Mexico (Mr. DOMENICI), the Senator from Wisconsin (Mr. KOHL), the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. Res. 46, a resolution designating March 31, 2003, as ''National Civilian Conservation Corps Day''.

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. Res. 48, a resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 67

At the request of Mr. SCHUMER, the names of the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. FEINSTEIN), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. Res. 67, a resolution expressing the sense of the Senate that Alan Greenspan, the Chairman of the Federal Reserve Board, should be recognized for his outstanding leadership of the Federal Reserve, his exemplary conduct as Federal Reserve chairman, and his commitment as a public servant.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself and Mr. MILLER) (by request):

S. 2. A bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth; to the Committee on Finance.

Mr. NICKLES. Mr. President, today I am sending to the desk a bill by myself and Senator MILLER to amend the IRS Code. It is a bill to provide jobs and economic growth for our country.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. NICKLES. Mr. President, this bill Senator MILLER and I are introducing is the President's economic and growth package. This is a package the President has put together that would help American families. This is a package that is profamilial and progrowth. It is a bill that will create jobs. It is a bill that will create an incentive to invest. It is a bill to eliminate unfair punitive taxes on corporate earnings that are distributed to the owners of the corporation. It is a bill that will help stimulate and grow our economy.

I compliment the President for his work in proposing this. I am happy to introduce it. Let me talk about a couple of the provisions of the bill.

This bill will expand the 10-percent bracket. This is to help people of all incomes. But the lowest income people will be the true beneficiaries of this package. It will accelerate reductions in the individual income tax rates that were passed in 2001. You might remember the 2001 tax bill that we passed which had individual rate reductions phased in over the years. There was a 1 percent reduction in most of the rates in 2004, and another percent reduction in 2006. These are accelerated to 2003.

It means that the maximum personal income tax bracket would be 35 percent instead of the present 38.6 percent. It means that individuals would not have to pay taxes at rates greater than corporations. The bulk of the benefit of this will come to individuals who are self-employed, individuals who are sole proprietors, and individuals who own or operate their own business. They will receive the bulk of the benefit of this rate reduction. Some people may want to demagog some of the estimates that benefit primarily the wealthy. I disagree.

We also might keep in perspective that when President Clinton was elected, the maximum rate was 31 percent. He increased it to 39.4 percent. When we totally implement President Bush's tax reduction, the maximum rate will be 35 percent, which is still significantly higher than the 31 percent just 10 years ago.

The President's proposal that we are introducing today would also accelerate the reduction in the marriage penalty. This is a very big item to help married couples reduce their taxes. The net impact of this is it would double the 15-percent bracket that individuals have for couples.

To give you an example, individuals presently pay 15 percent, I believe, on income up to about $28,000. But couples have to start paying a 28-percent or 27-percent bracket when they have income above $47,000. We say that instead of paying 27 percent for taxable income above $47,000, no, that should be double the individual amount. So couples don't have to pay above the 15-percent bracket unless their income exceeds $56,000.

It is not very complicated. Couples should have for the 15-percent bracket twice what individuals have. Individuals pay 15 percent up to $28,000. So we doubled that amount for couples. The net impact of that is you pay 15 percent instead of 27 percent for a total of about $9,000. It saves couples a total of $1,022. If the couples have two children, they would get additional child credit. We increase the child credit, which is presently $600, to $1,000. That is an increase of $400 per child. If you have two children, that is $800 of tax credit—not deductions, tax credit. It reduces your tax bill by $800.

If you have a taxable income of $56,000, you also get the $1,122 of marriage penalty relief. You get $100 savings from the 10-percent bracket expansion. Total tax relief for a family that has taxable income of $56,800 totals over $2,000. Actually, it is $2,022. That is about a 22-percent tax cut for middle-income families. That will help thousands—millions—of families all across the country.

Also, this bill would eliminate the double taxation on corporate earnings. Presently, in the United States, unfortunately, unbelievably, we tax corporate earnings that are distributed to the owners more than almost any other country in the world. Only one country, Japan, taxes corporate earnings distributed to the owners higher than the United States.

Our combined tax rate of 35 percent corporate and the individual tax percentage, depending on the individual's income tax bracket—it could be 15 percent, it could be 30 percent, it could be 38.6 percent—if you add the 38.6 percent plus the 35 percent, it is over 70 percent. If it is 30 percent for the individual rate, and the corporation rate is 35, it is 65 percent. So for a corporation that makes $1,000 and wants to distribute that to the owners, the Federal Government gets 65 percent; and the beneficiary, the owner of the company, gets 35 percent. That is absurd. That is embarrassing. That is indefensible. And countless people—economists, the President, candidates and others—said we should eliminate this unfair double taxation of dividends.

The President has come up with a proposal to do that. I am happy to introduce it for him. I urge my colleagues—before they demagog it, before they castigate it—to look at the facts.

Does it really make sense for us to be taxing corporate distributions to all owners—incidently, the majority of owners are senior citizens—does it really make sense for us to be taxing these proceeds higher than any other country in the world but one? It makes no sense.

Does it really make sense to have the Tax Code skewed to where it really is beneficial to go into debt because you can expense your interest expense? But, oh, yes, if you go the equity route, you have to pay taxes on anything that is generated in the company. And the individual who receives the benefits pays taxes, so the Government gets two-thirds of the money, two-thirds of the distribution. That does not make sense. It discourages investment. It encourages debt. Not a good corporate policy.

Present law encourages a lot of corporate shenanigans and corporate games trying to get around taxes when they realize that such a great percentage of the distribution to owners is going to be paid in taxes—''Let's figure out other ways.'' Maybe they do it through bonuses, but they might do it through all kinds of schemes. And we have seen some of those.

This would be great corporate reform, very positive, well-needed reform, and long overdue—long overdue.

In this package that the President has proposed, it also has something I am very much in favor of: expensing for small business. I used to have a small business. But it triples the amount a small businessperson can expense from $25,000 to $75,000. In other words, if they write a check for that amount, they can expense it in the year that the check is written. That

will greatly encourage investment because they get to recoup the investment that is made in the same year the check is written—a very positive, progrowth proposal. Most jobs are created in small businesses, and this is a good, positive small business provision that will create jobs.

So we reduce taxes on business owners, sole proprietors. They would not have to pay taxes more than corporations. We would reduce taxes on married couples. We would discontinue the present policy of penalizing them for being married and filing joint returns. We would allow them to keep more of their own money. We would allow them to keep more of their own money if they have kids.

Certainly, if you have kids, it costs a lot of money to raise them. We say you should have a $1,000 tax credit per child. So for every child you have, you get to save $1,000 in taxes. I have four kids, so that is $4,000 per year. A couple with four kids would get to save $4,000 per year. That is significant. That is profamily. That is positive. That allows people who really need the money raising families to keep it.

One, we eliminate the marriage penalty, and, two, we allow them to keep more for their own kids. Very significant benefits. When you add all the benefits together, it really makes the income tax even more progressive.

The upper income groups would still pay a greater percentage of income tax, even after we pass this proposal. I can just envision people saying: Well, this is class warfare. I hope they do not play those arguments because this is very family friendly and also investment friendly and will create jobs.

We need to do some things. Revenues have been declining for the last 2 years. We need to figure out ways to get revenues to grow. That means a growing economy. It means the stock market needs to move up instead of down.

This proposal will do that. This proposal is investment friendly. And the main beneficiaries will not be just the owners, it will be the people who get a job because the investment was not going to be made without it.

So let's do some things that will create an incentive for investment, for expensing, for people to go to work, and for people who are working to be able to keep more of their own money so they can take care of their families.

That is what the President's proposal is all about. So I am delighted to introduce this today with my colleague and friend, Senator ZELL MILLER of Georgia.

I ask unanimous consent to have printed in the RECORD two charts to further explain the breakout of this proposal.

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

PRESIDENT BUSH'S 2004 BUDGET TAX PROPOSALS

(Dollars in billions)

	Fiscal years												
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004–2008	2004–2013
Growth Package—Revenue Impact:													
Accelerate 10% bracket expansion	−0.978	−7.782	−6.112	−6.117	−6.495	−4.275	−3.227	−3.283	−3.326	−3.294	−3.283	−30.781	−47.194
Accelerate reduction in marginal rates	−5.808	−35.693	−17.470	−4.939	—	—	—	—	—	—	—	−58.102	−58.102
Accelerate marriage penalty relief	−2.776	−27.134	−14.680	−7.642	−3.595	−1.735	−0.424	0.000	0.000	0.000	0.000	−54.786	−55,210
Accelerate increase in child credit	−13.527	−5.060	−10.735	−8.534	−8.532	−8.502	−7.746	−4.197	0.000	0.000	0.000	−41.363	−53.306
Eliminate double taxation of dividends	−3.801	−24.874	−22.062	−28.218	−31.126	−33.952	−37.378	−40.842	−44.010	−47.246	−50.616	−140.232	−360.324
Increase the small business expensing limit	−1.023	−1.652	−1.776	−1.912	−1.601	−1.431	−1.256	−1.170	−1.235	−1.259	−1.291	−8.372	−14.583
AMT hold-harmless	−3.141	−8.534	−10.353	−6.931	—	—	—	—	—	—	—	−25.818	−25.818
Growth Package Revenue Impact	−31.054	−110.729	−83.188	−64.293	−51.349	−49.895	−50.031	−49.492	−48.571	−51.799	−55.190	−359.454	−614.537

THE JOBS AND GROWTH TAX ACT OF 2003—TAX RELIEF FOR WORKING FAMILIES

Example: *Married couple with two children.*

Taxable Income	$56,800
Total Tax Liability Under Current Law	9,042
With Enactment of The Jobs and Growth Tax Act of 2003:	
Marriage Penalty Relief	1,122
Relief from 10% Bracket Expansion	100
Relief From Child Credit Increase	800
Total Tax Relief in 2003	2,022
Tax savings of 22 percent.	

Mr. NICKLES. I urge my colleagues to seriously consider this proposal. And I welcome their support of it.

I yield the floor.

By Mr. REID (for himself, Mr. SMITH Ms. SNOWE, Ms. CANTWELL, Mr. HARKIN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. WYDEN, and Mr. COLEMAN):

S. 464. A bill to amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes; to the Committee on Finance.

Mr. REID. Mr. President, faced with uncertainties in electricity energy markets, turmoil in the Mideast, the need to cut back on the fossil fuel emissions linked to global warming, air pollution that contributes to high rates of asthma and fills even our national parks with smog, the United States must diversify its energy supply by promoting the growth of renewable energy.

Since 1999, Las Vegas electricity rates have increased by 60 percent. In the same period, natural gas prices across Nevada have doubled. We need to change the energy equation. We need to diversify the Nation's energy supply to reduce volatility and ensure a stable supply of electricity. We must harness the brilliance of the sun, the strength of the wind, and the heat of the Earth to provide clean, renewable energy for our nation.

I rise today to introduce a bill with Senators SMITH, SNOWE, CANTWELL, HARKIN, LIBERMAN, FEINSTEIN, JEFFORDS, and WYDEN expands the existing Section 45 production tax credit for renewable energy resources to cover all renewable energy resources. Our legislation accomplishes this by adding geothermal, incremental geothermal, solar, open-loop biomass, incremental hydropower, landfill gas, and animal waste to the list of renewable energy resources that would quality for a production tax credit.

Our legislation also makes the production tax credit permanent to signal America's long-term commitment to renewable energy resources. The existing production tax credit that covers wind energy, poultry waste, and closed-look biomass will expire at the end of 2003! Since it inception in 1992, the production tax credit has expired and been renewed twice; in 1999 and 2001. Development of wind energy has closely mirrored these renewal cycles. Clearly, the private investment necessary to develop renewable energy resources requires the business certainly afforded a long-term extension of the production tax credit.

Our bill allows for co-production credits to encourage blending of renewable energy with traditional fuels and provides a credit for renewable facilities on native American and native Alaskan lands. In northern Nevada, the Pyramid Lake Paiute Tribe is working with Advanced Thermal Systems to develop geothermal resources on Indian lands that will spur economic development by creating business opportunities and jobs for tribal members.

This legislation also provides production incentives to not-for-profit public power utilities and rural electric cooperatives, which serve 25 percent of the Nation's power customers, by allowing them to transfer of their credits to taxable entities.

The good news is that the production tax credit for renewable energy resources really works to promote the growth of renewable energy. In 1990, the cost of wind energy was 22.5 cents per kilowatt hour and, today, with new technology and the help of a modest

production tax credit, wind is a competitive energy source at 3 to 4 cents per kilowatt hour. In the last 5 years, wind energy has experience a 30 percent growth rate. This year, Nevada utilities have signed contracts for more then 130 MW of wind energy.

The production tax credit provides 1.8 cents for every kilowatt-hour of electricity produced. Similar to wind energy, this credit will allow geothermal energy, incremental hydropower, and landfill gas to immediately compete with fossil fuels, while biomass will follow closely behind. The Department of Energy estimates that we would increase our geothermal energy production almost ten fold, supplying ten percent of the energy needs of the West. As fantastic as it sounds, enough sunlight falls on a 100 mile by 100 miles of southern Nevada that—if covered with solar panels—could power the entire Nation.

Let's never lose sight of the fact that renewable energy resources are domestic sources of energy, and using them instead of foreign sources contributes to our energy security. Renewables provide fuel diversify and price stability. After all, the fuel—the wind, the sun, heat from the core of the earth—costs nothing. And they provide jobs, especially in rural areas that have been largely left out of American recent economic growth.

The production tax credit for renewable energy resources is a powerful, fast acting stimulus to the economy. According to the Western Government Association, the Department of Energy's Initiative to deploy 1,000 MWs of concentrated solar power in the Southwestern area of the United States by the year 2006 would create approximately 10,0000 jobs and estimated expenditures of more than 3.7 billion over 14 years. Nevada has already developed 200 Megawatts of geothermal power, with a longer-term potential of more than 2,500 Megawatts. This development will provide billions of private investment and create thousands of jobs. Our production tax credit means immediate economic development and jobs!

In the U.S. today, we get less than 3 percent of our electricity from renewable energy sources like wind, solar, geothermal, and biomass. But the potential for much greater supply is here. For example, Nevada is considered the Saudi Arabia of geothermal. My state could use geothermal energy to meet one-third of its electricity needs, but today this source of energy only supplies 2.3 percent. I'm proud to say that Nevada has adopted one of the most aggressive Renewable Portfolio Standard in the Nation, requiring that 5 percent of the State's electricity needs be met by renewable energy resources in 2003, which then grows to 15 percent by 2013.

After pouring billions of dollars into oil and gas, we need to invest in a clean energy future. Fossil fuel plants pump over 11 million tons of pollutants into our air each year. Federal energy policy must promote reductions in greenhouse gas emissions. By including landfill gas in this legislation, we systematically reduce the largest single human source of methane emissions in the United States, effectively eliminating the greenhouse gas equivalent of 223 million tons of carbon dioxide.

An article in The Journal of the American Medical Association revealed an alarming link between soot particles from power plants and motor vehicles and lung cancer and heart disease. The adverse health effects of power plant and vehicle emissions cost Americans billions of dollars in medical care, and our cost in human suffering is immeasurable. Simply put, the human cost of dirty air is staggering. If we factor in environmental and health effects, the real cost of energy becomes apparent, and renewable energy become the fuel of choice.

America's abundant and untapped renewable resources can fuel our journey into a more prosperous and safer tomorrow without compromising air and water quality.

Renewable energy is the cornerstone of a successful, forward looking, and secure energy policy for the 21st Century.

By Mrs. HUTCHISON (for herself, Ms. CANTWELL, Mr. FRIST, Mr. CORNYN, Mr. COCHRAN, Mr. THOMAS, and Mr. ALEXANDER):

S. 467. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for State and local sales taxes in lieu of State and local income taxes and to allow the State and local income tax deduction against the alternative minimum tax; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to correct an injustice in the tax code that harms citizens in every state of this great Nation.

State and local governments have various alternatives for raising revenue. Some levy income taxes, some use sales taxes, and others use a combination of the two. The citizens who pay State and local income taxes are able to offset some of what they pay by receiving a deduction on their Federal taxes. Before 1986, taxpayers also had the ability to deduct their sales taxes.

The philosophy behind these deductions is simple: people should not have to pay taxes on their taxes. The money that people must give to one level of government should not also be taxed by another level of government.

Unfortunately, these common sense deductions have slowly been eroded over the years. First, the deduction for State and local sales tax was eliminated in the 1986 tax reform legislation. Second, the alternative minimum tax has reduced the benefit of the income tax deduction for many.

The elimination of the sales tax deduction discriminates against those living in states, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; revenues are simply collected differently.

It is unfair to give citizens from some States a deduction for the revenue they provide their State and local governments, while not doing the same for citizens from other States. Federal tax law should not treat people differently on the basis of State residence and differing tax collection methods.

This discrepancy has a significant impact on Texas. According to the Texas Comptroller, if taxpayers could deduct their sales taxes, more than $700 million would stay in the hands of Texans. This could lead to the creation of more than 16,000 new jobs and add almost $900 million in economic activity. The impact of this growth would be particularly beneficial during this period when many States are facing record-breaking deficits. At the same time, such a tax change would cost the Federal Government less than one percent of what the current State and local income tax deduction costs.

