; ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS

SECTION 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''commenced,'' with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

(2) The term ''construction'' means fabrication, erection, or installation of an affected unit.

(3) The term ''affected unit'' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(4) The term ''existing affected unit'' means any affected unit that is not a new affected unit.

(5) The term ''new affected unit'' means any affected unit, the construction or reconstruction of which is commenced after the date of enactment of the Clear Skies Act of 2002, except that for the purpose of any revision of a standard pursuant to subsection (e), ''new affected unit'' means any affected unit, the construction or reconstruction of which is commenced after the public of regulations (or, if earlier, proposed regulations) prescribing a standard under this section that will apply to such unit.

(6) The term ''reconstruction'' means the replacement of components of a unit to such an extent that:

(A) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit; and

(B) it is technologically and economically feasible to meet the applicable standards set forth in this section.

(7) The term ''simply cycle combustion turbine'' means a stationary combustion turbine that does not extract heat from the combustion turbine exhaust gases.

(b) EMISSION STANDARDS.—

(1) IN GENERAL.—No later than twelve months after the date of enactment of the Clear Skies Act of 2002, the Administrator shall promulgate regulations prescribing the standards in subsections (c) through (d) for the specified affected units and establishing requirements to ensure compliance with these standards, including monitoring, recordkeeping, and reporting requirements.

(2) MONITORING.—

(A) The owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section shall meet the requirements of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each affected unit for the pollutants for which the unit is subject to such standards.

(B) The Administrator shall, by regulation, require—

(1) the owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section to—

(i) install and operate CEMS for monitoring output, including electricity and useful thermal energy, on the affected unit and to quality assure the data; and

(ii) comply with recordkeeping and reporting requirements, including provisions for reporting output data in megawatt hours.

(2) the owner or operator of any affected unit subject to the standards for particulate matter under this section to—

(i) install and operate CEMS for monitoring particulate matter on the affected unit and to quality assure the data;

(ii) comply with recordkeeping and reporting requirements; and

(iii) comply with alternative monitoring, quality assurance, recordkeeping, and reporting requirements for any period of time for which the Administrator determines that CEMS with appropriate vendor guarantees are not commercially available for particulate matter.

(3) COMPLIANCE.—For boilers, integrated gasification combined cycle plants, and combustion turbines that are gas-fired or coal fired, the Administrator shall require that the owner or operator demonstrate compliance with the standards daily, using a 30-day rolling average, except that in the case of mercury, the compliance period shall be the calendar year. For combustion turbines that are not gas-fired or coal-fired, the Administrator shall require that the owner or operator demonstrate compliance with the standards hourly, using a 4-hour rolling average.

(c) BOILERS AND INTEGRATED GASIFICATION COMBINED CYCLE PLANTS.—(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any boiler or integrated gasification combined cycle plant that is a new affected unit to discharge into the atmosphere any gases which contain:

(A) sulfur dioxide in excess of 2.0 lb/MWh;

(B) nitrogen oxides in excess of 1.0 lb/MWh;

(C) particulate matter in excess of 0.20 lb/MWh; or

(D) if the unit is coal-fired, mercury in excess of 0.015 lb/GWh, unless:

(i) mercury emissions from the unit are reduced by 80%

(ii) flue gas desulfurization (FGD) and selective catalytic reduction (SCR) are applied to the unit and are operated so as to optimize capture of mercury; or

(iii) a technology is applied to the unit and operated so as to optimize capture of mercury, and the permitting authority determines that the technology is equivalent in terms of mercury capture to the application of FGD and SCR.

(2) Notwithstanding subparagraph (1)(D), integrated gasification combined cycle plants with a combined capacity of less than 5 GW are exempt from the mercury requirement under subparagraph (1)(D) if they are constructed as part of a demonstration project under the Secretary of Energy that will include a demonstration of removal of significant amounts of mercury as determined by the Secretary of Energy in conjunction with the Administrator as part of the solicitation process.

(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any oil-fired boiler that is an existing affected unit to discharge into the atmosphere any gases which contain particulate matter in excess of 0.30 lb/MWh.

(d) COMBUSTION TURBINES.—(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any gas-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain nitrogen oxides in excess of:

(A) 0.56 lb/MWh (15 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine;

(B) 0.084 lb/MWh (3.5 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine and either uses add-on controls or is located within 50 km of a class I area;

(C) 0.21 lb/MWh (9 ppm at 15 percent oxygen), if the unit is not a simple cycle turbine and neither uses add-on controls nor is located within 50 km of a class I area.

(2) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide, nitrogen oxides, particulate matter, or mercury in excess of the emission limits under subparagraphs (c)(1)(A) through (D).

(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain:

(A) sulfur dioxide in excess of 2.01b/MWh;

(B) nitrogen oxides in excess of—

(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine, is dual-fuel capable, and uses add-on controls; or is not a simple cycle combustion turbine and is located within 50 km of a class I area;

(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine and is not dual-fuel capable; or is not a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

(C) particulate matter in excess of 0.20 lb/MWh.

(e) PERIODIC REVIEW AND REVISION.—(1) The Administrator shall, at least every 8 years following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated. When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

(f) EFFECTIVE DATE.—Standard promulgated pursuant to this section shall become effective upon promulgation.