For those in states with income taxes, their tax deduction benefit has been diminished by the alternative minimum tax, AMT. People can deduct their state and local income taxes when calculating their regular taxes, but not when determining the AMT. The difference often is the reason people must pay the higher alternative tax.

In fact, state and local taxes account for 54 percent of the difference between the AMT and the regular tax calculation. This particularly hurts the 60 percent of AMT payers who are from states with higher income tax rates. Eliminating this discrepancy would go a long way toward reducing the number of people affected by the AMT.

The legislation I am offering today will fix these problems. First, it will provide all taxpayers with the option of deducting State and local sales taxes, instead of income taxes, when calculating their Federal tax. This will end the discrimination suffered by my fellow Texans and citizens of other states who do not have the option of an income tax deduction. It will also allow people from states with both a sales and an income tax to choose the most advantageous deduction.

My bill will also provide for a State and local income and sales tax deduction in the AMT. This is an important step in reducing the ballooning growth of the AMT, which will impact almost a third of all taxpayers by 2010.

The legislation I am introducing today is about reestablishing equity to the tax code and defending the important principle of eliminating taxes on taxes. I hope my fellow Senators will support this effort.

Mr. President, I ask 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. 467

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Sales and Income Tax Deduction Fairness Act of 2003''.

SEC. 2. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

''(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes,

''(II) as if State and local general sales taxes were referred to in a paragraph thereof, and

''(III) without regard to the last sentence.

''(B) DEFINITION OF GENERAL SALES TAX.—The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

''(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

''(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

''(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

''(D) ITEMS TAXED AT DIFFERENT RATES.—Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

''(E) COMPENSATING USE TAXES.—A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, with respect to any item, a tax which—

''(i) is imposed on the use, storage, or consumption of such item, and

''(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

''(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

''(G) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

''(H) AMOUNT OF DEDUCTION TO BE DETERMINED UNDER TABLES.—

''(i) IN GENERAL.—The amount of the deduction allowed under this paragraph shall be determined under tables prescribed by the Secretary.

''(ii) REQUIREMENTS FOR TABLES.—The tables prescribed under clause (i) shall reflect the provisions of this paragraph and shall be based on the average consumption by taxpayers on a State-by-State basis, as determined by the Secretary, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 3. ALLOWANCE OF STATE AND LOCAL INCOME TAXES AGAINST ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 56(b)(1)(A)(ii) of the Internal Revenue Code of 1986 (relating to limitation on deductions) is amended by inserting ''(other than State and local income taxes or general sales taxes)'' before the period.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mr. KOHL (for himself, Mr. DEWINE, Mrs. FEINSTEIN, Mr. SCHUMER, Mr. REED, Ms. MIKULSKI, Mr. CORZINE, and Mr. LEVIN).

S. 469. A bill to amend chapter 44 of title 18, United States Code, to require ballistics testing of all firearms manufactured and all firearms in custody of Federal agencies; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today with my colleagues Senator DEWINE, Senator FEINSTEIN, Senator SCHUMER, Senator REED, Senator MIKULSKI, Senator CORZINE, and Senator LEVIN to reintroduce the ''Technological Resource to Assist Criminal Enforcement'' ''TRACE'' Act, a bill to require ballistics testing of all firearms manufactured or imported in the United States.

The science of ballistics testing has given police the ability to solve multiple crimes simply by comparing bullets and shell casings found at the scene of a crime to a gun seized in a seemingly unrelated incident. This comparison is possible because every gun has a unique ''fingerprint'' it leaves on spent shell casings and bullets after it is fired. Just as human fingerprints can be grouped into general classifications such as loops and whorls, but still possess individual characteristics and then analyzed for its unique characteristics, firearms evidence can be similarly grouped and then analyzed by trained technicians for unique identifying characteristics.

Let me explain more specifically how this technology works. Today, ballistics technology equipment allows firearms technicians to acquire digital images of the images of the markings made by a firearm on bullets and cartridge casings; the images then undergo an automated initial comparison. If a high confidence match emerges, experts compare the original evidence to confirm a match. Once a match is found, law enforcement can begin tracing that weapon from its original sale to the person who used it to commit the crime.

Microscopic comparison of bullets and shell casings has been in practice for many years, even before formal databases were established. However, in the past 15 years, through the use of computer databases, ballistics technology described above has developed into a systematic tool for law enforcement to solve gun crimes. Since the early 1990's, more than 250 crime labs and law enforcement agencies in more than 40 States have been operating independent ballistics systems maintained by either the Bureau of Alcohol, Tobacco, Firearms, and Explosives ''ATFE'', or the Federal Bureau of Investigation. Together, ATFE's Integrated Ballistics Identification System, ''IBIS'', and the FBI's DRUGFIRE system have been responsible for linking 5,700 guns to two or more crimes where corroborating evidence was otherwise lacking. These links have helped law enforcement and prosecutors bring thousands of dangerous criminals to justice.

Never before have the tremendous law enforcement benefits of ballistics testing been so apparent. I would like to take the opportunity to describe a few instances where ballistics technology helped solve otherwise unsolvable crimes.

Last fall, law enforcement officials used ballistics testing to match the bullets and shell casings found at the scenes of the sniper shootings in the Nation's Capital region, and later to other deadly shootings across the country. The bullets and casings were also linked to the gun that the accused assailants had in their possession when they were arrested. This ballistics information has provided vital evidence to prosecutors and will help keep the snipers behind bars.

In another example, the only evidence at the scene of a brutal homicide in Milwaukee was 9 millimeter cartridge casings—there were no other clues. But 4 months later, when a teenage male was arrested on an unrelated charge, he was found to be in possession of the firearm that had discharged those casings. Ballistics linked the two cases. Prosecutors successfully prosecuted three adult suspects for the homicide and convicted the teen in juvenile court.

On September 9, 2000, several suspects were arrested in Boston for the illegal possession of three handguns. Each of the guns was test fired, and the ballistics information was compared to evidence found at other crime scenes. The police quickly found that the three guns were used in the commission of 15 felonies in Massachusetts and Rhode Island. This routine arrest for illegal possession of firearms provided police with new leads in the investigation of 15 unsolved crimes. Without the ballistics testing, these crimes would not have been linked and might have never been solved.

As you can see, ballistics technology helps law enforcement exponentially in their efforts to solve gun crimes. But while success stories are increasingly frequent, the full potential of ballistics

testing is still untapped. One way that the Bureau of Alcohol, Tobacco, Firearms and Explosives is making ballistics testing more accessible to state and local law enforcement is through the installation of a new network of ballistics imaging machines. The final introduction of the machines across the country is almost complete and, once it is, the computers will be able to access each other and search for a greater number of images. The National Integrated Ballistics Information Network, better know as ''NIBIN,'' will be a regional network of databases that will permit law enforcement in one locality access to information stored in other gun crime databases around the entire country. According to the ATFE, ''the NIBIN program is a key element to ATFE's efforts [to remove violent offenders from America's streets].''

But ballistics testing is only as useful as the number of images in the database. Today, almost all jurisdictions are limited to images of bullets and cartridge casings that come from guns used in crimes. The TRACE Act would dramatically expand the scope of that database by mandating that all guns manufactured or imported be test fired before being placed into the stream of commerce. The images collected from the test firing would then be collected and accessible to law enforcement—and law enforcement only—for the purpose of investigating and prosecuting gun crimes.

Recently, studies done about ballistics testing and ballistics databases have been in the news. Concern has been expressed by some about the size and practicality of a large database. However, it is important to point out that this bill would merely expand upon the existing network of 16 multistate regional databases, rather than create a single large national database. In addition, accusations that systems would be log-jammed with too many entries has been refuted by ATFE ballistics experts. Since its inception, the speed and efficiency of ballistics databases has substantially increased. For example, from 1994 to 1999 the IBIS correlation speed for cartridge casings dropped from 35 seconds to 1.7 seconds, and correlation speed for bullets dropped from 4 seconds to 0.3 seconds. The conversion to NIBIN is expected to yield an even faster return of correlation results, regardless of an increase in entries.

Of course no investigative tool is perfect or effective in every single situation, not even fingerprints. However, ATFE maintains that the availability of an open-case file of many thousands of exhibits, searchable within minutes, provides invaluable information to law enforcement authorities. TRACE would enhance the current ballistics databases by giving federal, state, and local law enforcement access to even more evidence that will help them solve more gun crimes and make our communities safer.

Today, police can find out more about a human being than they can about a gun used in a crime. Law enforcement can use DNA testing, take fingerprints and blood samples, search a person's health records, peruse bank records and credit card statements, obtain phone records and get a list of book purchases to link a suspect to a crime. Yet, the bullets found at the scene of a crime often cannot be traced back to the gun used because our ballistics images database is not comprehensive. Many of those on the front lines of the fight against crime are in favor of ballistics testing. In fact, in my home state of Wisconsin, over 75 percent of police chiefs surveyed are supportive of the use of ballistics technology.

The burden on manufacturers is minimal—we authorize funds to underwrite the cost of testing—and the assistance to law enforcement is considerable. And don't take our word for it, ask the gun manufacturers and the police. Listen to what Paul Januzzo, the vice-president of the gun manufacturer Glock, said in reference to ballistics testing, ''Our mantra has been that the issue is crime control, not gun control . . . it would be two-faced of us not to want this.'' In their agreement with the Department of Housing and Urban Development, Smith & Wesson agreed to perform ballistics testing on all new handguns. And Ben Wilson, the chief of the firearms section at ATFE, emphasized the importance of ballistics testing as a investigative device, ''This [ballistics] allows you literally to find a needle in a haystack.''

To be sure, we are sensitive to the notion that law abiding hunters and sportsmen need to be protected from any misuse of the ballistics database by government. The TRACE Act explicitly prohibits ballistics information from being used for any purpose unless it is necessary for the investigation of a gun crime.

The TRACE Act will enhance a revolutionary new technology that helps solve crime. The technology is becoming more and more advanced to accommodate high volume-usage, and it is expected to continue to get better and better. Ballistics testing will help solve more gun crimes, prosecute more criminals, and ensure that more communities are protected from violence. TRACE is a worthwhile piece of crime control legislation and I hope that the Senate will move quickly to pass it.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 469

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Technological Resource to Assist Criminal Enforcement Act'' or the ''TRACE Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to increase public safety by assisting law enforcement in solving more gun-related crimes and offering prosecutors evidence to link felons to gun crimes through ballistics technology;

(2) to provide for ballistics testing of all new firearms for sale to assist in the identification of firearms used in crimes;

(3) to require ballistics testing of all firearms in custody of Federal agencies to assist in the identification of firearms used in crimes; and

(4) to add ballistics testing to existing firearms enforcement programs.

SEC. 3. DEFINITION OF BALLISTICS.

Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) BALLISTICS.—The term 'ballistics' means a comparative analysis of fired bullets and cartridge casings to identify the firearm from which bullets and cartridge casings were discharged, through identification of the unique markings that each firearm imprints on bullets and cartridge casings.''.

SEC. 4. TEST FIRING AND AUTOMATED STORAGE OF BALLISTICS RECORDS.

(a) AMENDMENT.—Section 923 of title 18, United States Code, is amended by adding at the end the following:

''(m)(1) In addition to the other licensing requirements under this section, a licensed manufacturer or licensed importer shall—

''(A) test fire firearms manufactured or imported by such licensees as specified by the Attorney General by regulation;

''(B) prepare ballistics images of the fired bullet and cartridge casings from the test fire;

''(C) make the records available to the Attorney General for entry into the electronic database established under paragraph (3)(B); and

''(D) store the fired bullet and cartridge casings in such a manner and for such a period as specified by the Attorney General by regulation.

''(2) Nothing in this subsection creates a cause of action against any Federal firearms licensee or any other person for any civil liability except for imposition of a civil penalty under this section.

''(3)(A) The Attorney General shall assist firearm manufacturers and importers in complying with paragraph (1) by—

''(i) acquiring, installing, and upgrading ballistics equipment and bullet and cartridge casing recovery equipment to be placed at locations readily accessible to licensed manufacturers and importers;

''(ii) hiring or designating sufficient personnel to develop and maintain a database of ballistics images of fired bullets and cartridge casings, research, and evaluation;

''(iii) providing education about the role of ballistics as part of a comprehensive firearm crime reduction strategy;

''(iv) providing for the coordination among Federal, State, and local law enforcement and regulatory agencies and the firearm industry to curb firearm-related crime and illegal firearm trafficking; and

''(v) taking other necessary steps to make ballistics testing effective.

''(B) The Attorney General shall—

''(i) establish an electronic database—

''(I) through which State and local law enforcement agencies can promptly access the ballistics records stored under this subsection, as soon as such capability is available; and

''(II) that shall not include any identifying information regarding dealers, collectors, or purchasers of firearms; and

''(ii) require training for all ballistics examiners.

''(4) The Attorney General shall conduct mandatory ballistics testing of all firearms obtained or in the possession of their respective agencies.

''(5) Not later than 3 years after the date of enactment of this subsection, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report regarding the implementation of this section, including—

''(A) the number of Federal and State criminal investigations, arrests, indictments, and prosecutions of all cases in which access to ballistics records, provided under the system established under this section and under similar systems operated by any State, served as a valuable investigative tool in the prosecution of gun crimes;

''(B) the extent to which ballistics records are accessible across jurisdictions; and

''(C) a statistical evaluation of the test programs conducted pursuant to paragraph (4).

''(6) There are authorized to be appropriated to the Department of Justice $20,000,000 for each of the fiscal years 2004 through 2007 to carry out this subsection, to be used to—

''(A) install ballistics equipment and bullet and cartridge casing recovery equipment;

''(B) establish sites for ballistics testing;

''(C) pay salaries and expenses of necessary personnel; and

''(D) conduct related research and evaluation.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) shall take effect on the date on which the Attorney General, in consultation with the Board of the National Integrated Ballistics Information Network, certifies that the ballistics system used by the Department of Justice is sufficiently developed to support mandatory ballistics testing of new firearms.

(2) BALLISTICS TESTING.—Section 923(m)(1) of title 18, United States Code, as added by subsection (a), shall take effect 2 years after the date of enactment of this Act.

(3) EFFECTIVE ON DATE OF ENACTMENT.—Section 923(m)(4) of title 18, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act.

SEC. 5. PRIVACY RIGHTS OF LAW ABIDING CITIZENS.

Ballistics information of individual guns in any form or database established by this Act may not be used for prosecutorial purposes unless law enforcement officials have a reasonable belief that a crime has been committed and that ballistics information would assist in the investigation of that crime.

By Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, Mr. LUGAR, and Mr. DURBIN):

S. 470. A bill to extend the authority for the construction of a memorial to Martin Luther King, Jr; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, I am pleased to join today with Senators WARNER, LUGAR, MIKULSKI and DURBIN in introducing legislation that would extend the legislative authority for the Martin Luther King, Jr. Memorial for an additional three years. The monument to Martin Luther King, Jr., which will be built on the Mall, will honor one of this Nation's most treasured citizens. Dr. King challenged us to live by the principles set forth at this Nation's inception, and forever changed the fabric of this country.

Despite the enormous dedication of the Martin Luther King, Jr. National Memorial Project Foundation, Inc., additional time is necessary for the Foundation to erect a fitting tribute to Dr. King. The Commemorative Works Act currently requires that construction of the Memorial begin by November 2003. However, meeting the administrative procedures and fundraising requirements of the Act has been a very slow process.

On November 12, 1996, legislation was enacted authorizing construction of the Memorial within a seven-year period. It then took Congress another two years to pass legislation authorizing placement of the Memorial in Area I of the Capital. Then the Foundation worked with the National Capital Planning Commission and the Commission for Fine Arts for over a year to locate an appropriate site for the Memorial within Area I. As a result, the Foundation was unable to select a design for the Memorial until September 2000.

This consultative process has been challenging, but it has resulted in a design for a Memorial on the Tidal Basin that will fittingly reflect the legacy of the greatest civil rights leader of our time. Initial estimates indicate that the construction costs of the Memorial alone could be as much as $60 million, and the Foundation is actively engaged in fundraising for the Memorial. However, it does not expect to have the necessary funds to receive the construction permit by the deadline of November 2003 as dictated by the Commemorative Works Act. One hundred percent of the funding must be privately financed, and the total cost of the project could near $100 million. Our legislation would give the Foundation an additional three years to raise the necessary funds to obtain the construction permit, and would ensure that work on the Memorial is completed. This extension of legislative authority has been done before for other memorials, given the length of time it usually takes to embark on a project of this magnitude, and it should be done for the Martin Luther King, Jr. Memorial.

Dr. King serves as a reminder that change is brought about most powerfully when it is done by non-violent means. This country owes much to Dr. King, most notably his legacy of nonviolent protest that has informed and influenced subsequent rights campaigns in our nation. Visitors will come to the Memorial from every part of this country and indeed the world, to be inspired anew by Dr. King's words and deeds, and the extraordinary story of his life. Mr. President, I ask my colleagues to support this important legislation and grant the Foundation the additional time it needs to complete this significant monument.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 470

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

SECTION 1. MEMORIAL TO MARTIN LUTHER KING, JR.

Section 508(b) of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4157) is amended—

(1) by striking ''The establishment'' and all that follows through the period at the end and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the establishment of the memorial shall be in accordance with chapter 89 of title 40, United States Code.''; and

(2) by inserting after paragraph (1) (as designated by paragraph (1)) the following:

''(2) EXCEPTION.—Notwithstanding section 8903(e) of title 40, United States Code, the authority provided by this section terminates on November 12, 2006.''.

By Mr. FEINGOLD (for himself, Mrs. BOXER, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 473. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, today I am introducing important legislation to affirm Federal jurisdiction over the waters of the United States. I am pleased to have three members of the Environment and Public Works Committee, the Senator from California, Mrs. BOXER, the Senator from Vermont, Mr. JEFFORDS, and the Senator from Connecticut, Mr. LIEBERMAN, as original cosponsors of this bill.

In the U.S. Supreme Court's January 2001 decision, Solid Waste Agency of Northern Cook County versus the Army Corps of Engineers, a 5 to 4 majority limited the authority of Federal agencies to use the so-called migratory bird rule as the basis for asserting Clean Water Act jurisdiction over nonnavigable, intrastate, isolated wetlands, streams, ponds, and other bodies of water.

This decision, known as the SWANCC decision, means that the Environmental Protection Agency and Army Corps of Engineers can no longer enforce Federal Clean Water Act protection mechanisms to protect a waterway solely on the basis that it is used as habitat for migratory birds.

In its discussion of the case, the Court went beyond the issue of the migratory bird rule and questioned whether Congress intended the Clean Water Act to provide protection for isolated ponds, streams, wetlands and other waters, as it had been interpreted to provide for most of the last 30 years. While not the legal holding of the case, the Court's discussion has resulted in a wide variety of interpretations by EPA and Corps officials that jeopardize protection for wetlands, and other waters.

The wetlands at risk include prairie potholes and bogs, familiar to many in Wisconsin, and many other types of wetlands.

In effect, the Court's decision removed much of the Clean Water Act protection for between 30 percent to 60 percent of the Nation's wetlands. An estimate from my home state of Wisconsin suggested that more than 60 percent of the wetlands in my state lost federal protection. Wisconsin is not alone. The National Association of State Wetland Managers has been collecting data from states across the country. For example, Nebraska estimates that it will lose protection for more than 40 percent of its wetlands. Indiana estimates they will lose 31 percent of total wetland acreage and 74 percent of the total number of wetlands. Delaware estimates the loss of protection for 33 percent or more of their freshwater wetlands.

These wetlands absorb floodwaters, prevent pollution from reaching our rivers and streams, and provide crucial habitat for most of the nations ducks and other waterfowl, as well as hundreds of other bird, fish, shellfish and amphibian species. Loss of these waters would have a devastating effect on our environment.

In addition, by narrowing the water and wetland areas subject to Federal regulation, the decision also shifts more of the economic burden for regulating wetlands to State and local governments. My home State of Wisconsin has passed legislation to assume the regulation of isolated waters, but many other States have not. This patchwork of regulation means that the standards for protection of wetlands nationwide is unclear, confusing, and jeopardizes the migratory birds and other wildlife that depend on these wetlands.

Since 2001, the confusion over the interpretation of the SWANCC decision is growing. On January 15, 2003, the EPA and Army Corps of Engineers published in the Federal Register an Advanced Notice of Proposed Rulemaking raising questions about the jurisdiction of the Clean Water Act. Simultaneously, they released a guidance memo to their field staff regarding Clean Water Act jurisdiction.

The agencies claim these actions are necessary because of the SWANCC case. But both the guidance memo and the proposed rulemaking go far beyond the holding in SWANCC. The guidance took effect right away and has had an immediate impact. It tells the Corps and EPA staff to stop asserting jurisdiction over isolated waters without first obtaining permission from headquarters. Based on this guidance, waters that the EPA and Corps judge to be outside the Clean Water Act can be filled, dredged, and polluted without a permit or any other long-standing Clean Water Act safeguard.

The rulemaking announces the Administration's intention to consider even broader changes to Clean Water Act coverage for our waters. Specifically, the agencies are questioning whether there is any basis for asserting Clean Water Act jurisdiction over additional waters, like intermittent streams. The possibility for a redefinition of our waters is troubling because there is only one definition of the term ''water'' in the Clean Water Act. The wetlands program, the point source program which stops the dumping of pollution, and the non-point program governing polluted runoff all depend on this definition.

If we don't protect a category of waters from being filled under the wetlands program, we also fail to protect them from having trash or raw sewage dumped in them, or having other activities that violate the Clean Water Act conducted in them as well.

Congress needs to re-establish the common understanding of the Clean Water Act's jurisdiction to protect all waters of the U.S.—the understanding that Congress held when the Act was adopted in 1972—as reflected in the law, legislative history, and longstanding regulations, practice, and judicial interpretations prior to the SWANCC decision.

The proposed legislation does three things, and it is a very simple bill. It adopts a statutory definition of ''waters of the United States'' based on a longstanding definition of waters in the EPA and Corps of Engineers' regulations. Second, it deletes the term navigable from the Act to clarify that Congress's primary concern in 1972 was to protect the nation's waters from pollution, rather than just sustain the navigability of waterways, and to reinforce that original intent. Finally, it includes a set of findings that explain the factual basis for Congress to assert its constitutional authority over waters and wetlands on all relevant Constitutional grounds, including the Commerce Clause, the Property Clause, the Treaty Clause, and Necessary and Proper Clause.

In conclusion, I am very pleased to have the support of so many environmental and conservation groups, and well as organizations that represent those who regulate and manage our country's wetlands, such as: the Natural Resources Defense Council, Earthjustice, the National Wildlife Federation, Sierra Club, American Rivers, the National Audubon Society, U.S. Public Interest Research Group, Defenders of Wildlife, the Ocean Conservancy, Trout Unlimited, the Izaac Walton League, and the Association of State Floodplain Managers. They know, as I do, that we need to re-affirm the federal government's role in protecting our water. This legislation is a first step in doing just that.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 473

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Water Authority Restoration Act of 2003''.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.

(2) To clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act.

(3) To provide protection to the waters of the United States to the fullest extent of the legislative authority of Congress under the Constitution.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Water is a unique and precious resource that is necessary to sustain human life and the life of animals and plants.

(2) Water is used not only for human, animal, and plant consumption, but is also important for agriculture, transportation, flood control, energy production, recreation, fishing and shellfishing, and municipal and commercial uses.

(3) In enacting amendments to the Federal Water Pollution Control Act in 1972 and through subsequent amendment, including the Clean Water Act of 1977 (91 Stat. 1566) and the Water Quality Act of 1987 (101 Stat. 7), Congress established the national objective of restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States and recognized that achieving this objective requires uniform, minimum national water quality and aquatic ecosystem protection standards to restore and maintain the natural structures and functions of the aquatic ecosystems of the United States.

(4) Water is transported through interconnected hydrologic cycles, and the pollution, impairment, or destruction of any part of an aquatic system may affect the chemical, physical, and biological integrity of other parts of the aquatic system.

(5) Protection of intrastate waters, along with other waters of the United States, is necessary to restore and maintain the chemical, physical, and biological integrity of all waters in the United States.

(6) The regulation of discharges of pollutants into interstate and intrastate waters is an integral part of the comprehensive clean water regulatory program of the United States.

(7) Small and periodically-flowing streams comprise the majority of all stream channels in the United States and serve critical biological and hydrological functions that affect entire watersheds, including reducing the introduction of pollutants to large streams and rivers, and especially affecting the life cycles of aquatic organisms and the flow of higher order streams during floods.

(8) The pollution or other degradation of waters of the United States, individually and in the aggregate, has a substantial relation to and effect on interstate commerce.

(9) Protection of the waters of the United States, including intrastate waters, is necessary to prevent significant harm to interstate commerce and sustain a robust system of interstate commerce in the future.

(10) Waters, including wetlands, provide protection from flooding, and draining or filling wetlands and channelizing or filling streams, including intrastate wetlands and streams, can cause or exacerbate flooding,

placing a significant burden on interstate commerce.

(11) Millions of people in the United States depend on wetlands and other waters of the United States to filter water and recharge surface and subsurface drinking water supplies, protect human health, and create economic opportunity.

(12) Millions of people in the United States enjoy recreational activities that depend on intrastate waters, such as waterfowl hunting, bird watching, fishing, and photography and other graphic arts, and those activities and associated travel generate billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.

(13) Activities that result in the discharge of pollutants into waters of the United States are commercial or economic in nature.

(14) States have the responsibility and right to prevent, reduce, and eliminate pollution of waters, and the Federal Water Pollution Control Act respects the rights and responsibilities of States by preserving for States the ability to manage permitting, grant, and research programs to prevent, reduce, and eliminate pollution, and to establish standards and programs more protective of a State's waters than is provided under Federal standards and programs.

(15) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of implementing treaties to which the United States is a party, including treaties protecting species of fish, birds, and wildlife.

(16) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of protecting Federal land, including hundreds of millions of acres of parkland, refuge land, and other land under Federal ownership and the wide array of waters encompassed by that land.

(17) Protecting the quality of and regulating activities affecting the waters of the United States is necessary to protect Federal land and waters from discharges of pollutants and other forms of degradation.

SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (8) through (23) as paragraphs (7) through (22), respectively; and

(3) by adding at the end the following:

''(23) WATERS OF THE UNITED STATES.—The term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.''.

SEC. 5. CONFORMING AMENDMENTS.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended—

(1) by striking ''navigable waters of the United States'' each place it appears and inserting ''waters of the United States'';

(2) in section 304(l)(1) by striking ''NAVIGABLE WATERS'' in the heading and inserting ''WATERS OF THE UNITED STATES''; and

(3) by striking ''navigable waters'' each place it appears and inserting ''waters of the United States''.

By Mr. THOMAS:

S. 475. A bill to reform the nation's outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from whole electric competition and restore investor confidence in the electric industry; to the Committee on Energy and Natural Resources.

Mr. THOMAS. Mr. President, I come to the floor to talk about one of the things that is so important. Obviously, items connected with terrorism, the war in Iraq have to be dealt with. We have to deal with heightened homeland security and related issues. Health care is an area we need to talk about. Prescription drugs is in the process of this.

One issue that is particularly important is an energy policy. I don't think there has ever been a time when it has been more apparent and more important to deal with energy policy. We have an economy, prices with gas and energy that are high. We have uncertainty, certainly, in the Middle East. We have had a Venezuelan problem. We had a very cold winter. We cannot seem to come together to put together a policy that will allow us to move forward, an aggressive energy policy. I would like to talk briefly about a component of that which I think is very important, and that is an electric component.

I rise today to introduce the Electric Transmission Reliability and Enhancement Act of 2003. It is my intention to build on a changing wholesale, competitive, open access market and to suggest that we build that into a policy. Things have changed in the way energy is generated, the way energy is transmitted, the way energy is sold. We need to change our policy, as well.

Very simply, what we have is: In years past, there was a generator that generated for their own distribution area. That was pretty simple. Prices were controlled. It was a simple technique. Now we have more and more merchant generators, people who do not have a constituency or distribution system of their own but they sell into the marketplace. This is good. There is competition. And we will see more and more of that. But to do that, we have to update our laws and we have to update the regulations that go with that. My legislation would extend and improve open nondiscriminatory access policies. Access to transmission would remove antiquated Federal barriers that stand in the way of competitive wholesale markets. Wholesale markets that are competitive are new. We have to change to meet those needs. We have to encourage increased investments in our transmission system and establish reliability standards.

We saw what happened in California 2 years ago. If there is no reliability, we cannot depend upon getting that energy to people's homes, to businesses, and then we have a very difficult situation.

Particularly what has changed now is it is interstate. For years we grew up with the fact that in your State the State controlled both the generation and the distribution, and that worked well. Now we go across interstate lines and there needs to be something different.

Legislatively we have to pare down our wish list so we get to the bare essentials and keep those things that are necessary.

It seems clear, if we are going to have a truly wholesale market, we need to ensure that all the industry participants play by the same rules. Only Congress can give FERC, the Federal Energy Regulatory Commission, the tools it needs to ensure that all participants get treated fairly in a competitive marketplace. Under the Federal law, currently FERC has no jurisdiction or authority over transmission owned by public power agencies, municipals, cooperatives, yet they want to participate and need to participate and should participate. Many of them—most—are willing to participate.

These nonregulated utilities represent 52 percent of the total, so we do not want to move forward with FERC's so-called market plan. I think it goes too far getting into the authority of the States. But there are some changes that need to be made, and we would like to do that.

We also need to protect those cooperatives. I grew up in a area of cooperatives and spent much of my life working with cooperatives. So we have given that break. Those that sell less than 4 million megawatt hours per year are entirely exempt. We think that is as it should be.

We would repeal the Public Utility Holding Company Act, PUHCA, because it needs to be restructured and the deployment of capital in this industry needs to go where it is desperately needed. We need to do that. There is ample regulation over those investments now in the existing business. We want to make it easier for people to be able to invest, produce competitively, and go into the marketplace.

The Department of Justice, Federal Trade Commission, and the State commissions would still be able to monitor rates and prevent cross-subsidies. So my legislation would prospectively eliminate mandatory purchase and sales obligations of PURPA, one that was put in a very long time ago. Despite the State administering it, it causes favoritism to many utilities and changes things.

Over the years the grid has been protected through voluntary standards and that is exactly right. But what we are now faced with is to have RTOs, regional transportation organizations, where they can make those decisions within the RTO. There would be a Western one, a Midwestern one, a New England one, and so on. But then connecting with those will be an interstate, like an interstate highway. That has to, of course, be organized and controlled by a national group because it serves all these different ones.

So what we need is to modernize our system so we can accommodate things that have changed. Reliability organizations must be run by market participants and be overseen by FERC. Reliability organizations must be made up of representatives of everyone who is affected: residential, commercial, industrial. That can be done, and this provides an opportunity to do that.

During our discussions last year, we were made to address some of the more egregious behavior and found a great deal of issues that needed to be dealt with—market manipulation, those kinds of things. This is very complex. I believe we can address these issues with regulatory agencies, things that truly can exist.

So my legislation would provide a greater price in the transmission of availability of information and outlaw the practice of roundtrip trading. In the past we found some trading where they went around, got it back, made a profit on the sale, and served no one.

We prohibit the reporting of false information for the purpose of manipulating price indices. Again, we go back a little bit to the California situation, where there obviously is a great need to do some opening up so there is visibility of what is happening. That is what we are seeking to do. It would increase civil and criminal penalties for the violation of the Federal Power Act and would accelerate the effective dates of refunds and so on.

In the end, it is about consumers, it is about serving consumers, it is about competition, it is about reliability, it is about keeping the lights on—the part of energy that probably affects more people and more businesses than any other. It is my hope that the Electric Transmission Reliability Enhancement Act of 2003 will produce a more reliable, efficient transmission system, a more dependable and more affordable product for the end user, and perhaps more than anything else, bring our system and our oversight into the modern time of electric generation and transmission.

Things change. We need to change. Now is the time. We will have an energy bill. It needs to have an energy component.

Mr. President, any comprehensive energy bill must contain an electric component. That is why, today, I rise to introduce the ''Electric Transmission and Reliability Enhancement Act of 2003.'' It is my intention to build on the competitive wholesale open access policies adopted by the Congress in the 1992 Energy Policy Act. My legislation would extend and improve these open, non-discriminatory access policies; remove antiquated federal statutory barriers that stand in the way of competitive wholesale markets; encourage increased investment in our transmission system and establish enforceable reliability standards to help ensure the continued reliability of the interstate transmission system.

The state of the industry is far weaker financially than it has been in years. Billions of dollars of shareholder value has evaporated. Access to capital is becoming an important issue for large segments of the industry that are fighting for survival. In addition, the Federal Energy Regulatory Commission, FERC, policy regarding wholesale markets seems to be in a state of constant change. The Standard Market Design, SMD, Notice of Proposed Rulemaking, NOPR, has divided regulators and industry participants in a way that may be unprecedented, threatening more years of rulemakings, litigation and regulatory uncertainty.

If we are to legislate successfully, we will have to par down our wish list to the bare essentials, plus those issues necessary for the electric industry to attract the capital it needs to keep our lights on. Last year, the Enron fallout dominated the debate. By being on the defensive most of last year, it was not possible to successfully advance those issues most important to consumers and the industry that serves them.

It seems clear that if truly competitive wholesale markets are to exist, there is a need to ensure that all industry participants play by the same rules. While FERC has tried to ensure this, the Commission's tools are limited. Only Congress can give FERC the tools it needs to ensure that all industry participants in competitive wholesale markets play by the same rules.