(g) DELEGATION.—(1) Each State may develop and submit to the Administration a procedure for implementing and enforcing standards promulgated under this section for affected units located in such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State any authority the Administrator has under this Act to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard under this section.

(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate such unit in violation of any standard applicable to such unit.

(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections 111(e), 113, 114, 116, 120, 303, 304,307 and other provisions for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard of performance under section 111, and each affected unit subject to standards under this section shall be treated in the same manner as a stationary source under section 111.

(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulations, requirement, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this Act.

(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected unit subject to standards under this section shall be subject to standards under section 111 of this Act.

SECTION 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.

(a) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research and environmental monitoring and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury and to demonstrate the efficacy of emission reductions under this title. The purposes of such a program are to:

(1) expand current research and knowledge of the contribution of emissions from electricity generation to exposure and health effects associated with particulate matter and mercury;

(2) enhance current research and development of promising multi-pollutant control strategies and CEMS for mercury;

(3) produce peer-reviewed scientific and technology information to inform the review of emissions levels under section 410;

(4) improve environmental monitoring and assessment of sulfur dioxide, nitrogen oxides and mercury, and their transformation products, to track changes in human health and the environment attributable to emission reductions under this title; and

(5) periodically provide peer-reviewed reports on the costs, benefits, and effectiveness of emission reductions achieved under this title.

(b) RESEARCH.—The Administrator shall enhance planned and ongoing laboratory and field research and modeling analyses, and conduct new research and analyses to produce peer-reviewed information concerning the human health and environmental effects of mercury and particulate matter and the contribution of U.S. electrical generating units to those effects. Such information shall be included in the report under subsection (d). In addition, such research and analyses shall:

(1) improve understanding of the rates and processes governing chemical and physical transformations of mercury in the atmosphere, including speciation of emissions from

electricity generation and the transport of these species;

(2) improve understanding of the contribution of mercury emissions from electricity generation to mercury in fish and other biota, including:

(A) the response of and contribution to mercury in the biota owing to atmospheric deposition of mercury from U.S. electricity generation on both local and regional scales;

(B) long-term contributions of mercury from U.S. electricity generation on mercury accumulations in ecosystems, and the effects of mercury reductions in that sector on the environment and public health;

(C) the role and contribution of mercury, from U.S. electricity generating facilities and anthropogenic and natural sources to fish contamination and to human exposure, particularly with respect to sensitive populations; and

(D) the contribution of U.S. electricity generation to population exposure to mercury in freshwater fish and seafood and quantification of linkages between U.S. mercury emissions and domestic mercury exposure and its health effects; and

(E) the contribution of mercury from U.S. electricity generation in the context of other domestic and international sources of mercury, including transport of global anthropogenic and natural background levels.

(3) improve understanding of the health effects of fine particulate matter components related to electricity generation emissions (as distinct from other fine particle fractions and indoor air exposures) and the contribution of U.S. electrical generating units to those effects including:

(A) the chronic effects of fine particulate matter from electricity generation in sensitive population groups; and

(B) personal exposure to fine particulate matter from electricity generation.

(4) improve understanding, by way of a review of the literature, of methods for valuing human health and environmental benefits associated with fine particulate matter and mercury.

(c) INNOVATIVE CONTROL TECHNOLOGIES.—The Administrator shall collaborate with the Secretary of Energy to enhance research and development, and conduct new research that facilitates research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at a lower cost than existing technologies. Such research and development shall provide updated information on the cost and feasibility of technologies. Such information shall be included in the report under subsection (d). In addition, the research and development shall:

(1) upgrade cost and performance models to include results from ongoing and future electricity generation and pollution control demonstrations by the Administrator and the Secretary of Energy;

(2) evaluate the overall environmental implications of the various technologies tested including the impact on the characteristics of coal combustion residues;

(3) evaluate the impact of the use of selective catalytic reduction on mercury emissions from the combustion of all coal types;

(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the Secretary of Energy and the Administrator, including development of enhanced sorbents and srubbers for use on all coal types;

(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

(8) improve low cost combustion modifications and controls for dry-bottom boilers.

(d) EMISSIONS LEVELS EVALUATION REPORT.—Not later than January 1, 2008, the Administrator, in consultation with the Secretary of Energy, shall prepare a peer reviewed report to inform review of the emissions levels under section 410. The report shall be based on the best available peer-reviewed scientific and technology information. It shall address cost, feasibility, human health and ecological effects, and net benefits associated with emissions levels under this title.

(e) ENVIRONMENTAL ACCOUNTABILITY.—(1) The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall:

(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

(i) improve the ability to routinely measure mercury in dry deposition processes;

(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

(iv) improve understanding of the effectiveness and cost of mercury emissions controls.

(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section.

(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota.

(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition.

(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

(2) REPORTING REQUIREMENTS.—Not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002, and not later than every four years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title. The report shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to:

(A) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

(B) average ambient concentrations of sulfur dioxide and nitrogen oxides transformation products, related air quality parameters, and indicators of reductions in human exposure;

(C) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

(D) status and trends in visibility;

(E) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and near-coastal waters);

(F) status of mercury and its transformation products in fish;

(G) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

(H) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

(I) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

SEC. 483. EXEMPTION FROM MAJOR SOURCE RECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.

(a) MAJOR SOURCE EXEMPTION.—An affected unit may not be considered a major emitting facility or major stationary source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of part C and part D of title I. This exemption only applies to units that are either subject to the performance standards of section 481 or meet the following requirements within three years after the date of enactment of the Clear Skies Act of 2002:

(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particular matter from the affected unit to 0.03 lb/mmBtu within eight years after the date of enactment of the Clear Skies Act of 2002, and

(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide.

(b) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2002 is subject to those provisions under part C of title I pertaining to the review of a new or modified major stationary source's impact on a Class I area.

(c) PRECONSTRUCTION REQUIREMENTS.—Each State shall include in its plan under section 110, a program to provide for the regulation of the construction of an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit:

(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard.

(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved.

(3) for a modified unit, the unit must comply prior to beginning operation with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity.

(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

(d) DEFINITIONS.—For purposes of this section:

(1) The term ''affected unit'' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(2) The term ''construction'' includes the construction of a new affected unit and the modification of any affected unit.

(3) The term ''modification'' means any physical change in, or change in the method of operation of, an affected unit which increases the hourly emissions of any air pollutant at the unit's maximum capacity.''.

SEC. 3. OTHER AMENDMENTS.

(a) Title I of the Clean Air Act is amended by—

(1) removing from section 103 subparagraphs (j)(3)(E) and (j)(3)(F); and

(2) modifying section 107 by amending:

(A) subparagraph (D)(1)(A) by

(i) deleting the ''or'' at the end of clause (ii);

(ii) replacing the period with '', or'' at the end of clause (iii);

(iii) adding clause (iv) to read as follows:

''(iv) notwithstanding clauses (i)—(iii), an area may be designated transitional for the fine particles national primary ambient air quality standard or the 8-hour ozone national primary ambient air quality standard if the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain that standard no later than December 31, 2015, and such modeling demonstration and all necessary local controls have been approved into the state implementation plan no later than December 31, 2004.''; and

(iv) adding to the flush language at the end a sentence to read as follows:

''. . . However, for purposes of the fine particles national primary ambient air quality standard and the 8-hour ozone national primary ambient air quality standard, the time period for the State to submit the designations shall be extended to no later than November 30, 2003.''

(B) clause (d)(1)(B)(i) by adding at the end a sentence to read as follows:

''. . . Provided, however, that the Administrator shall not be required to designate areas for the revised fine particles national primary ambient air quality standard and 8-hour ozone fine particles national primary ambient air quality standard prior to 6-months after the States are required to submit recommendations under section 107(d)(1)(A), but in no event shall the period for designating such areas be extended beyond November 30, 2004.''

(3) modifying section 110 by:

(A) amending clause (a)(2)(D)(i) to read as follows:

''(D) contain adequate provisions—

(i)(I) except as provided in subclause (II), prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(A) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(B) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(II) The Administrator, in reviewing, under subclause (I), any plan with respect to which emissions from affected units, within the meaning of section 126(d)(1), are substantial—

(A) shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant non-attainment areas in the other State or States; and

(B) may not require submission of plan provisions—

(i) subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to January 1, 2012; or

(ii) mandating an amount of emissions reductions based on the Administrator's determination that emissions reductions are available from such affected units, unless the Administrator determines that emissions from such units may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and that reductions in such emissions will improve air quality in the petitioning State's nonattainment area(s) at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, to the maximum extent that a methodology is reasonably available to make such a determination. The Administrator shall develop an appropriate peer reviewed methodology for making such determinations by December 31, 2006. In making this determination, the Administrator will use the best available peer reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other source characteristics.

(III) Nothing in subclause (II) shall be interpreted to require revisions to the provisions of 40 CFR 51.121 and 51.122 (2001), as would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).''

(B) adding a new subsection (q) to read as follows:

''(q) TRANSITIONAL AREAS.—

(1) MAINTENANCE.—

(A) By December 31, 2010, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2015.

(B) No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2015, the Administrator will consult with the State and determine what action, if any, is necessary to assure that attainment will be achieved by 2015.

(2) PREVENTION OF SIGNIFICANT DETERIORATION. Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this subchapter.

(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015. No later than June 30, 2016, EPA shall determine whether each area designated as transitional for the 8-hour ozone standard or for the fine particles standard has attained that standard. If EPA determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within 1 year of the determination and the State shall be required to submit a state implementation plan revision satisfying the provisions of section 172 within 3 years of redesignation as nonattainment.

(4) adding to section 111 a new subparagraph (b)(1)(C) to read as follows:

''(C) No standards of performance promulgated under this section shall apply to units subject to regulations promulgated pursuant to section 481.''.

(5) modifying section 112 by amending:

(A) paragraph (c)(1) to read as follows:

''(c) LIST OF SOURCE CATEGORIES.—

(1) IN GENERAL.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Provided, however, that electric utility steam generating units not subject to Resource Conservation and Recovery Act section 3005 shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units in accordance with the regime set forth in section 112(f)(2) through (4). The section 112(f)(2) determination shall be based on actual emissions by electric utility steam generating units in 2010. Any such regulations shall be promulgated within 8 years of 2010. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.''