The Wyoming State commissioners wrote that ''under present Federal law the FERC has no jurisdiction or authority over transmission facilities owned by public power agencies, municipalities and cooperatives. In the West these types of entities own a substantial portion, perhaps as much as half of the interstate electric transmission system.'' As a matter of fact, in the Western Electric Coordinating Council, an area that encompasses all or part of 11 Western States and parts of Canada, non-FERC jurisdictional facilities account for 52 percent of transmission miles.

The Wyoming commissioners claim that, ''without the full participation of all of those who own transmission in the West, the FERC's wholesale market initiative will fail to provide the full spectrum of benefits Congress expected when it created wholesale electricity markets. System optimization requires that bulk power be able to move freely throughout the interconnected system without regard to who owns the facilities over which the power travels. Removing the institutional impediments to the free movement of bulk power is also requisite to identifying the physical constraints that exist in the western system. Proper planning for the relief of such constraints depends on properly identifying and quantifying them, absent other economic and institutional constraints.''

They go on to say that such a vision for the future of wholesale power markets makes a compelling case for the inclusion of all facilities which can be used to move bulk power across the West, regardless of ownership. Anything less than 100 percent participation by transmission owning entities will simply perpetuate some level of inefficiency in the system and will continue to afford those who do not participate the ability to favor their own generation resources.

My legislation would permit FERC to require certain nonregulated utilities to offer transmission serviced at comparable rates to those they charge themselves, and on terms and conditions comparable to those applicable to jurisdictional public utilities. Currently nonregulated transmitting utilities would not be subject to the full panoply of FERC regulation under this provision. Instead, a ''light handed'' form of regulation would apply and small nonregulated entities, such as those that sell less than 4,000,000 MW/h per year, would be entirely exempt from these nondiscrimination requirements.

It also seems clear that the Public Utility Holding Company Act PUHCA, is hindering necessary restructuring of the industry and the deployment of capital into an industry that desperately needs it. Investors are deterred simply because they do not want to deal with the PUHCA rules and restrictions. If repealed, utility securities will continue to be regulated by the Securities and Exchange Commission, SEC, FERC and most state commissions. Mergers and acquisitions of jurisdictional assets would still require FERC and state commission approval and review by Department of Justice, DOJ, and the Federal Trade Commission, FTC. FERC and State commissions would still be able to monitor rates and prevent cross-subsidies.

Despite State progress in administering the Public Utility Regulatory Policies Act of 1978, PURPA, more intune with markets, it is clear that PURPA continues to provide special privileges to certain favored generators at the expense of utilities and their customers. Like PUHCA, PURPA is no longer needed in today's competitive wholesale markets. My legislation prospectively eliminates the mandatory purchase and sell obligations of PURPA.

Over the years the grid has been well protected through voluntary standards established by the North American Electric Reliability Council, NERC, NERC's voluntary reliability standards—which are not enforceable—have generally been complied with by the electric power industry. But with the opening of the wholesale power market to competition, our transmission grid is being used in ways for which it was not designed. New system strains are also being created by the breakup of vertically integrated utilities and by the emergence of new market structures and participants. The results of these changes have been an increase in the number and severity of violations of NERC's voluntary rules.

My legislation converts the existing NERC voluntary reliability system into a mandatory reliability system. A nation-wide organization would have the authority to establish and enforce reliability standards, and take into account regional differences. The new reliability organization will be run by market participants, and will be overseen by the FERC in the U.S. The reliability organization will be made up of representatives of everyone who is affected—residential, commercial and industrial consumers; state public utility commissions; independent power producers; electric utilities and others. There is no question that we need a new system to safeguard the integrity of our electric grid. My legislation would do this, using language that was effectively agreed upon last fall by House and Senate conferees for the energy bill.

During discussions last year, efforts were made to address some of the more egregious behavior and attempted market manipulation through legislation. While this area is obviously very complex, I believe that we need to address this issue if regulatory gaps truly do exist. I realize my attempt might not be perfect, but I wanted to intimate discussion on this very important topic if, in fact, regulatory agencies do need additional authority to police and monitor the industry.

My legislation will provide greater price and transmission availability information, outlaw the practice of round trip trading and prohibit reporting of false information for the purpose of manipulating price indices. In addition, I've included authority the FERC has requested and that would increase civil and criminal penalties for violation of the Federal Power Act and accelerate the refund effective date to the date of filing of a complaint.

In the end it's about the consumer. It is my hope and vision that the ''Electric Transmission and Reliability and Enhancement Act of 2003'' I am introducing today will produce a more reliable and efficient transmission system and that these improvements will result in a more dependable and affordable product for the end user. This legislation is the best solution to move forward with a better product for all classes of consumers and the industry as a whole.

I ask 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. 475

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Electric Transmission and Reliability Enhancement Act of 2003''.

TITLE I—TRANSMISSION IMPROVEMENT

SEC. 101. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

''OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

''(2) on terms and conditions (not relating to rates) that are comparable to those under Commission rules that require public utilities to offer open access transmission services and that are not unduly discriminatory or preferential.

''(b) The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

''(1) sells no more than 4,000,000 megawatt hours of electricity per year;

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(d) In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(e) The provision of transmission services under subsection (a) does not preclude a request for transmission services under 211.

''(f) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(g) For purposes of this subsection, the term 'unregulated transmitting utility' means an entity that—

''(1) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

''(2) is either an entity described in section 201(f) or a rural electric cooperative.''.

SEC. 102. FEDERAL AGENCY COORDINATION.

The Department of Energy shall be the lead agency for conducting environmental review (for purposes of the National Environmental Policy Act of 1969) of the establishment and modification of electric power transmission corridors across federal lands. The Secretary of Energy shall coordinate with Federal agencies, including Federal land management agencies, to ensure the timely completion of environmental reviews pertaining to such corridors and may set deadlines for the completion of such reviews. For purposes of this section, the term ''Federal land management agencies'' means the Bureau of Land Management, the United States Forest Service, the United States Fish and Wildlife Service, and the Department of Defense. For purposes of this section, ''Federal lands'' means all lands owned by the United States except lands in the National Park System or the national wilderness preservation system, or such other lands as the President may designate.

SEC. 103. PRIORITY FOR RIGHTS-OF-WAY ACROSS FEDERAL LANDS.

Section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) is amended by adding the following new subsection at the end thereof:

''(e) In administering the provisions of this title, the Secretary of the Interior and the Secretary of Agriculture shall each shall give a priority to applications for rights of way for electric power transmission corridors.''.

SEC. 104. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following new section at the end thereof:

''SEC. 215. ELECTRIC RELIABILITY

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

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

''(6) The term 'transmission organization' means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification

as the Electric Reliability Organization (ERO). The Commission may certify one such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

''(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

''(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

''(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the Electric Reliability Organization files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the Electric Reliability Organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the Electric Reliability Organization for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall establish regulations directing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by an independent, balanced stakeholder, or combination independent and balanced stakeholder board;

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

''(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or compliant, may propose a change to the rules of the Electric Reliability Organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminary or preferential, is in the public interest, and satisfies the requirements of subsection(c).

''(g) RELIABILITY REPORTS.—The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the Electric Reliability Organization in the United States and Canada or Mexico.

''(i) SAVINGS PROVISIONS.—(1) The Electric Reliability Organization shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the Electric Reliability Organization or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the Electric Reliability Organization.

''(5) The Commission, after consultation with the Electric Reliability Organization, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-

thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

TITLE II—ELIMINATION OF COMPETITIVE BARRIERS

SUBTITLE A—PROVISIONS REGARDING THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

SEC. 201. DEFINITIONS.

For the purpose of this subtitle:

(1) The term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) the term ''company'' means a corporation, partnership, association, joint stock company, business rust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The term ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) the term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such persons be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 202. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a and following) is repealed, effective 12 months after the date of enactment of this Act.

SEC. 203. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) In General.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) Affiliate Companies.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 204. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or any associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, or other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, or other records, under federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 205. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later 90 days after the date of enactment of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 203 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility company or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility company, the Commission shall exempt such person or transaction from the requirements of section 203.

SEC. 206. AFFILIATE TRANSACTIONS.

Nothing in this subtitle shall preclude the Commissioner or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company, public utility, or natural gas company from an associate company.

SEC. 207. APPLICABILITY.

No provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of such officer, agent, or employee's official duty.

SEC. 208. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 209. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 210. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a and following) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 and following) (including section 8 of that Act).

SEC. 211. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this Act, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implements this subtitle; and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 212. TRANSFER OR RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 213. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this Act.

SEC. 214. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

SUBTITLE B—PROVISIONS REGARDING THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

SEC. 215. PROSPECTIVE REPEAL OF SECTION 210.

(a) NEW CONTRACTS.—After the date of enactment of this Act, no electric utility shall be required to enter into a new contract or obligation to purchase or to sell electric energy or capacity pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3).

(b) EXISTING RIGHTS AND REMEDIES NOT AFFECTED.—Nothing in this Act affects the rights or remedies of any party with respect to the purchase or sale of electric energy or capacity from or to a facility determined to be a qualifying small power production facility or a qualifying cogeneration facility under section 210 of the Public Utility Regulatory Policies Act of 1978 pursuant to any contract or obligation to purchase or to sell electric energy or capacity in effect on the date of enactment of this Act, including the right to recover the costs of purchasing such electric energy or capacity.

SEC. 216. RECOVERY OF COSTS.

In order to assure recovery by electric utilities purchasing electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 prior to the date of enactment of this Act, of all costs associated with such purchases, the Commission shall promulgate and enforce such regulations as may be required to assure that no such electric utility shall be required directly or indirectly to absorb the costs associated with such purchases from a qualifying facility. Such regulations shall be treated as a rule enforceable under the Federal Power Act (16 U.S.C. 791a–825r).

SEC. 217. DEFINITIONS.

For purposes of this subtitle, the terms ''Commission'', ''electric utility'', ''qualifying cogeneration facility'', and ''qualifying small power production facility'', shall have the same meanings as provided in the Public Utility Regulatory Policies Act of 1978, and the term ''qualifying facility'' shall mean either a qualifying small production facility or a qualifying cogeneration facility as defined in such Act.

TITLE III—MARKET TRANSPARENCY, ANTIMANIPULATION AND ENFORCEMENT

SUBTITLE A—MARKET TRANSPARENCY, ANTI-MANIPULATION AND ENFORCEMENT

SEC. 301. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is amended by adding after section 215 as added by this Act the following:

''SEC. 216. MARKET TRANSPARENCY RULES.

''(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide statistical information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissioners, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis.

''(b) INFORMATION REQUIRED.—The Commission shall require—

''(1) each regional transmission organization or, where no regional transmission organization is operating, each transmitting utility to provide information about the available capacity of transmission facilities operated by the organization or transmitting utility; and

''(2) each regional transmission organization or broker or exchange to provide aggregate information about the amount and price of physical sales of electric energy at wholesale in interstate commerce it transacts.

''(c) DEFINITION.—For purposes of this section, the term 'broker or exchange' means an entity that matches offers to sell and offers to buy physical sales of wholesale electric energy in interstate commerce.

''(d) PROTECTION OF SENSITIVE INFORMATION.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market.''.

SEC. 302. MARKET MANIPULATION.

(a) Part II of the Federal Power Act is amended by adding after section 216 as added by this Act the following:

''SEC. 217. PROHIBITION ON FILING FALSE INFORMATION.

''It shall be a violation of this Act for any person willfully and knowingly to report any information relating to the price of electricity sold at wholesale, which information the person knew to be false at the time of the reporting, to any governmental or non-governmental entity and with the intent to manipulate the date being compiled by such entity.''.

''SEC. 218. PROHIBITION ON ROUND TRIP TRADING.

''(a) PROHIBITION.—It shall be a violation of this Act for any person willfully and knowingly to enter into any contract or other arrangement to execute a ''round-trip trade'' for the purchase or sale of electric energy at wholesale.

''(b) DEFINITION OF ROUND-TRIP TRADE.—For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or other entity—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

''(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

''(3) enters into the contract or arrangement with the intent to deceptively affect reported revenues, trading volumes, or prices.''.

SEC. 303. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting ''electric utility,'' after ''Any person,''; and

(2) inserting ''transmitting utility,'' after ''license'' each place it appears.

(b) INVESTIGATIONS—Section 307(a) of the Federal Power Act (16 U.S.C. 825f((a)) is amended by inserting ''or transmitting utility'' after ''any person'' in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting ''electric utility,'' after ''Any person,'' in the first sentence.

(d) CRIMINAL PENALTIES—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1 is amended—

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

SUBTITLE B—REFUND EFFECTIVE DATE

SEC. 304. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of'';

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''; and

(4) striking the fifth sentence and inserting in lieu thereof; ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.''.

By Mr. FEINGOLD (for himself, Mr. LEAHY, and Mr. DAYTON):

S. 477. A bill to amend the Internal Revenue Code of 1986 to disallow deductions and credits for companies who discriminate against Canadian pharmacies that pass along discounts to consumers living in the United States; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, I rise today to introduce legislation on behalf of Wisconsin's seniors and taxpayers whose wallets are being gauged by certain pharmaceutical companies. My legislation is in response to certain pharmaceutical companies' decision to target seniors who are crossing into Canada to get more affordable prescription drugs for their own use.

If these pharmaceutical companies are going to price gauge seniors's wallets, they don't deserve the taxpayers' support.

A growing number of American seniors are obtaining their prescription drugs from Canada for personal use.

Unfortunately, many of these seniors who are crossing the boarder to access more affordable prescription drugs for their personal use are being targeted by the very pharmaceutical companies that receive millions in tax breaks.

I recently received a call from seniors in my state that Glaxo Smith Klein had decided to stop supplying Canadian pharmacies that resell its drugs to Americans, thereby preventing them from receiving the same benefits these pharmacies provide to Canadians.

The Seniors in my State were not the only ones who took notice of this action. On February 21st of this month, Seniors groups from 12 States, including Wisconsin, sent Glaxo a message by launching a boycott of nonprescription products of Glaxo-Smith-Kline.

Congress should also send all pharmaceutical companies a message that this practice simply is unacceptable.

I think the single most important step we can take is to modernize Medicare and make it better is to eliminate the current inequities in the Medicare system and provide the prescription drug coverage senior citizens need.

At the same time Congress should pass legislation, that Senators SCHUMER, MCCAIN, and I introduced that would bring lower-cost generic drugs to the market faster and lower the cost of prescription drugs by $60 billion.

Until we pass a comprehensive prescription drug benefit, we must ensure that seniors are not targeted by pharmaceutical companies. If these drug companies actively discriminate against American seniors, we should not provide them tax breaks.

That's why my legislation would deny tax breaks to drug companies who discriminate against Canadian pharmacies that provide Americans the same discount that they provide to Canadians.

I urge my colleagues to join me in cosponsoring this legislation.

By Mr. SARBANES (for himself, Mr. WARNER, Mrs. MURRAY, Mr. CAMPBELL, Mrs. HUTCHISON, Mrs. CLINTON, Mr. SESSIONS, and Mr. MILLER):

S. 478. A bill to grant a Federal charter Korean War Veterans Association, Incorporated, and for other purposes; to the Committee on the Judiciary.

Mr. SARBANES. Mr. President, today I am once again introducing legislation together with Senators WARNER, CAMPBELL, MURRAY, CLINTON, SESSIONS, HUTCHISON and MILLER which would grant a Federal Charter to the Korean War Veterans Association, Incorporated. This legislation, which has passed the Senate in the past two Congresses, recognizes and honors the 5.7 million Americans who fought and served during the Korean War for their struggles and sacrifices on behalf of freedom and the principles and ideals of our nation.

For the past three years, under the direction of Public Law 105–85, we have been marking the 50th Anniversary of the events of the Korean War—beginning with the events of June 1950 when the North Korea People's Army swept across the 38th Parallel to occupy Seoul, South Korea. Members of our Armed Forces—including many from the State of Maryland—immediately answered the call of the U.N. to repel this forceful invasion. Without hesitation, these soldiers traveled to an unfamiliar corner of the world to join an unprecedented multi-national force comprised of 22 countries and risked their lives to protect freedom. The Americans who led this international effort were true patriots who fought with remarkable courage.

In battles such as Pork Chop Hill, the Inchon Landing and the frozen Chosin Reservoir, which was fought in temperatures as low as fifty-seven degrees below zero, they faced some of the most brutal combat in history. This year, on July 27, we will commemorate the 50th Anniversary of the signing of the Military Armistice Agreement which officially ended armed hostilities. By the time the fighting had ended, 8,177 Americans were listed as missing or prisoners of war—some of whom are still missing—and over 36,000 Americans had died. One hundred and thirty-one Korean War Veterans were awarded the nation's highest commendation for combat bravery, the Medal of Honor. Ninety-four of these soldiers gave their lives in the process.

There is an engraving on the Korean War Veterans Memorial which reflects these losses and how brutal a war this was. It reads, ''Freedom is not Free.'' Yet, as a Nation, we have done little more than establish this memorial to publicly acknowledge the bravery of those who fought in the Korean War. The Korean War has been termed by many as the ''Forgotten War.'' Freedom is not free. We owe our Korean War Veterans a debt of gratitude. Granting this Federal charter—at no cost to the government—is a small expression of appreciation that we as a Nation can offer to these men and women, one which will enable them to work as a unified front to ensure that the ''Forgotten War'' is forgotten no more.