(B) subparagraph (n)(1)(A) to read as follows:

''(n) OTHER PROVISIONS.—

(1) ELECTRIC UTILITY STEAM GENERATING UNITS.—

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990.''

(6) modifying section 126 by:

(A) revising subsection (b) by replacing ''section 110(a)(2)(D)(ii) or this section'' with ''section 110(a)(2)(D)(i)'';

(B) revising subsection (c)(1) by replacing ''this section and the prohibition of section 110(a)(2)(D)(ii)'' with ''the prohibition of section 110(a)(2)(D)(i)'';

(C) revising subsection (c), flush language at end, by replacing ''section 110(a)(2)(D)(ii)'' with ''section 110(a)(2)(D)(i)'' and deleting the last sentence; and

(D) adding subsection (d) to read as follows:

''(d)(1) For purposes of this subsection, the term ''affected unit'' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(2) To the extent that any petition submitted under subsection (b) after the date of

enactment of the Clear Skies Act of 2002 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary—

(A) In determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the petitioning State or political subdivision.

(B) The Administrator may not determine that affected units emit or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that:

(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify; and

(ii) reductions in such emissions will improve air quality in the petitioning state's nonattainment area(s) at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination. In making this determination, the Administrator will use the best available peer reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subsidision and incorporate other sources characteristics.

(C) The Administrator shall develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006.

(D) The Administrator shall not make any findings with respect to an affected unit under this section prior to January 1, 2009. For any petition submitted prior to January 1, 2007, the Administrator shall make a finding or deny the petition by January 31, 2009.

(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2012.''

(b) Title III of the Clean Air Act is amended by modifying section 307(d)(1(G) to read as follows:

''(G) the promulgation or revision of any regulation under title IV,''.

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

(1) amended by renumbering sections 401 through 403 as sections 701 through 703, respectively; and

(2) renumbered as title VII.

(d) Title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended by modifying section 821(a) to read as follows:

''(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after November 15, 1990 to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR part 75 (2001), amended as appropriate by the Administrator.''

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. MCCAIN, Mr. DEWINE, Ms. LANDRIEU, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HATCH, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. TORRICELLI, Mr. DURBIN, Mr. MURKOWSKI, and Mr. KERRY):

S. 2816. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Foreign and Armed Services Tax Fairness Act of 2002, FAST Fairness, that will not only correct inequities in the current tax code our military men and women are subject to, but it will also provide incentives for our dedicated forces to continue their service to America.

On July 9, 2002, the House passed unanimously a bill, H.R. 5063, that provided limited relief to military personnel. The bill would provide a special rule for members of the armed forces in determining the exclusion of gain from the sale of a principal residence and would restore the tax-exempt status of death gratuity payments to members of the armed forces. I support the efforts of the House, but believe we can go farther.

These are the men and women that put their lives on the line for our freedom on a daily basis. We need to ensure that laws that we here in Congress pass do not negatively impact them. We should also develop sound policy that serves as an incentive for our youth to follow in the steps of the men and women that went before them to defend our country.

It is with these principles in mind that I move forward with this military tax package and incorporate additional provisions already introduced by my colleagues. I would now like to describe the provisions that I have chosen to include in this critical piece of legislation:

On July 24, 2002, Senator CARNAHAN introduced S. 2783, which would restore the tax exempt status of all death gratuity payments. This proposal is similar to the provision included in H.R. 5063.

Why is this provision so important? Under current law, death gratuity benefits are excludable from income only to the extent that they were as of September 9, 1986. In 1986, the death gratuity benefit was $3,000. In 1991, the benefit was increased to $6,000, but the tax code was never adjusted to exclude the additional $3,000 from income. Because of this oversight, the U.S. government has been taxing families for the death of a family member who died in combat. This is just wrong.

I support the provisions of H.R. 5063 and S. 2783, therefore I have included them in this piece of legislation.

In 1997, Congress passed legislation revising the taxation of capital gains on the sale of a person's principal residence. The new rule is that up to $250,000, $500,000 per couple, is excluded on that sale of a principal residence if the individual has lived in the house for at least two of the previous five years.

However, when enacted, Congress failed to provide a special rule for military and Foreign Service personnel who are required to move either within the U.S. or abroad. Senators MCCAIN and GRAHAM both have introduced legislation to address this oversight.

I agree that we should adjust the rule for our service men and women. We shouldn't penalize them for choosing to serve our country. My proposal would permit service personnel and members of the Foreign Service to suspend the five-year period while away on assignment, meaning those years would count toward neither the two years nor the five year periods. This is a also similar to provisions on H.R. 5063.

The Department of Defense provides payments to members of the Armed Services to offset diminution in housing values due to military base realignment or closure. For example, if a house near a base was worth $180,000 prior to the base closure and $100,000 after the base closure, DOD may provide the owner with a payment to offset some, but not all of the $80,000 diminution in value. Under current law, those amounts are taxable as compensation.

There will be another round of base closures in the near future. That fate was decided in the FY2002 Defense Authorization bill. We should ensure that those men and women losing value in their homes due to a federal government decision are not adversely affected financially. The proposal would provide that payments for lost value are not includible into income. Recently, Senator CLELAND introduced a package that included this provision. I thank him for his unending pursuit to provide military personnel with the best quality of life available. And, I'm happy to include this provision in my legislation.