The Korean War Veterans Association was originally incorporated on June 25, 1985. Since its first annual reunion and memorial service in Arlington, Virginia, where its members decided to develop a national focus and strong commitment to service, the association has grown substantially to a membership of approximately 19,000. A Federal charter would allow the Association to continue and grow its mission and further its charitable and benevolent causes. Specifically, it will afford the Korean War Veterans' Association the same status as other major veterans organizations and allow it to participate as part of select committees with other congressionally chartered veterans and military groups. A Federal charter will also accelerate the Association's ''accreditation'' with the Department of Veterans Affairs which will enable its members to assist in processing veterans' claims.

The Korean War Veterans have asked for very little in return for their service and sacrifice. I urge my colleagues to join me in supporting this legislation and ask that the text of the measure be printed in the RECORD.

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

S. 478

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

SECTION 1. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

''CHAPTER 1201—[RESERVED]''; and

(2) by inserting the following:

''CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

''Sec.

''120101. Organization.

''§ 120101. Organization

''(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), incorporated in the State of New York, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.

''§ 120102. Purposes

''The purposes of the corporation are as provided in its articles of incorporation and include—

''(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons;

''(2) providing a means of contact and communication among members of the corporation;

''(3) promoting the establishment of, and establishing, war and other memorials commemorative of persons who served in the Armed Forces during the Korean War; and

''(4) aiding needy members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

''§ 120103. Membership

''Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the bylaws of the corporation.

''§ 120104. Governing body

''(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

''(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

''§ 120105. Powers

''The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

''§ 120106. Restrictions

''(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

''(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

''(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

''(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

''§ 120107. Duty to maintain corporate and tax-exempt status

''(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

''(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

''§ 120108. Records and inspection

''(a) RECORDS.—The corporation shall keep—

''(1) correct and complete records of account;

''(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

''(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

''(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

''§ 120109. Service of process

''The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

''§ 120110. Liability for acts of officers and agents

''The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

''§ 120111. Annual report

''The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

''1201. Korean War Veterans Association, Incorporated .....120101''.

By Mr. EDWARDS:

S. 479. A bill to amend title IV of the Higher Education Act of 1965 to provide grants for homeland security scholarships; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, I rise today to introduce the Protect America Scholarships Act of 2003. The Act will draw talented young people into professions that are vital to America's security and that are critically short of expertise. It offers college students a simple deal: If you'll serve for five years, we'll pay for your college.

The reason for this law is simple. Our country continues to have tremendous homeland security needs. We have thousands of important jobs that we aren't filling because we don't have the qualified people. And we have thousands of young people who are looking to serve their country, and who are also looking for ways to pay for college.

So this bill puts together the needs of our country and the idealism of our young people. It says that young people who commit to meeting priority homeland security needs will get money for college in return.

Let me give three examples of professions where this bill can make a real difference.

First, our public health system suffers from a shortage of trained professionals who can contribute to the fight against terrorism. Too few medical professionals are trained to diagnose and treat diseases caused by biological agents. Public health laboratories don't have the capacity to test all the specimens suspected of being biological agents. Local governments need as many as 15,000 new public health preparedness employees. And despite the central role of nurses in responding should terrorists attack with chemical or biological weapons, there are more than 126,000 unfilled nursing positions today. There are special roles in all of these professions that trained young people could fill in important ways.

Second, the federal government faces a critical shortage of policymakers and intelligence analysts with expertise in foreign languages and cultures. The General Accounting Office has reported that the FBI's efforts to combat terrorism have been impeded by a lack of qualified translators. Thousands of hours of audiotapes and pages of written material have not been reviewed or translated. Similarly, the U.S. Department of State reports that lack of language fluency has weakened its fight against international terrorism and drug trafficking.

A third area where we need more people is fighting cyberterrorism. We now live in a world where a terrorist can do as much damage with a keyboard and a modem as with a gun or a bomb. By exploiting computer vulnerabilities, terrorists might be able to shut down power for entire cities for extended periods; disrupt our phones; poison our water; erase financial records; paralyze our police, firefighters, and ambulances; and stop all traffic on the Internet. Yet our workforce specializing in cybersecurity remains inadequate. The federal government has especially serious shortages. These vulnerabilities leave our Federal agencies exposed to hackers, system shutdowns, and cyberterrorists.

By offering up to $10,000 in college tuition, the Protect America Scholarships Act will harness the patriotism and determination of a new generation of Americans to urgent national priorities. The federal government and a growing number of states, including North Carolina, use similar programs to recruit teachers successfully. The recent Hart-Rudman report identified student loan debt burdens as a particular obstacle to attracting young adults into public service.

The safety of the American people depends on the millions of people working to protect them. Today's bill will help recruit more talented Americans to professions needed to defend our nation. I hope it will earn the support of my colleagues.

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. 479

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protect America Scholarships Act of 2003''.

SEC. 2. GRANTS AUTHORIZED.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

''Subpart 9—Homeland Security Scholarships

''SEC. 420K. PURPOSES.

''The purposes of this subpart are—

''(1) to recruit talented young people to professions that are needed to ensure the Nation's homeland security; and

''(2) to make college education more affordable.

''SEC. 420L. DEFINITIONS.

''In this subpart:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a partnership between—

''(A) an institution of higher education (or consortium of such institutions); and

''(B) a qualified employer (or consortium of such employers).

''(2) ELIGIBLE STUDENT.—The term 'eligible student' means an individual who—

''(A)(i) is enrolled as a full- or part-time student at an institution of higher education with a qualified academic major or program; or

''(ii) has been accepted for enrollment at an institution of higher education and intends to major in a qualified academic major or program;

''(B) submits an application for a scholarship under this subpart; and

''(C) submits a written contract, prior to receiving assistance, accepting payment of a scholarship in exchange for providing qualified service.

''(3) QUALIFIED ACADEMIC MAJOR OR PROGRAM.—

''(A) IN GENERAL.—The term 'qualified academic major or program' means an academic major or program of study designated by the Secretary for each State in an annual notice in the Federal Register that—

''(i) prepares students in such majors or programs for a career that—

''(I) is primarily related to homeland security;

''(II) requires specialized expertise; and

''(III) suffers from a critical shortage of qualified personnel; and

''(ii) is a—

''(I) national priority, as determined by the Secretary in consultation with the Secretary of Homeland Security; or

''(II) State priority, as determined by the chief executive officer in the State in which the student seeking a scholarship under this subpart—

''(aa) graduated from secondary school; or

''(bb) is enrolled at an institution of higher education.

''(B) CONTINUATION OF QUALIFICATION.—An academic major or program of study designated by the Secretary under subparagraph (A) shall continue to be considered a qualified academic major or program for a student if such academic major or program of study was a qualified academic major or program at the time such student commenced study of such major or program of study.

''(4) QUALIFIED EMPLOYER.—The term 'qualified employer' means—

''(A) a nonprofit organization; or

''(B) a public agency.

''(5) QUALIFIED SERVICE.—

''(A) IN GENERAL.—The term 'qualified service' means full-time employment with the qualified employer of the eligible entity that awarded the eligible student a scholarship or with another qualified employer (consistent with the guidelines issued by the Secretary pursuant to subparagraph (B)), for a period of 2 years for the first year of a scholarship award and an additional 1 year for each additional year of a scholarship award, in a position that—

''(i) is primarily related to homeland security;

''(ii) requires specialized expertise related to the qualified academic major or program of the eligible student; and

''(iii) suffers from a critical lack of qualified personnel.

''(B) SERVICE WITH DIFFERENT EMPLOYER.—The Secretary shall issue guidelines describing when employment may be completed with a qualified employer who is not the qualified employer of the eligible entity that awarded the eligible student a scholarship.

''SEC. 420M. GRANTS TO ELIGIBLE ENTITIES.

''(a) IN GENERAL.—From funds appropriated under section 420O, the Secretary shall award grants, on a competitive basis, to eligible entities to enable the entities to award scholarships to eligible students in exchange for qualified service from such students.

''(b) APPLICATION.—An eligible entity that desires to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(c) USE OF GRANT FUNDS.—

''(1) SCHOLARSHIP AWARDS.—An eligible entity that receives a grant under this subpart shall award scholarships to eligible students in exchange for qualified service from such students.

''(2) APPLICATION FORM.—An eligible entity that receives a grant under this subpart shall create an application form for a student desiring to receive a scholarship under this subpart, and include in such form a summary of the rights and liabilities of a student whose application is approved (and whose contract is accepted) by the eligible entity.

''(3) CONTRACT.—

''(A) IN GENERAL.—An eligible entity that receives a grant under this subpart shall prepare a written contract that shall be provided to a student desiring to receive a scholarship under this subpart at the time that an application is provided to such student.

''(B) CONTENT.—The contract described in subparagraph (A) shall be an agreement between the eligible entity and student that states that, subject to subparagraph (C)—

''(i) the eligible entity agrees to provide the student with a scholarship, that may be renewed in each year of study at the institution of higher education for a total of not more than 4 years; and

''(ii) the student agrees to—

''(I)(aa) accept provision of such a scholarship to the student;

''(bb) maintain enrollment in the qualified academic major or program until the student completes the course of study at the institution of higher education;

''(cc) while enrolled in such qualified academic major or program, maintain an acceptable level of academic standing (as determined by the institution of higher education); and

''(dd) provide qualified service; and

''(II) repay the scholarship under the terms of this subpart if the student fails to comply with the requirements of subclause (I).

''(C) LIMITATION.—The contract described in subparagraph (A) shall contain a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the student which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart.

''(4) INFORMATION ON SCHOLARSHIP RECIPIENTS.—An eligible entity that receives a grant under this subpart shall submit a report to the Secretary at the time a scholarship award is provided to an eligible student identifying—

''(A) such student's name, date of birth, and social security number; and

''(B) the amount of such scholarship.

''(d) MATCHING FUNDS.—An eligible entity receiving Federal assistance under this subpart shall contribute non-Federal matching funds in an amount equal to 50 percent of the amount of Federal assistance.

''(e) DURATION OF GRANT.—Grants awarded under this subpart shall be for a term of 5 years.

''SEC. 420N. SCHOLARSHIPS.

''(a) SUBMISSION OF APPLICATION AND WRITTEN CONTRACT.—A student that desires to receive a scholarship under this subpart shall submit an application and written contract to an eligible entity at such time, in such manner, and containing such information as the eligible entity may require.

''(b) PAYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), a scholarship provided to an eligible student under this subpart for a school year shall consist of payment to, or (in accordance with paragraph (3)) on behalf of, the eligible student of the amount of the tuition and fees, described in section 472(1), of the eligible student in such school year.

''(2) MAXIMUM SCHOLARSHIP AMOUNT.—A scholarship awarded under this subpart during fiscal year 2004 shall not exceed $10,000. The Secretary shall determine the maximum scholarship amount for each succeeding fiscal year after adjusting for inflation.

''(3) CONTRACT.—The Secretary may contract with an institution of higher education, in which an eligible student is enrolled, for the payment to the institution of higher education of the amounts of tuition and fees described in paragraph (1).

''(c) VERIFICATION OF QUALIFIED SERVICE.—

''(1) DOCUMENTATION.——

''(A) FROM ELIGIBLE STUDENT.—An eligible student that receives a scholarship under this subpart shall submit documentation to the eligible entity that awarded the student the scholarship, under standards and procedures determined by the eligible entity, verifying that the student has completed such student's qualified service.

''(B) FROM ELIGIBLE ENTITY.—An eligible entity that receives a grant under this subpart shall submit documentation to the Secretary by a date specified by the Secretary and under standards and procedures determined by the Secretary, verifying that each eligible student awarded a scholarship under this subpart has completed such student's qualified service.

''(2) ROLE OF SECRETARY.—If the Secretary does not receive satisfactory documentation under paragraph (1)(B) by the date specified by the Secretary, then the Secretary shall collect the scholarship amount determined under paragraph (3) as a loan under the terms and conditions for repayment of loans under part B (including provisions under such part that provide for loan repayment over time).

''(3) BREACH OF AGREEMENT.—Subject to paragraph (4), if an eligible student receives a scholarship under this subpart and agrees to provide qualified service in consideration for receipt of the scholarship, the eligible student is liable to the Federal Government

for the amount of such award, for interest on such amount at the rate applicable at the time of noncompliance for Stafford loans under section 427A, and for reasonable collections costs, if the eligible student fails to submit the documentation required under paragraph (1)(A).

''(4) WAIVER OR SUSPENSION OF LIABILITY.—The Secretary shall waive liability under paragraph (3) if—

''(A) the student subsequently demonstrates that such student has provided qualified service;

''(B) the student suffers death or permanent and total disability;

''(C) the student is unable to complete the program in which such student was enrolled due to the closure of the institution of higher education; or

''(D) the Secretary determines that compliance by the student with the agreement involved is impossible or would involve extreme hardship to such student.

''(5) AMOUNTS TO REMAIN AVAILABLE.—Any amounts collected by the Secretary under this subsection shall remain available for grant awards under this subpart.

''(d) TAX-FREE.—The amount of any scholarship that is received under this subpart shall not, consistent with section 108(f) of the Internal Revenue Code of 1986, be treated as gross income for Federal income tax purposes.

''SEC. 420O. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart—

''(1) $50,000,000 for fiscal year 2004;

''(2) $100,000,000 for fiscal year 2005;

''(3) $150,000,000 for fiscal year 2006; and

''(4) such sums as may be necessary for each of fiscal years 2007 and 2008.''.

By Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. KENNEDY, Mr. COCHRAN, Mrs. LINCOLN, Mr. KERRY, Mr. BINGAMAN, Mr. DODD, Mr. BAUCUS, and Mr. EDWARDS):

S. 480. A bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HARKIN. Mr. President, today I am introducing legislation, the Training for Realtime Writers Act of 2003, on behalf of myself and my colleagues, Senators GRASSLEY, KENNEDY, COCHRAN, LINCOLN, KERRY, BINGAMAN, DODD, and BAUCUS. The 1996 Telecom Act required that all television broadcasts were to be captioned by 2006. This was a much needed reform that has helped millions of deaf and hard-of-hearing Americans to be able to take full advantage of television programing. As of today, it is estimated that 3,000 captioners will be needed to fulfill this requirement, and that number continues to increase as more and more broadband stations come online. Unfortunately, the United States only has 300 captioners. If our country expects to have media fully captioned by 2006, something must be done.

This is an issue that I feel very strongly about because my late brother, Frank, was deaf. I know personally that access to culture, news, and other media was important to him and to others in achieving a better quality of life. More than 28 million Americans, or 8 percent of the population, are considered deaf or hard of hearing and many requires captioning services to participate in mainstream activities. In 1990, I authored legislation that required all television sets to be equipped with a computer chip to decode closed captioning. This bill completes the promise of that technology, affording deaf and hard of hearing Americans the same equality and access that captioning provides.

Though we don't necessarily think about it, on the morning of September 11 was a perfect example of the need for captioners. Holli Miller of Ankeny, IA, was captioning for Fox News. She was supposed to do her three and a half hour shift ending at 8:00 a.m. but as we all know, disaster struck. Despite the fact that she had already worked most of her shift and had two small children to care for, Holli Miller stayed right where she was and for nearly five more hours and continued to caption. Without even the ability to take bathroom breaks, Holli Miller made sure that deaf and hard of hearing people got the same news the rest of us got on September 11. I want to personnally say thank you to Holli Miller and all the many captioners and other people across the country that made sure all Americans were alert and informed on that tragic day.

But let me emphasize that the deaf and hard of hearing population is only one of a number of groups that will benefit from the legislation. The audience for captioning also includes individuals seeking to acquire or improve literacy skills, including approximately 27 million functionally illiterate adults, 3 to 4 million immigrants learning English as a second language, and 18 million children learning to read in grades kindergarten through 3. In addition, I see people using closed captioning to stay informed everywhere—from the gym to the airport. Captioning helps people educate themselves and helps all of us stay informed and entertained when audio isn't the most appropriate medium.

Although we have a few years to go until the deadline given by the 1996 Telecom Act, our nation is facing a serious shortage of captioners. Over the past five years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses. Yet the need for these skills continues to rise. That is why my colleagues and I are introducing this vital piece of legislation. The Training for Realtime Writers Act of 2003 would establish competitive grants to be used toward training real time captioners. This is necessary to ensure that we meet our goal set by the 1996 Telecom Act.

I urge my colleagues to review this legislation and I hope they will join us in support and join us in our effort to win its passage. I ask 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. 480

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Training for Realtime Writers Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As directed by Congress in section 723 of the Communications Act of 1934 (47 U.S.C. 613), as added by section 305 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 126), the Federal Communications Commission adopted rules requiring closed captioning of most television programming, which gradually require new video programming to be fully captioned beginning in 2006.

(2) More than 28,000,000 Americans, or 8 percent of the population, are considered deaf or hard of hearing, and many require captioning services to participate in mainstream activities.