Under current law, military personnel in a combat zone are afforded an extended period for filing tax returns. However, this does not apply to contingency operations. This proposal would extend the same benefits to military personnel assigned to contingency operations.

It can't be easy trying to figure out our complicated tax system while you are overseas and protecting our nation's freedom. Those men and women that have been sent to uphold freedom in other countries are confronted with similar circumstances, such as in Operation Just Cause in Panama, 1989, or in Operation Restore Hope in Somalia in 1992 and 1993, or in Operation Uphold Democracy in Haiti, 1994. Contingency operations are just as demanding as combat zone deployment, although not always in the same manner. I would like to thank Senator JOHNSON for introducing S. 2785. It is important that we support all our troops when they are overseas.

Some reservists who travel one weekend per month and two weeks in the summer for reserve duty incur significant travel and lodging expenses. Under current law, these are deductible as itemized deductions but must exceed 2 percent of adjusted gross income. For lower income reservists, this deduction does not provide a benefit, because they do not itemize. For higher income reservists, the 2 percent floor limits the amount of the benefit of the deductions.

In my home state of Montana, we have approximately 3500 reservists, 800 of which travel each month across the State for their training. These 800 reservists pay out of their own pocket the expense for travel, and hotel rooms. In Montana we rank 48th in the Nation for per capita personal income. I know it can't be easy for Montanans to incur approximately $200 in expenses each and every month. Yet, they continue selflessly to provide their services to our country at their own expense. For those reservists that travel out of State for their training, this expense is higher on average. This proposal would provide an above the line deduction for overnight travel costs and would be available for all reservists and members of the National Guard.

This issue is currently addressed in S. 540, which Senator DEWINE introduced back in March of 2001. I can't tell you just how many people have contacted our office in support of this bill. I support what this bill does and I am glad that we can include some of its provisions in my military tax package.

Recently, Senator HARKIN introduced S. 2789, which would expand the membership for Veteran's organizations. Currently, qualified veterans' organizations under section 501(c)(19) of the tax code are both tax-exempt and contributions to the organization are tax-deductible. In order to qualify under 501(c)(19), the organization must meet several tests, including 75 percent of the members must be current or former active military, and substantially all of the members must be either current or former active military or widows of former active military. The proposal would permit lineal descendants and ancestors to qualify for the ''substantially all'' test.

It is important that our veterans' organizations continue the good work that they do. But, as the organizations age, they are in danger of losing their tax-exempt status. I support Senator HARKIN's bill, as does the American Legion. I have included it in my tax package.

Finally, I want to ensure that women in the military can continue their dedicated service even once they have entered motherhood knowing that their children are being well taken care of. The military provides extensive childcare benefits to its employees. DOD employees at DOD-owned facilities provide childcare services while other areas contract out their childcare.

When Congress passed the Tax Reform Act of 1986, we included a provision stating that qualified military benefits are excluded from income. It is not absolutely clear whether child care provisions are covered under this provision. The proposal would clarify that any childcare benefit provided to military personnel would be excludable from income. Senator LANDRIEU has introduced S. 2807, a similar measure. I support this measure and am proud to include it in this piece of legislation.

It is my intention to mark-up this legislation soon in hopes that we can move it through the Senate quickly. It is important that we continue to show members of the armed forces our support and solidarity during this time of conflict. The War on Terrorism has brought to light the essential role the armed services play in upholding freedom throughout the world. I would like to see a military tax equity bill signed into law by the President before the end of the year.

Mr. President, I ask consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2816

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Foreign and Armed Services Tax Fairness Act of 2002''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

SEC. 2. RESTORATION OF FULL EXCLUSION FROM GROSS INCOME OF DEATH GRATUITY PAYMENT.

(a) IN GENERAL.—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.''.

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 134(b)(3) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring after September 10, 2001.

SEC. 3. SPECIAL RULE FOR MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE IN DETERMINING EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(9) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.—

''(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period described in subsection (a) with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service.

''(B) MAXIMUM PERIOD OF SUSPENSION.—The 5-year period described in subsection (a) shall not be extended more than 5 years by reason of subparagraph (A).

''(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified official extended duty' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

''(ii) UNIFORMED SERVICES.—The term 'uniformed services' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

''(iii) FOREIGN SERVICE OF THE UNITED STATES.—The term 'member of the Foreign Service' has the meaning given the term 'member of the Service' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980.

''(iv) EXTENDED DUTY.—The term 'extended duty' means any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

''(D) SPECIAL RULES RELATING TO ELECTION.—

''(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

''(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to elections made after the date of the enactment of this Act for suspended periods under section 121(d)(9) of the Internal Revenue Code of 1986 (as added by this section) beginning after such date.

SEC. 4. QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE BENEFIT.

(a) IN GENERAL.—Section 132(a) (relating to the exclusion from gross income of certain fringe benefits) is amended by striking ''or'' at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting '', or'' and by adding at the end the following new paragraph:

''(8) qualified military base realignment and closure fringe.''.

(b) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—For purposes of this section, the term 'qualified military base realignment and closure fringe' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to offset the adverse effects on housing values as a result of a military base realignment or closure.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 5. EXTENSION OF TAX FILING DELAY PROVISIONS TO MILITARY PERSONNEL SERVING IN CONTINGENCY OPERATIONS.

(a) IN GENERAL.—Section 7508(a) (relating to time for performing certain acts postponed by reason of service in combat zone) is amended—

(1) by inserting ''or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law'' after ''section 112'',

(2) by inserting in the first sentence ''or at any time during the period of such contingency operation'' after ''for purposes of such section'',

(3) by inserting ''or operation'' after ''such an area'', and

(4) by inserting ''or operation'' after ''such area''.

(b) CONFORMING AMENDMENTS.—

(1) Section 7508(d) is amended by inserting ''or contingency operation'' after ''area''.

(2) The heading for section 7508 is amended by inserting **''or contingency operation''** after **''combat zone''**.

(3) The item relating to section 7508 in the table of sections for chapter 77 is amended by inserting ''or contingency operation'' after ''combat zone''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

SEC. 6. DEDUCTION OF CERTAIN EXPENSES OF MEMBERS OF THE RESERVE COMPONENT.

(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

''(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business during any period for which such individual is away from home in connection with such service.''.

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

''(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, in amounts not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2001.

SEC. 7. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR VETERANS' ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking ''or widowers'' and inserting '', widowers, or ancestors or lineal descendants''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 8. CLARIFICATION OF THE TREATMENT OF DEPENDENT CARE ASSISTANCE PROGRAMS SPONSORED BY THE DEPARTMENT OF DEFENSE FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.

(a) IN GENERAL.—Section 134(b) (defining qualified military benefit) is amended by adding at the end the following new paragraph:

''(4) CLARIFICATION OF CERTAIN BENEFITS.—For purposes of paragraph (1), such term includes any dependent care assistance program sponsored by the Department of Defense for members of the Armed Forces of the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3121(a)(18) is amended by striking ''or 129'' and inserting '', 129, or 134(b)(4)''.

(2) Section 3306(b)(13) is amended by striking ''or 129'' and inserting '', 129, or 134(b)(4)''.

(3) Section 3401(a)(18) is amended by striking ''or 129'' and inserting '', 129, or 134(b)(4)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

(d) NO INFERENCE.—No inference may be drawn from the amendments made by this section with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2002.

By Mr. KENNEDY (for himself, Mr. HOLLINGS, Mr. BOND, and Ms. MIKULSKI):

S. 2817. A bill to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased to introduce today the National Science Foundation Doubling Act. This important legislation has been crafted with the extensive cooperation of Senator HOLLINGS, Chairman of the Senate Committee on Commerce, Science, and Transportation, Senator MIKULSKI and Senator BOND, the respective Chair and Ranking Member of the Senate Committee on Appropriations Subcommittee on Veterans Affairs, Housing and Urban Development, and Independent Agencies. I commend each of them for their leadership in federal support for the sciences .

The National Science Foundation, NSF, has two key missions, and it carries both of them out well. It supports basic research and development in math, science, engineering, and technology, and it promotes math and science learning at every level, from K–12 through post-graduate education.

NSF has funded basic research leading to the creation of speech recognition software, MRI machines, and even World Wide Web browsers such as Netscape and Microsoft's Internet Explorer. In education, NSF initiatives of the late 1980s were the forerunners of the standards-based school reform movement embraced throughout the Nation today.

We can and should build on NSF's distinguished record in improving the lives of millions of Americans. The 20th Century was the era of the industrial age, and the 21st Century will be the era of information technology and the life sciences. With the leadership of Senator HARKIN and others, we have doubled the budget of the National Institutes of Health over the last five years. We should do the same for NSF. We should double our support for research and development in theoretical mathematics and the physical sciences, because they support advances in the health sciences and because they are also valuable in their own right.

As former Senator Glenn has pointed out so frequently, we need to do much more to interest young minds in math and science and recruit tomorrow's scientists and engineers. Over the next 10 years, the number of jobs requiring technical skills will grow by 50 percent. Unfortunately, high school student performance on math and science exams is alarmingly low. The number of American students studying the sciences at the post-secondary level is flat. Too many women and minorities continue to shy away from the sciences.

The bill we are introducing today authorizes a doubling of the NSF budget over the next five years. It makes sense to match the growth of NIH. As we enhance research and development in the life sciences, we should also be strengthening research and development in the physical sciences.

This legislation also builds on NSF's Systemic Initiatives by supporting a Secondary School Systemic Initiative to develop models to improve high school student math and science performance and preparation for college-level or technical work.

The bill supports model Math and Science Partnerships between institutions of higher education and local school districts to improve the knowledge and teaching techniques of current math and science teachers.

The bill supports institutions of higher education in increasing the

number of students, particularly women and minorities, who study toward and obtain degrees in science, math, engineering, and technology.

Finally, the bill reforms NSF's program on major research and facilities equipment, to help prioritize projects and guard against cost overruns and non-merit reviewed proposals.

Scientific discovery and development continues to set America apart from other Nations and is one of our enduring legacies. The National Science Foundation Doubling Act is a solid piece of legislation building on our Nation's history in the sciences and promoting a better future. It deserves to be considered quickly, and I believe favorably, by the United States Senate.