(3) More than 24,000 children are born in the United States each year with some form of hearing loss.

(4) According to the Department of Health and Human Services and a study done by the National Council on Aging—

(A) 25 percent of Americans over 65 years old are hearing impaired;

(B) 33 percent of Americans over 70 years old are hearing impaired; and

(C) 41 percent of Americans over 75 years old are hearing impaired.

(5) The National Council on Aging study also found that depression in older adults may be directly related to hearing loss and disconnection with the spoken word.

(6) Empirical research demonstrates that captions improve the performance of individuals learning to read English and, according to numerous Federal agency statistics, could benefit—

(A) 3,700,000 remedial readers;

(B) 12,000,000 young children learning to read;

(C) 27,000,000 illiterate adults; and

(D) 30,000,000 people for whom English is a second language.

(7) Over the past 5 years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses.

SEC. 3. AUTHORIZATION OF GRANT PROGRAM TO PROMOTE TRAINING AND JOB PLACEMENT OF REALTIME WRITERS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall make competitive grants to eligible entities under subsection (b) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 723 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

(b) ELIGIBLE ENTITIES.—For purposes of this Act, an eligible entity is a court reporting program that—

(1) can document and demonstrate to the Secretary of Commerce that it meets minimum standards of educational and financial accountability, with a curriculum capable of training realtime writers qualified to provide captioning services;

(2) is accredited by an accrediting agency recognized by the Department of Education; and

(3) is participating in student aid programs under title IV of the Higher Education Act of 1965.

(c) PRIORITY IN GRANTS.—In determining whether to make grants under this section, the Secretary of Commerce shall give a priority to eligible entities that, as determined by the Secretary of Commerce—

(1) possess the most substantial capability to increase their capacity to train realtime writers;

(2) demonstrate the most promising collaboration with local educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(3) propose the most promising and innovative approaches for initiating or expanding training and job placement assistance efforts with respect to realtime writers.

(d) DURATION OF GRANT.—A grant under this section shall be for a period of two years.

(e) MAXIMUM AMOUNT OF GRANT.—The amount of a grant provided under subsection (a) to an entity eligible may not exceed $1,500,000 for the two-year period of the grant under subsection (d).

SEC. 4. APPLICATION.

(a) IN GENERAL.—To receive a grant under section 3, an eligible entity shall submit an application to the National Telecommunications and Information Administration at such time and in such manner as the Administration may require. The application shall contain the information set forth under subsection (b).

(b) INFORMATION.—Information in the application of an eligible entity under subsection (a) for a grant under section 3 shall include the following:

(1) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(2) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(3) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(4) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(5) A description of how the eligible entity will work with local workforce investment boards to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(6) Additional information, if any, of the eligibility of the eligible entity for priority in the making of grants under section 3(c).

(7) Such other information as the Administration may require.

SEC. 5. USE OF FUNDS.

(a) IN GENERAL.—An eligible entity receiving a grant under section 3 shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including—

(1) recruitment;

(2) subject to subsection (b), the provision of scholarships;

(3) distance learning;

(4) development of curriculum to more effectively train realtime writing skills, and education in the knowledge necessary for the delivery of high-quality closed captioning services;

(5) assistance in job placement for upcoming and recent graduates with all types of captioning employers;

(6) encouragement of individuals with disabilities to pursue a career in realtime writing; and

(7) the employment and payment of personnel for such purposes.

(b) SCHOLARSHIPS.—

(1) AMOUNT.—The amount of a scholarship under subsection (a)(2) shall be based on the amount of need of the recipient of the scholarship for financial assistance, as determined in accordance with part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk).

(2) AGREEMENT.—Each recipient of a scholarship under subsection (a)(2) shall enter into an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time (as determined by the Administration) that is appropriate (as so determined) for the amount of the scholarship received.

(3) COURSEWORK AND EMPLOYMENT.—The Administration shall establish requirements for coursework and employment for recipients of scholarships under subsection (a)(2), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. Requirements for repayment of scholarship amounts shall take into account the effect of economic conditions on the capacity of scholarship recipients to find work as realtime writers.

(c) ADMINISTRATIVE COSTS.—The recipient of a grant under section 3 may not use more than 5 percent of the grant amount to pay administrative costs associated with activities funded by the grant.

(d) SUPPLEMENT NOT SUPPLANT.—Grants amounts under this Act shall supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers

SEC. 6. REPORTS.

(a) ANNUAL REPORTS.—Each eligible entity receiving a grant under section 3 shall submit to the National Telecommunications and Information Administration, at the end of each year of the grant period, a report on the activities of such entity with respect to the use of grant amounts during such year.

(b) REPORT INFORMATION.—

(1) IN GENERAL.—Each report of an entity for a year under subsection (a) shall include a description of the use of grant amounts by the entity during such year, including an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers. The assessment shall utilize the performance measures submitted by the entity in the application for the grant under section 4(b).

(2) FINAL REPORT.—The final report of an entity on a grant under subsection (a) shall include a description of the best practices identified by the entity as a result of the grant for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, amounts as follows:

(1) $20,000,000 for each of fiscal years 2004, 2005, and 2006.

(2) Such sums as may be necessary for fiscal year 2007.

Mr. GRASSLEY. Mr. President, I am pleased to once again be the lead Republican cosponsor of the ''Training for Realtime Writers Act''. This legislation that Senator HARKIN and I are introducing today will provide grants for the training of realtime reporters and captioners. While we ran out of time to address this matter in the 107th Congress, I would remind Senators of the looming problem related to a shortage of what are called ''realtime writers''. Realtime writers are essentially trained court reporters, much like the Official Reporters of Debates here in the Senate, who use a combination of additional specialized training and technology to transform words into text as they are spoken. This can allow deaf and hard of hearing individuals to understand live television as well as follow proceedings at a civic function or in a classroom.

In the Telecommunications Act of 1996, Congress mandated that most television programming be fully captioned by 2006 in order to allow the 28 million Americans who are deaf or had of hearing to have access to the same news and information that many of us take for granted. Information provides a vital link to the outside world. Americans receive a large amount of their information about what is happening in the world and right in their communities from television. Whether it is an international crisis or a weather warning, information is necessary to fully participate in our society. In order for those who are deaf and hard of hearing to receive the same information as it is broadcast on live television, groups of captions must work around the clock transcribing words as they are spoken.

Currently, video-programming distributers must provide an average of at least 900 hours of captioned programming. Starting in 2005, this will increase to 1350 hours. By 2006, 100 percent of new nonexempt programming must be provided with captions. At the same time, student enrollment in programs that provide essential training in captioning has decreased significantly, with programs closing on many campuses. In order to meet the growing demand for realtime writers caused by this mandate, we must do everything we can to increase the number of individuals receiving this very specialized training.

Our bill will help address the shortage of individuals trained as realtime writers by providing grants to accredited court reporting programs to promote the training and placement of individuals as realtime writers. Specifically, court reporting programs could use these grants for item like recruitment of students for realtime writing programs, need-based scholarships, distance learning, education and training, job placement assistance, the encouragement of individuals with disabilities to pursue a career as a realtime writer, and personnel costs.

The expansion of distance learning opportunities in particular will have an enormous impact by making training accessible to individuals who want to become realtime writers but do not live in metropolitan areas. Also, need based scholarships offered using these grants funds would be subject to an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time.

We must act quickly because the shortage of individuals trained as realtime writers will only grow more severe as the captioning mandate in the 1996 Telecommunications Act continues to take effect. Failure to act could leave the 28 million deaf or hard of hearing Americans without the ability to fully participate in many of the professional, educational, and civic activities that other Americans enjoy. Congress was not able to complete work on this urgent matter before the end of the 107th Congress, so we must redouble our efforts. I would urge all senators to support the swift passage of this legislation.

By Mr. ALLEN (for himself and Mr. WARNER):

S. 481. A bill to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes; to the Committee on Governmental Affairs.

Mr. ALLEN. Mr. President, I rise today to introduce a bill to fairly assist injured Federal employees. This legislation will adjust Federal employees retirement computations to offset reductions in their retirement arising from on-the-job injuries covered by the Workers Compensation program. I introduced similar legislation last session that was passed by the Senate. I would like to thank my colleague Senator WARNER the senior Senator from Virginia, for his valuable support in cosponsoring this important effort.

This bill addresses a problem in the retirement program for Federal employees that has been recognized but unresolved since 1986 when the current retirement system was established. Unfortunately, complications arising from the Tax Code and the Workers Rehabilitation Act of 1973 have blocked any solution.

My resolve to address this problem was inspired by Ms. Louise Kurtz, a Federal employee from Virginia who was severely injured in the September 11 attack on the pentagon. She suffered burns over 70 percent of her body and lost all of her fingers. She has had many painful surgeries and faces additional surgeries in the future. She continues to endure rehabilitation over a year after suffering her injuries, yet still hopes to return to work some day. Current law, however, does not allow Mrs. Kurtz to contribute to her retirement program while she is recuperating and receiving Workers' Compensation disability payments. As a result, after returning to work and eventually retiring, she will find herself inadequately prepared and unable to afford to retire because of the lack of contributions during her recuperation.

As Ms. Kurt's situation reveals, Federal employee under the Federal Employees Retirement System who have sustained an on-the-job injury and are receiving disability compensation from the Department of Labor's Office of Worker's Compensation Programs are unable to make contributions or payments into Social Security or the Thrift Savings Plan. Therefore, the future retirement benefits from both sources are reduced.

This legislation offsets the reductions in Social Security and Thrift savings Plan retirement benefits by increasing the Federal Employees Retirement System Direct Benefit calculation by one percentage point for extended periods of disability.

The passage of this bill ensures that the pensions of our hard-working federal employees will be kept whole during a period of injury and recuperations, especially now that many of them are on the frontlines of protecting our homeland security in this new war on terror. By protecting the retirement security of injured Federal employee, we have provided an incentive for them to return to work and increased our ability to retain our most dedicated and experienced Federal workers. This is a reasonable and fair approach in which the whole Senate acted in a logical and compassionate manner last fall. Let us do so again.

I ask 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. 481

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

SECTION 1. ANNUITY COMPUTATION ADJUSTMENT FOR PERIODS OF DISABILITY.

(a) IN GENERAL.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating the second subsection (i) as subsection (k); and

(2) by adding at the end the following:

''(l) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.''

(b) CONFORMING AMENDMENT.—Section 8422(d)(2) of title 5, United States Code (as added by section 122(b)(2) of Public Law 107–135), is amended by striking ''8415(i)'' and inserting ''8415(k)''.

(c) APPLICABILITY.—The amendments made by this section shall apply with respect to any annuity entitlement which is based on a separation from service occurring on or after the date of enactment of this Act.

By Ms. COLLINS:

S. 482. A bill to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 483. A bill to authorize the Secretary of the Army to carry out a project for the mitigation of shore damages attributable to the project for navigation, Saco River, Maine; to the Committee on Environment and Public Works.

Ms. COLLINS. Mr. President, I rise today to introduce two pieces of legislation that will improve the lives of our Nation's fishermen who are struggling to make a living on the sea.

Fishing is more than just a profession in New England. Fishing is a culture and a way of life. This way of life is being threatened, however, by excessive regulation and unnecessary litigation. Despite scientific evidence of a rebound in fish stocks, New England's fishermen are suffering under ever more burdensome restrictions. Everyday, I hear from fishermen who struggle to support their families because they have been deprived of their right to make an honest living on the seas. The ''working waterfronts'' of our communities are in danger if disappearing, likely to be replaced by development. When that happens, a part of Maine's heritage is lost forever.

Today, I am introducing a package of amendments to the Magnuson-Stevens Act that will deliver a resource management strategy that is balanced, responsive, and sensible. It recognizes the fishermen's strong commitment to conserving the stocks, and acknowledges fishermen as partners in fisheries management.

The Fisheries Science and Management Improvement Act of 2003 will address much needed improvements in the science and regulatory standards of fisheries management. The Nation's fisheries management system, as it is currently designed, is broken. If anyone doubts this is the case, I want to point out that more than 100 lawsuits are currently pending against the Department of Commerce involving fisheries management plans.

Litigation is no way to manage one of our Nation's most important ecological and economic resources. The fact is, the courts are simply not well-suited to making biological and regulatory decisions. Fisheries management is best left to those who know the subject best: the fishermen, scientists, and regulators working together cooperatively.

No one in the country knows this better than New England groundfishermen. Over the last two years, a court case has thrown New England's groundfishing industry into a crisis. The case ended when a Federal judge ordered severe restrictions on groundfishing, including a 20-percent

cut in Days-at-Sea. The effect of this court order has been simply catastrophic for New England's groundfishing industry—an industry made up of small, independently-owned, and often family-owned, businesses.

These severe restrictions were ordered despite the fact that the science clearly demonstrates that the biomass for New England groundfish has increased every year since 1996. If the biomass is increasing, and the stock is clearly rebuilding, it makes no sense to enforce an arbitrarily structured and unscientifically based timeframe on the rebuilding process. This is especially true when the survival of a culture is at stake.

My legislation would inject consistency and common-sense standards into the fisheries management process: it addresses the importance of solid and reliable science in fisheries management. It strengthens the definition of ''best scientific information available'' and requires scientific data, including all stock assessments, to be peer-reviewed and to include the consideration of anecdotal information gathered from the people who know fishing best—the fishermen themselves. My bill ensures that the process of rebuilding stocks is based on rational and comprehensive science. Under current law, when fisheries are classified as overfished, the Councils are required to implement rebuilding plans to attain a historic high level of abundance within ten years, regardless of whether or not the current state of the marine environment can sustain such an abundance level. My bill redefines the concept of ''overfishing'' to take into consideration natural fluctuations in the marine environment. It also eliminates the ten-year rebuilding requirement—a requirement that has no foundation in science—and requires rebuilding periods to take into consideration the biology of the fish stock and the economic impact on fishing communities.

The legislation also addresses problems with the current conception of Essential Fish Habitat. Currently, the entire Exclusive Economic Zone has been defined as Essential Fish Habitat instead of more discrete units of habitat as originally conceived. Further, current law allows the Councils to regulate the impacts of fishing activity on Essential Fish Habitat, while the Councils cannot regulate other commercial activities—such as mining and coastal development and the laying of telecommunications cables—that affect these areas. My bill focuses the management of these areas on ''Habitat Areas of Particular Concern''—more discrete units of fish habitat that are more consistent with the congressional intent behind the Essential Fish Habitat concept.

My proposal treats the fishing industry as a legitimate interest in fisheries management by acknowledging the important role that commercial fishing plays in food security and healthy food consumption. My bill also ensures that the cumulative economic and social impacts of fisheries management decisions are considered, rather than assessed in isolation from one another.

Finally, the legislation would reduce the litigation burden on the fisheries management system. My proposal ensures that fishery management plans are pre-determined to be compliant with NEPA requirements, thereby preventing NEPA law from being used in an incorrect way to regulate fisheries. It would still require fishery management plans to meet all the other conservation provisions, including those governing rebuilding of overfished stocks, set out in the law. The Nation's Councils have asked for this protection from lawsuits so they may resume their proper role as a regulatory body.

I want to acknowledge the important role that my colleagues Senators SNOWE and KERRY, Chair and Ranking Member of the Oceans and Fisheries Subcommittee, are playing in addressing the problems of Magnuson-Stevens. My hope is that my proposal will help propel a discussion in the upcoming months as their committee moves forward with their own ideas.

The second piece of legislation I am offering is the Commercial Fishermen Safety Act of 2003, a bill to help fishermen purchase the life-saving safety equipment they need to survive when disaster strikes. I am pleased to be joined by my good friend from Massachusetts, Senator KERRY, in introducing this legislation. Senator KERRY has been a leader in the effort to sustain our fisheries and to maintain the proud fishing tradition that exists in his state and throughout the country.

The release of the movie The Perfect Storm provided millions of Americans with a glimpse of the challenges and dangers associated with earning a living in the fishing industry. While based on a true story, the movie merely scratches the surface of what it is like to be a modern-day fisherman. Everyday, members of our fishing communities struggle to cope with the pressures of running a small business, complying with extensive regulations, and maintaining their vessels and equipment. Added to these challenges are the dangers associated with fishing, where disaster can strike in conditions that are far less extreme than those depicted by the movie.

Year-in and year-out, commercial fishing is among the nation's most dangerous occupations. According to data compiled by the Coast Guard and the Bureau of Labor Statistics, 536 fishermen have lost their lives at sea since 1994. In fact, with an annual fatality rate of about 150 deaths per 100,000 workers, fishing is 30 times more dangerous than the average occupation.

The year 2000 will always be remembered in Maine's fishing communities as a year marked by tragedy. All told, nine commercial fishermen lost their lives off the coast of Maine in the year 2000, exceeding the combined casualties of the three previous years.

Yet as tragic as the year was, it could have been worse. Heroic acts by the Coast Guard and other fishermen resulted in the rescue of 13 commercial fishermen off the coast of Maine in the year 2000. In most of these circumstances, these fishermen were returned to their families because they had access to safety equipment that made the difference between life and death.