Mr. HOLLINGS. Mr. President, I join my colleagues, Senator KENNEDY, and Senator MIKULSKI and Senator BOND, in introducing this bill to authorize the National Science Foundation through FY 2007. My friends and I represent three Committees with a strong interest in NSF, and we chose a straightforward title for the name of this bill, the NSF Doubling Act, because our intentions our simple and straightforward. Congress's intent is to double NSF's budget by fiscal year 2007. NSF is the Nation's premier federal science agency that invests in basic research across all disciplines that is on the frontiers of science. In 1945, Vannevar Bush's report for President Roosevelt led to the establishment of the National Science Foundation. Since then, this nation has been on a path of solid investment in the scientific research that underlies our future economic health and well being. It's no mistake that Alan Greenspan and other important economists have noted that more than one-half of our Nation's economic growth since World War I has stemmed from technology driven by science.

By next year, we in Congress will have succeeded in our goal to double the budget of the National Institutes of Health. I applaud that effort. But as scientific disciplines have become fundamentally interdependent, advances in the health sciences necessarily depend on advances in math, computer science, and engineering. NSF is the only Federal agency specifically charged with ensuring a broad and deep base of fundamental knowledge across disciplines. This mission is critical to technological innovation, our economy, and our general health and welfare as a Nation.

I have said that our intentions are simple and straightforward. So let me set out three simple reasons why this doubling is vital to our future:

The first concerns our security. Not only does NSF fund areas, such as cyber security, that are critical to protecting our nation, but NSF is the agency that takes the lead in ensuring that this country has sufficient human capital to ensure our continued world leadership in science and technology. The Hart-Rudman Commission on National Security warned that our failure to invest in science and to reform math and science education was the second biggest threat to our national security, only the threat of a weapon of mass destruction in an American city was a greater danger. NSF invests in math and science education from kindergarten all the way through to the postdoctoral level and beyond. This bill allows the Foundation to increase that investment, while reaffirming our commitment to women, minorities, and people with disabilities. These underrepresented groups, together, make up more than half of our Nation's work force and are only increasing. Letting these groups fall by the wayside would not only threaten our economic competitiveness, but also our national security.

Second pertains to our economy. I have already talked about science and technology driving our economic growth. Let me give just one example of how NSF's investments can spur our economy. NSF is the leading agency in the National Nanotechnology Initiative. Nanotechnology, which is the science of manipulating matter at the atomic and molecular level, will cut across every scientific discipline, including materials and manufacturing, healthcare and medicine, energy and the environment, agriculture, biotechnology, information technology, and national security. Worldwide, the market for nanotechnology is expected to be $1 trillion annually within 10 to 15 years. NSF's cross-disciplinary approach, which includes groundbreaking research into the way society and this new technology will interact, will help this nation take advantage of Nanotechnology sooner, better, and with greater confidence.

The third involves basic research. NSF is responsible for the overall health and well-being of the research enterprise in this country. One way NSF does this is through continued support for the EPSCoR program. EPSCoR supports the development of the science and technology resources of individual States like South Carolina, through partnerships that involve the State's universities, industry, government, and the Federal research and development enterprise. For example, NSF supports an Engineering Research Center focused on advanced fibers and films at Clemson University that, through partnerships and continued investment over the next 10 years, will make Clemson the national leader in advanced fibers and films technologies.

I think these arguments are solid, simple, and straightforward. We can talk about NSF's past outstanding contributions to science. We can talk about the future and the importance of science and technology to our economy. But, where the rubber meets the road, we have to stop talking and invest, with real money, in the science and engineering enterprise that will guaranty the health, economic viability, and security of our future. I, for one, appreciate the hard work that NSF has done over the past 52 years promoting the progress of science, and I urge my Senate colleagues to support me in providing this agency the resources needed to conquer tomorrow.

Mr. BOND. Mr. President, I rise today to express my strong support for the National Science Foundation Doubling Act of 2002. As an original cosponsor, I am pleased to join my colleagues, Senators KENNEDY, HOLLINGS, and MIKULSKI in introducing this important legislation that will strengthen the long-term economic competitiveness and health of our Nation. As an appropriator and as an authorizer of NSF, I have a special interest in NSF and the basic science research it supports. I believe this bill underscores the critical role NSF plays in the economic and intellectual growth and well-being of this Nation.

As many of my colleagues know, Senator MIKULSKI and I have led a bipartisan, bi-cameral effort to double NSF's budget and this reauthorization bill further supports our doubling effort over a five-year period. NSF is funding innovative and cutting-edge research in nanotechnology, plant biotechnology, and information technology. Doubling NSF's funding is not only important for these research programs but also in the area of education. NSF plays a valuable role in supporting math and science education and developing the Nation's supply of scientists and engineers in this country.

Unfortunately, despite our efforts on the appropriations committee, the Federal Government has not provided adequate support to NSF and the physical sciences in general. I believe the lack of adequate support for the physical sciences puts our Nation's capabilities for scientific innnovation at risk and, equally important, at risk of falling behind other industrial nations.