Coast Guard regulations require all fishing vessels to carry safety equipment. The requirements vary depending on factors such as the size of the vessel, the temperature of the water, and the distance the vessel travels from shore to fish.

When an emergency arises, safety equipment is priceless. At all other times, the cost of purchasing or maintaining this equipment must compete with other expenses such as loan payments, fuel, wages, maintenance, and insurance. Meeting all of these obligations is made more difficult by a regulatory framework that uses measures such as trip limits, days at sea, and gear alterations to manage our marine resources.

The Commercial Fishermen Safety Act of 2003 lends a hand to fishermen attempting to prepare in case disaster strikes. My bill provides a tax credit equal to 75 percent of the amount paid by fishermen to purchase or maintain required safety equipment. The tax credit is capped at $1500. Items such as EPIRBs and immersion suits cost hundreds of dollars, while life rafts can reach into the thousands. The tax credit will make life-saving equipment more affordable for more fishermen, who currently face limited options under the federal tax code.

I believe these two bills will assist our Nation's fishermen as they struggle to make their living on the seas. Fishing is a legitimate profession that deserves to be treated with the common-sense and consistency that we treat other professions. The legislation I am introducing gives these communities the tools they need to safely make their living in a way that still protects the resource.

By Mr. LEAHY (for himself and Ms. SNOWE):

S. 484. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility stem generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environmental and Public Works.

Mr. LEAHY. Mr. President, the risks and health effects of mercury contamination continue to be serious and immediate. We have known about mercury pollution for many years. It remains one of, if not the last of, the

major toxic pollutants without a comprehensive plan to control its spread. We know where the sources contributing to mercury contamination are, we have a pretty good idea where it goes, and we definitely know what harm it causes to people and to wildlife. Yet, serious contamination continues. That is why I am reintroducing important legislation today to confront this problem directly.

The most serious threat of mercury pollution is to our children. Just this week, the Environmental Protection Agency finally released their report, ''American's Children and the Environment: Measures of Contaminants, Body Burdens and Illnesses.'' The report should alarm all of us. It highlights the neurological harm that can come to children exposed to elevated mercury levels while in the womb and during the first years of their lives. As more mercury is dumped into our environment, more children will be at risk. Today, according to the Centers for Disease Control, 1 in 12 women of childbearing age has mercury levels above the safe health threshold established by EPA.

Although the report comes nine months late, it does highlight a serious gap between the Administration's ''Clear Skies'' proposal and the Leahy/Snowe bill when it comes to reducing mercury levels. The only thing clear about the Administration's proposal is that it won't protect Vermont's children from the pollution spewing out of power plants in the Midwest. The Administration's Clear Skies proposal will actually relax current mercury emissions law.

Our bill will reduce mercury emission from coal-fired power plants by 90 percent. The Clear Skies proposal would only reduce emissions by 50 percent in the near future and 70 percent over the next 15 years. Not only does this fall far short of our proposal, but it also falls short of current law and the Administration's previous position. In 2001, EPA Administrator Christie Todd Whitman said the EPA had initiated strict ''maximum achievable control technology'' MACT, standards for oil- and coal-fired electric utility units as required under section 112 of the Clean Air Act. At that time, Whitman said that mercury reductions are ''necessary now, not decades from now.''

Administrator Whitman was right then and wrong now. With industry's vigorous opposition to tighter mercury controls and the Bush administration's record to date rolling back environmental legislation regulation, especially the Clean Air Act, I worry that more children will be put at risk as the Administration continues to delay the MACT standards and other policies. The delays and rollbacks make you ask whose interests the Administration is putting first—children, or the big powerplant companies?

I ask for unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF THE OMNIBUS MERCURY EMISSIONS REDUCTION ACT OF 2003

WHAT WILL THE OMNIBUS MERCURY EMISSIONS REDUCTION ACT OF 2003 DO?

The Omnibus Mercury Emissions Reduction Act of 2003 mandates substantial reductions in mercury emissions from all major sources in the United States. It is the only comprehensive legislation to control mercury emissions from all major sources. It directs EPA to issue new standards for unregulated sources and to monitor and report on the progress of currently regulated sources. It sets an aggressive timetable for these reductions so that mercury emissions are reduced as soon as possible.

With these emissions reductions, the bill requires the safe disposal of mercury recovered from pollution control systems, so that the hazards of mercury are not merely transferred from one environmental medium to another. It requires annual public reporting—in both paper and electronic form—of facility-specific mercury emissions. It phases out mercury use in consumer products, requires product labeling, and mandates international cooperation. It supports research into the retirement of excess mercury, the handling of mercury waste, the effectiveness of fish consumption advisories, and the magnitude of previously uninventoried sources.

SECTION 3. MERCURY EMISSION STANDARDS FOR FOSSIL FUEL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS

The EPA's ''Mercury Study Report to Congress'' estimated 52 tons of mercury emissions per year from coal- and oil-fired electric utility steam generating units. More recently, an EPA inventory estimated 43 tons of mercury from coal-fired power plants. Collectively, these power plants constitute the largest source of mercury emissions in the United States. In December 2000, the EPA issued a positive determination to regulate these mercury emissions. But these rules will take years to write and implement, and there is already vigorous industry opposition. It is uncertain what form these rules will take or how long they may be delayed. This section requires EPA to set a ''maximum achievable control technology'' (MACT) standard for these emissions, such that nationwide emissions decrease by at least 90 percent.

SECTION 4. MERCURY EMISSION STANDARDS FOR COAL- AND OIL-FIRED COMMERCIAL AND INDUSTRIAL BOILER UNITS

The EPA's report on its study estimates that 29 tons of mercury emissions are released per year from coal- and oil-fired commercial and industrial boiler units. The EPA has not yet decided to regulate these emissions. This section requires EPA to set a MACT standard for these mercury emissions, such that nationwide emissions decrease by at least 90 percent.

SECTION 5. REDUCTION OF MERCURY EMISSIONS FROM SOLID WASTE INCINERATION UNITS

The EPA study estimates that 30 tons of mercury emissions are released each year from municipal waste combustors. These emissions result from the presence of mercury-containing items such as fluorescent lamps, fever thermometers, thermostats and switches, in municipal solid waste streams. In 1995 EPA promulgated final rules for these emissions, and these rules took effect in 2000. This section reaffirms those rules and requires stricter rules for units that do not comply. The most effective way to reduce mercury emissions from incinerators is to reduce the volume of mercury-containing items before they reach the incinerator. That is why this section also requires the separation of mercury-containing items from the waste stream, the labeling of mercury-containing items to facilitate this separation, and the phaseout of mercury in consumer products within three years, allowing for the possibility of exceptions for essential uses.

SECTION 6. MERCURY EMISSION STANDARDS FOR CHLOR-ALKALI PLANTS

The EPA study estimates that 7 tons of mercury emissions are released per year from chlor-alkali plants that use the mercury cell process to produce chlorine. EPA has not issued rules to regulate these emissions. This section requires each chlor-alkali plant that uses the mercury cell process to reduce its mercury emissions by 95 percent. The most effective way to meet this standard would be to switch to the more energy efficient membrane cell process, which many plants already use.

SECTION 7. MERCURY EMISSION STANDARDS FOR PORTLAND CEMENT PLANTS

The EPA study estimates that 5 tons of mercury emissions are released each year from Portland cement plants. In 1999 EPA promulgated final rules for emissions from cement plants, but these rules did not include mercury. This section requires each Portland cement plant to reduce its mercury emissions by 95 percent.

SECTION 8. REPORT ON IMPLEMENTATION OF MERCURY EMISSION STANDARDS FOR MEDICAL WASTE INCINERATORS

The EPA study estimates that 16 tons of mercury emissions are released per year from medical waste incinerators. In 1997 EPA issued final rules for emissions from hospital/medical/infectious waste incinerators. This section requires EPA to report on the success of these rules in reducing these mercury emissions.

SECTION 9. REPORT ON IMPLEMENTATION OF MERCURY EMISSION STANDARDS FOR HAZARDOUS WASTE COMBUSTORS

The EPA study estimates that 7 tons of mercury emissions are released each year form hazardous waste incinerators. In 1999 EPA promulgated final rules for these emissions. This section requires EPA to report on the success of these rules in reducing these mercury emissions.

SECTION 10. DEFENSE ACTIVITIES

This section requires the Department of Defense to report on its use of mercury, including the steps it is taking to reduce mercury emissions and to stabilize and recycle discarded mercury. This section also prohibits the Department of Defense from returning the nearly 5,000 tons of mercury in the National Defense Stockpile to the global market.

SECTION 11. INTERNATIONAL ACTIVITIES

This section directs EPA to work with Canada and Mexico to study mercury pollution in North America, including the sources of mercury pollution, the pathways of the pollution, and options for reducing the pollution.

SECTION 12. MERCURY RESEARCH

This section supports a variety of mercury research projects. First, it promotes accountability by mandating an interagency report on the effectiveness of this act in reducing mercury pollution. Second, it mandates an EPA study on mercury sedimentation trends in major bodies of water. Third, it directs EPA to evaluate and improve state-level mercury data and fish consumption advisories. Fourth, it mandates a National Academy of Sciences report on the reatirement of excess mercury, such as

stockpiled industrial mercury that is no longer needed due to plant closures or process changes. Fifth, it mandates an EPA study of mercury emissions from electric arc furnaces, a source not studied in the EPA's study report. Finally, it authorizes $2,000,000 for modernization and expansion of the Mercury Deposition Network, plus $10,000,000 over ten years for operational support of that network.

Ms. SNOWE. Mr. President, I rise today as the lead cosponsor of Senator LEAHY's Omnibus Mercury Reduction Act of 2003 to ask support for our continued efforts to dramatically reduce mercury pollution that has been shown to pose serious health risks, especially for pregnant women, and can cause irreversible nerve damage in young children.

This legislation responds to the Environmental Protection Agency's just released report on ''America's Children and the Environment: Measures of Contaminants, Body Burdens, and Illnesses'', which states that EPA remains concerned about children potentially exposed to mercury in the womb.

Mercury is among the least-controlled and most dangerous toxins threatening pregnant women and children from mercury exposure through the air and water in America today, and we need to continue the fight to pass a national approach to better control its use. Because mercury pollution knows no State borders, a national initiative is necessary to control it and better understand its health effects.

The Omnibus Mercury Emissions Reduction Act of 2003 would require the U.S. Environmental Protection Agency, EPA, to impose new restrictions on mercury emissions by utility power plants, coal and oil-fired commercial boilers, solid waste incinerators, and other sources of emissions. According to the EPA, an estimated 30 tons of mercury emissions per year come from municipal waste combustors because of the presence of mercury-containing items such as fluorescent lamps, fever thermometers, thermostats, and switches.

Our bill requires utility power plants and commercial boilers to reduce mercury emissions by 95 percent in five years, and requires the EPA to publish a list of mercury-containing items that need to be separated and removed from the waste streams that feed solid waste management facilities. The most effective way to reduce mercury emissions from incinerators is to reduce the volume of mercury-containing items before they reach the incinerator.

The bill would also expand research on the effects of mercury on sensitive subpopulations such as pregnant women and children, and it directs the EPA to work with the States to improve the quality and dissemination of State fish consumption advisories.

Even in Maine, where great efforts have been made to preserve clean air and water, mercury arrives as an unseen threat, carried in the air from hundreds of miles away and deposited in our lakes, rivers and coastal regions through rain and snowfall. This bill complements the steps Maine has taken to reduce mercury emissions, and by addressing what happens outside our borders, it also can ensure that Maine's actions will not be in vain.

Mercury is a dangerous toxin present in coal, which is burned to produce 65 percent of the nation's electricity, other fossil fuels, and various household and industrial products. When mercury is burned, fine particles are released and carried by precipitation back to earth, contaminating water bodies, fish, and wildlife, and ultimately posing a threat to humans. Nationwide, 39 States have issued warnings about eating certain fish in more than 50,000 bodies of water, up from 27 States in 1993.

While Maine ranks 49th among the least-polluting States in terms of mercury emissions, nearly all of its lakes are under health advisories due to airborne mercury pollution transported in air currents from other States. Because mercury is an element and cannot be destroyed, it cycles endlessly through the environment, necessitating control of the toxin at the source.

With the technology and resources available, we can and must find creative ways to substantially reduce mercury pollution, and this bill kicks that process into gear and will go a very long way toward removing this harmful toxin as a threat to human health and the environment.

In partnership with the Omnibus mercury bill, I am also a cosponsor of Senator JEFFORDS' Clean Power Act that calls for a 90 percent reduction of mercury from coal burning power plants by 2008. By 2009, the Jeffords bill also dramatically cuts aggregate power plant emissions of the three other major power plant pollutants: nitrogen oxides, NO_x, the primary cause of smog, by 71 percent from 2000 levels; sulfur dioxide, SO_2, that causes acid rain and respiratory disease, by 81 percent from 2000 levels; and carbon dioxide, CO_2, the greenhouse gas most directly linked to global climate variabilities, by 21 percent from 2000 levels. Of note, the NO_x, SO_2, and mercury reductions are set at levels that are known to be cost effective with available technology.

I hope to work with my colleagues in the 108th Congress to see that provisions in these two bills are fully debated and policy is passed to protect our environment and our population from the ravages of these major air pollutants. We must move forward for the health of the unborn, the American public and the entire planet.

By Mr. INHOFE (for himself and Mr. VOINOVICH) (by request):

S. 485. 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 program, and for other purposes; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, I hereby introduce, by request, the Clear Skies Initiative to reduce harmful air pollutants.

I am pleased that Senator VOINOVICH and I and our counterparts in the House have the opportunity to work with the President on one of his top legislative priorities. Clear Skies demonstrates the President's serious commitment to providing strong environmental protections for the American people. It is the most aggressive presidential initiative in history to reduce power plant emissions.

Clear Skies will build upon the remarkable environmental progress we've made over the last 30 years. Since passage of the Clean Air Act in 1970 the nation's gross domestic product has increased 160 percent, energy consumption has increased 45 percent, and population has increased 38 percent. At the same time we've reduced emissions by 29 percent.

President Bush understands that achieving positive environmental results and promoting economic growth are not incompatible goals. Moving beyond the confusing, command-and-control mandates of the past, Clear Skies cap-and-trade system harnesses the power of technology and innovation to bring about significant reductions in harmful pollutants.

I look forward to working with the Administration on crafting a sound bill. I believe Clear Skies represents a good starting point for moving forward with the legislative process.

I ask 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. 485

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 2003''.

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

SEC. 2. EMISSION REDUCTION PROGRAMS.

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

''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 3 years in which the unit had the highest heat input for the period 1998 through 2002.

''(B) Notwithstanding subparagraph (A), if a unit commenced or commences operation during the period 2001 through 2004, then 'baseline heat input' means the manufacturer's design heat input capacity for the unit multiplied by 80 percent for coal-fired units, 50 percent for boilers that are not coal-fired, 50 percent for combustion turbines other than simple cycle turbines, and 5 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) Not later than 3 months after the enactment of the Clear Skies Act of 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. Not later than 9 months after the enactment of the Clear Skies Act of 2003, 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, where applicable, 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 contiguous or 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 90 percent, and fuel oil comprising no more than 10 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 10 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 'simple cycle combustion turbine' means a combustion turbine that does not extract heat from the combustion turbine exhaust gases.

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

''(32) 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, American 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.

''(33) 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.

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

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

SEC. 403. ALLOWANCE SYSTEM.

''(a) ALLOCATIONS 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 or facility, 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 (2002), 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 24 months after the date of enactment of the Clear Skies Act of 2003. 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, not later than the commencement date of the nitrogen oxides allowance requirement under section 452, 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 (2002), 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 24 months after the date of enactment of the Clear Skies Act of 2002. All allowance allocations and transfers shall, upon recording 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 the year in which the purchase is made or the prior year. Not later than 36 months after the date of enactment of the Clear Skies Act of 2003, 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 the year in which the purchase is made or the prior year,

''(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 2003 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 the year specified in subparagraph (A) 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, and

''(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 3 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 6 years after the enactment of the Clear Skies Act of 2003, 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 and nitrogen oxides allowances for sulfur dioxide allowances.

''(j) INTERNATIONAL TRADING.—Not later than 24 months after the date of enactment of the Clear Skies Act of 2003, 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) exceeding 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) Recording 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.—

''(1) 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 time lines 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 dioxide, 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 clause (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) NEW UTILITY UNITS.—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) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the sulfur dioxide allowance requirement of section 422, 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) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—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) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART C FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the nitrogen oxides allowance requirement under section 452, 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.

''(5) DEADLINE FOR AFFECTED UNITS UNDER PART D FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the mercury allowance requirement of section 472, 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) IMPLEMENTATION.—With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2002), amended as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing proposed regulations not later than 36 months before the commencement date of the mercury allowance requirement under section 472 and final regulations not later than 24 months before that commencement date.