Further, doctors throughout Missouri and the country have told me that despite the tremendous support we have provided for the life sciences, their research in the biomedical field will stagnate without adequate government support of the physical sciences that NSF supports. Many medical technologies such as magnetic resonance imaging, ultrasound, digital mammography and genomic mapping could not have occurred, and cannot improve to the next level of proficiency, without NSF-supported work in biology, physics, chemistry, mathematics, engineering, and computer sciences. Simply put: supporting NSF supports NIH.

The high-tech industry also in concerned about NSF funding because they are struggling to find qualified homegrown engineers and scientists and becoming more reliant on foreign nationals to fill their positions. Many notable researchers in the high-tech industry have told me that the significant shortages of trained American engineers and scientists have limited the growth potential of the electronics and software industries and allowed foreign

competitors to catch up to U.S. industry capabilities.

To address the development of tech talent in this country, NSF provides a wide array of support to preK–12, undergraduate, and graduate level schools. One new important tool is the Math and Science partnership program—a new joint program between NSF and the Department of Education. This program encourages partnerships among local school systems, higher education entities, and other organizations to improve student outcomes in math and science for all students.

Another important tool that I support is the tech talent program. This program was initiated at the urging of me and my Senate colleagues—Senators LIEBERMAN, FRIST, MIKULSKI, and DOMENICI. Last year, we introduced S. 1549, the Tech Talent Act to improve undergraduate education in math, science, engineering, and technology. We provided $5 million in the Fiscal Year 2002 VA–HUD and Independent Agencies Appropriations Act to jumpstart this important initiative and another $20 million was added in the fiscal year 2003 bill that passed the Appropriations Committee last week. NSF has already received 177 applications requesting an aggregate sum of almost $60 million.

Lastly, I am very supportive of efforts to improve the accountability of NSF's programs and activities—especially those projects funded through the major research equipment and facilities construction account. The bill includes a number of provisions to ensure that funding decisions on large research facilities are done in a rationale and understandable manner.

Before the bill reaches the floor, I hope to work with my colleagues on addressing other issues related to the National Science Board. As the budget for NSF grows, it is important that the Board has the tools it needs to fulfill its statutory responsibilities. Specifically, we need to provide the chairman of the Board the authority to hire its own staff to support the Board's oversight and policy-making responsibilities and to ensure that it can provide the Congress and the President with independent science policy advice. These tools will also ensure that the Board is not a ''rubber stamp'' for the Director of NSF.

I urge my colleagues to support this bill. I understand that some of my colleagues have concerns about the bill, but I believe that overall, this is a good bill. I look forward to working with my colleagues in the Senate and the House in moving a strong bipartisan NSF reauthorization bill and in advancing our effort to double NSF's budget.

I thank the Chair.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, July 30, 2002, at 10 a.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on a Legislative Proposal of the Department of Interior/Tribal Trust Fund Reform Task Force; to be followed immediately by a second hearing on S. 2212, A bill to establish a direct line of authority for the Office of Trust Reform Implementations and Oversight to oversee the management and reform of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and to advance tribal management of such funds and assets, pursuant to the Indian Self-Determination Act and for other purposes.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, August 1, 2002, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the Interior Secretary's Report on the Hoopa Yurok Settlement Act.

The Committee will meet again on Thursday, August 1, 2002, at 2 p.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on Problems Facing Native Youth.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Friday, August 2, 2002, at 2 p.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on S. 958, A bill to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 884, 885, 886, 890, 891, 892, 893, 904, 905, 910, 912, 913, 914, 915, 916, 917, 918, 919, and 920; that the nominations be confirmed, the motion to reconsider be laid upon the table, any statements thereon be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Jeffrey D. Wallin, of California, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Wilfred M. McClay, of Tennessee, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Thomas Mallon, of Connecticut, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

DEPARTMENT OF JUSTICE

Lawrence A. Greenfield, of Maryland, to be Director of the Bureau of Justice Statistics.

Anthony Dichio, of Massachusetts, to be United States Marshal for the District of Massachusetts for the term of four years.

Michael Lee Kline, of Washington, to be United States Marshal for the Eastern District of Washington for the term of four years.

James Thomas Roberts, Jr., of Georgia, to be United States Marshal for the Southern District of Georgia for the term of four years.

FARM CREDIT ADMINISTRATION

Fred L. Dailey, of Ohio, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

Grace Trujillo Daniel, of California, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

J. Russell George, of Virginia, to be Inspector General, Corporation for National and Community Service.

DEPARTMENT OF JUSTICE

Marcos D. Jimenez, of Florida, to be United States Attorney for the Southern District of Florida for the term of four years.

Miriam F. Miquelon, of Illinois, to the United States Attorney for the Southern District of Illinois.

James Robert Dougan, of Michigan, to be United States Marshal for the Western District of Michigan for the term of four years.

George Breffni Walsh, of Virginia, to be United States Marshal for the District of Columbia for the term of four years.

FEDERAL MEDIATION AND CONCILIATION SERVICE

Peter J. Hurtgen, of Maryland, to be Federal Mediation and Conciliation Director.

NATIONAL COUNCIL ON DISABILITY

Robert Davila, of New York, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Earl A. Powell III, of Virginia, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

Naomi Shihab Nye, of Texas, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Michael Pack, of Maryland, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

PERSIAN GULF WAR POW/MIA ACCOUNTABILITY ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 452, S. 1339.