''(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) AMOUNT FOR OXIDES OF NITROGEN.—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) AMOUNT FOR SULFUR DIOXIDE BEFORE 2008.—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, 300 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) AMOUNT FOR SULFUR DIOXIDE AFTER 2007.—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) UNITS SUBJECT TO SECTIONS 422, 432, 452, OR 472 .—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)(2) or (b)(3), as applicable; 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, 300 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) PAYMENT.—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 part 77 (2002), 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 24 months after the date of enactment of the Clear Skies Act of 2003. 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) OTHER REQUIREMENTS.—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 this Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

''(g) VIOLATIONS.—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 50 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 21 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 5 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-NO_X burners prior to the time of commencement, and

''(4) is otherwise in compliance with the requirements of this Act.

''SEC. 409. AUCTIONS.

''(a) IN GENERAL.—(1) Commencing in 2005 and in each year thereafter, the Administrator shall conduct auctions, as required under sections 423, 424, 426, 434, 453, 454, 473, and 474, at which allowances shall be offered for sale in accordance with regulations promulgated by the Administrator no later than 24 months after the date of enactment of the Clear Skies Act of 2003.

''(2) Such regulations shall promote an efficient auction outcome and a competitive marketfor allowances.

''(3) 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, 432, 452, and 472, as the case may be. 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. 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.

''(4) The regulations shall provide that each auction shall be open to any person. A person wishing to bid for allowances in the auction shall submit bids according to auction procedures, a bidding schedule, a bidding means, and requirements for financial guarantees specified in the regulations. Winning bids, and required payments, for allowances shall be determined in accordance with the regulations. For any winning bid, the Administrator shall record the allowances in the Allowance Tracking System under section 403(c) only after the required payment for such allowances is received.

''(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 begin on the first business day in October of the year in which the auction is required or, 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) The auction shall be a multiple-round auction in which sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances are offered simultaneously.

''(4) 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 initial bids to purchase a specified quantity of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, at a reserve price specified by the Administrator. The bidder shall identify the account in the Allowance Tracking System under section 403(c) in which the such allowances that are purchased are to be recorded. Each bid must be guaranteed by a certified check, a funds transfer, or, in a form acceptable to the Administrator, a letter of credit for such quantity multiplied by the reserve price payable to the U.S. EPA.

''(5) The procedures in paragraph (4) shall constitute the first round of the auction.

''(6) In each round of the auction, the Administrator shall—

''(A) announce current round reserve prices for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances;

''(B) receive bids comprising nonnegative quantities for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be;

''(C) determine whether bids are acceptable as meeting auction requirements;

''(D) for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, determine whether the sum of the acceptable bids exceeds the quantity of such allowances available for auction;

''(E) if the sum of the acceptable bids for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, exceeds the quantity of such allowances available for auction, increase the reserve price for the next round based on the amount by which the sum of such acceptable bids exceeds the quantity of such allowances;

''(F) if the sum of the acceptable bids for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, does not exceed the quantity of such allowances available for auction, declare that round the last round of the auction for such allowances.

''(7) In the second and all subsequent rounds of the auction, the Administrator shall require that, for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, a bidder's quantity bid may not exceed the bidder's quantity bid for such allowances in the first round of the auction.

''(8) After the auction, the Administrator shall publish the names of winning and losing bidders, their quantities awarded, and the final prices. The Administrator shall provide the successful bidders notice of the allowances that they have purchased within thirty days after payments equaling the quantity awarded multiplied by the corresponding final reserve price is collected by the Administrator. After the conclusion of the auction, the Administrator shall return payment to unsuccessful bidders and add any unsold allowances to the next relevant auction.

''(9) The Administrator may specify by regulations, without notice and opportunity for comment, the following auction requirements and procedures:

''(A) reserve prices for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be;

''(B) procedures for adjusting reserve prices in each round;

''(C) procedures limiting a bidder s bids based on his or her bids in previous rounds;

''(D) rationing procedures to treat tie bids;

''(E) procedures allowing bids at intermediate prices between previous reserve prices and current reserve prices;

''(F) procedures allowing bid withdrawals before the final round of the auction;

''(G) anti-collusion rules;

''(H) market share limitations on a bidder or associated bidders;

''(I) aggregate information made available to bidders during the auction;

''(J) proxy bidding or procedures for facilitating participation by small bidders;

''(K) levels and details of financial guarantees;

''(L) technical specifications for electronic bidding; and

''(M) bidding schedules and other administrative requirements and procedures of the auction.

''(c) DELEGATION OR CONTRACT.—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) PROCEEDS.—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) In conducting the study, the Administrator shall include the following analyses and evaluations concerning the pollutants under paragraph (1) of subsection (a)(1):

''(A) An evaluation of 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) A benefit-cost analysis to evaluate 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 merits of allowing trading between nitrogen oxides emissions and sulfur dioxide emissions.

''(E) An evaluation of 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.

''(F) An evaluation of 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 (1) of subsection (a) 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.

''(G) An assessment of 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.

''(H) 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 (1) of subsection (a) 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.

''(I) An assessment of the best available and 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 components of fine particulate matter on public health.

''(J) An assessment of the best available and 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; and

''(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.

''(K) 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.

''(L) 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 best available information pursuant to the review of the air quality criteria for particulate matter under section 108.

''(b) PEER REVIEW PROCEDURES.—(1) The draft results of the study under subsection (a), including the benefit-cost analysis, the risk assessment, technological information 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 shall 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.).

''(2) The Administrator shall 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;

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

''(iii) disclose to the agency their sources of personal and institutional funding from the private or public 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) The Administrator shall respond, in writing, to all significant peer review and public comments and certify that—

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

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

''(c) RECOMMENDATION 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 (1) of subsection (a). The recommendation shall include the final results of the study under subsections (a) and (b) and shall address the factors described in paragraph (2) of subsection (a). The Administrator may submit separate recommendations addressing sulfur dioxide, nitrogen oxides, or mercury at any time after the study has been completed under paragraph (2) of subsection (a) and the peer review process has been completed under subsection (b).

''PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

''Subpart 1—Acid Rain Program

''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) In conducting the study, the Administrator shall include the following analyses and evaluations concerning the pollutants under paragraph (a)(1),

''(A) an evaluation of 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) A benefit-cost analysis to evaluate 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 merits of allowing trading between NO_x and SO_2 limitations;

''(E) an evaluation of the relative marginal cost effectiveness of reducing sulfur dioxide and nitrogen oxide emissions from affected EGUs under sub-part 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 standard;

''(F) an evaluation of 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;

''(G) an assessment of 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;

''(H) 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;

''(I) an assessment of the best available and 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;

''(J) an assessment of the best available and 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; and

''(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;

''(K) 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

''(L) 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 best available information pursuant to the review of the air quality criteria for particulate matter under section 108.

''(b) PEER REVIEW PROCEDURES.—(1) The draft results of the study under subsection (a) 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 shall 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.).

''(2) The Administrator shall conduct the peer review in an open and rigorous manner. Such peer review shall—

''(A) be conducted through a formal panel that is broadly representative of the relevant scientific and technical views and involves qualified specialists who—

''(i) are selected primarily on the basis of their technical expertise relevant to the analyses required under this section;

''(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 public 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) The Administrator shall respond, in writing, to all significant peer review and public comments; and

''(3) The Administrator shall 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 required under this section.

''(c) RECOMMENDAITON TO CONGRESS.—The Administrator, in consultation with the Secretary of Energy, shall 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 (2) of subsection (a). The Administrator may submit separate recommendations addressing sulfur dioxide, nitrogen oxides, or mercury at any time after the study has been completed under paragraph (2) of subsection (a) and the peer review process has been completed under subsection (b).

''SEC. 411. DEFINITIONS.

''For purposes of this subpart and subpart 1 of part B:

''(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 4 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 18 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.

''(20) 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 cogenerates 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) 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 to the 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 recording. 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 hereunder 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 multiplied 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 impracticability 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

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

State	Plant name	Generator	Phase I allowances
	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

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

State	Plant name	Generator	Phase I allowances
		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
	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 (2002), 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. Notwithstanding the prior sentence, if allowances remain in the reserve one year after the date of enactment of the Clear Skies Act of 2003, 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 UNITS 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 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 (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, 1.20 lbs/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 1.20 lbs/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.—

''(1) 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) 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—

''(A) an applicable power sales agreement has been executed;

''(B) 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;

''(C) 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

''(D) 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 statewide 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) LIMITATION.—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 (2002), 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	125,000	0
2004–2009	125,000	0

Allowances sold in the spot sale in any year are allowances which may be used only in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

''(3) PROCEEDS.—

''(A) TRANSFER.—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) RETURN.—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 2003, 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 AUCTIONS.—Not later than the commencement date of the sulfur dioxide allowance requirement under section 422, the Administrator shall terminate the withholding of allowances and the auction sales under this section. 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 (2002), 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—Clear Skies 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 2003, 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 2002 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it served or serves during 2002 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 2003, 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 or 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.

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 1998 through 2002 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) (2002), 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 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1998 through 2002 or, for a unit that commenced operation during 2001–2004, a unit designed to combust oil for more than 10 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) (2002), amended as appropriate by the Administrator.

''SEC. 422. APPLICABILITY.

''(a) PROHIBITION.—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.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 423 shall be held in order to meet the requirements of subsection (a), except as provided under section 425.

''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

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

Year	SO_2 allowances allocated	SO_2 allowances auctioned
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) IN GENERAL.—Not later than 24 months before the commencement date of the sulfur dioxide allowance requirement of section 422, 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) 95 percent of the total amount of sulfur dioxide allowances allocated each year 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) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine the total amount of sulfur dioxide allowances allocated under subpart 1 for 2010 and thereafter that are recorded, as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2003. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2002), amended as appropriate by the Administrator, except that the Administrator shall apply a discount rate of 7 percent for each year after 2010 to the amounts of sulfur dioxide allowances allocated for 2011 or later.

''(ii) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine 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 shall allocate 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) 3½ percent of the total amount of sulfur dioxide allowances allocated each year 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).

''(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) 1½ percent of the total amount of sulfur dioxide allowances allocated each year 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 input 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.

''(iii) 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).

''(iv) 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) FAILURE TO PROMULGATE.—(1) If, by the date 18 months before January 1 of each year 2010 through 2060, the Administrator has signed proposed regulations, but has not promulgated final regulations, determining allocations under subsection (a), the Administrator shall allocate, for such year, for each facility where an affected EGU is located, and for each general account, the amount of sulfur dioxide allowances specified for that facility and the general account in such proposed regulations.

''(2) If, by the date 18 months before January 1 of each year 2010 through 2060, the Administrator has not signed proposed regulations determining allocations under subsection (a), the Administrator shall:

''(A) determine, for such year, for each unit with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 an amount of sulfur dioxide allowances by multiplying 95 percent of the allocation amount under section 423 by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units with coal as their primary or secondary fuel or residual oil as their primary fuel;

''(B) allocate, for such year, for each facility where a unit under subparagraph (A) is located 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 5 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 paragraph (1) and in accordance with section 409.

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

''(a) REMOVAL FROM ACCOUNTS.—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) REGULATIONS.—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.—Not later than 18 months after the enactment of the Clear Skies Act of 2003, 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 each of the following:

''(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 control 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.—By order 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.

''(e) ALLOCATIONS.—Not later than 6 months after the commencement date of the sulfur dioxide allowance requirement of section 422, for the units for which applications are approved under subsection (c), the Administrator shall allocate sulfur dioxide 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 3 years in which the unit had the highest heat input for the period from the 8th through the 4th 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 4th years before the first covered year; and

''(ii) on or after January 1 of the 4th year before the first covered year, then 'adjusted baseline heat input' shall mean the annual heat input used by the unit during the 4th 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 WRAP 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 WRAP State.

''(2) The term 'affected EGU' means an affected EGU under subpart 2 that is in a WRAP 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 8th through the 4th year before the first covered year.

''(4) The term 'covered year' means—

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

''(ii) 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 WRAP 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 WRAP States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the WRAP 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 10 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 4th year before the first covered year.

''(6) The term 'WRAP State' means Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

''SEC. 432. APPLICABILITY.

''(a) PROHIBITION.—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.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 433 shall be held in order to meet the requirements of subsection (a).

''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) IN GENERAL.—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 4th 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) FAILURE TO PROMULGATE.—(1) For each covered year, if, by the date 18 months before January 1 of such year, the Administrator has signed proposed regulations but has not promulgated final regulations determining allocations under paragraph (a), then the Administrator shall allocate, for such year, for each facility where an affected EGU is located the amount of sulfur dioxide allowances specified for that facility in such proposed regulations.

''(2) For each covered year, if, by the date 18 months before January 1 of such year, the Administrator has not signed proposed regulations determining allocations under subsection (a), the Administrator shall:

''(A) determine, for such year, for 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 2001, Appendix B, Table B1 an amount of sulfur dioxide allowances by multiplying 95 percent of the allocation amount under section 433 by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all affected EGUs with coal as their primary or secondary fuel or residual oil as their primary fuel;

''(B) allocate, for such year, for each facility where a unit under subparagraph (A) is located the total 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 5 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 paragraph (1) and in accordance with section 409.

''PART C—NITROGEN OXIDES CLEAR SKIES 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 (2002). The maximum allowable emission rates are as follows:

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

''(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; and

''(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 (2002).

''(c) ALTERNATIVE EMISSION LIMITATIONS.—(1) 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—

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

''(B) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

''(2) 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—

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

''(B) has properly operated such equipment for a period of 15 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

''(C) 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 (B), 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 subparagraphs (B) and (C).

''(3) 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 (2002), amended as appropriate by the Administrator.

''(d) EMISSIONS AVERAGING.—(1) 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—

''(A) 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

''(B) the 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).

''(2) If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in paragraph (1) 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 (2002), 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—Clear Skies 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 2003, 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 2002 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it served or serves during 2002 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 2003, 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 or 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, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas 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, Kansas, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

''SEC. 452. APPLICABILITY.

''(a) ZONE 1 PROHIBITION.—(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) ZONE 2 PROHIBITION.—(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) ZONE 1 ALLOCATIONS.—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 ALLOWANCES 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	900,550
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) ZONE 2 ALLOCATIONS.—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	NO_X allowance allocated	NO_X 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
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) EPA REGULATIONS.—Not later than 18 months before the commencement date of the nitrogen oxides allowance requirement of section 452, 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 commence operation by and 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) FAILURE TO REGULATE.—(A) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated 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; and

''(ii) has signed proposed regulations but has not promulgated final regulations determining allocations under paragraph (1),

the Administrator shall allocate, for such year, for each facility where an affected EGU is located in the Zone 1 States the amount of nitrogen oxides allowances specified for that facility in such proposed regulations.

''(B) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated 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; and

''(ii) has not signed proposed regulations determining allocations under paragraph (1),

the Administrator shall make allocations, for such year, for each unit in the Zone 1 States listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 as provided in subparagraph (C).

''(C) Allocations of nitrogen oxides allowances for a unit under this subparagraph shall be determined by multiplying 95 percent of the allocation amount under section 453(a) by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units in the Zone 1 States.

''(D) When the Administrator makes an allocation under subparagraph (C), the Administrator shall—

''(i) allocate for each facility where a unit referred to in subparagraph (C) is located the total of the amounts of nitrogen oxides allowances for the units at such facility, and

''(ii) auction an amount of nitrogen oxides allowances equal to 5 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 referred to in subparagraph (A) and in accordance with section 409.

''(E) For each year 2008 through 2058, if the Administrator has not signed proposed regulations referred to in subparagraph (A) 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 the date 18 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) EPA REGULATIONS.—Not later than 18 months before the commencement date of the nitrogen oxides allowance requirement of section 452, 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 commence operation by and 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) FAILURE TO REGULATE.—(A) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated 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; and

''(ii) has signed proposed regulations but has not promulgated final regulations determining allocations under paragraph (1),

the Administrator shall allocate, for such year, for each facility where an affected EGU is located in the Zone 2 States the amount of nitrogen oxides allowances specified for that facility in such proposed regulations.

''(B) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated 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; and

''(ii) has not signed proposed regulations determining allocations under paragraph (1),

the Administrator shall make allocations, for such year, for each unit in the Zone 2 States listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 as provided in subparagraph (C).

''(C) Allocations of nitrogen oxides allowances for a unit under this subparagraph shall be determined by multiplying 95 percent of the allocation amount under section 453(b) by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units in the Zone 2 States.

''(D) When the Administrator make an allocation under subparagraph (C), the Administrator shall—

''(i) allocate for each facility where a unit referred to in subparagraph (C) is located the total of the amounts of nitrogen oxides allowances for the units at such facility, and

''(ii) auction an amount of nitrogen oxides allowances equal to 5 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 referred to in subparagraph (A) and in accordance with section 409.

''(E) For each year 2008 through 2058, if the Administrator has not signed proposed regulations referred to in subparagraph (A) 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 the date 18 months before January 1 of such year, then it shall be unlawful for an 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 'NO_X SIP Call 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) SIPS.—Except as provided in subsection (b), the applicable implementation plan for each NO_X SIP Call State shall be consistent with the requirements, including the NO_X SIP Call 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) REQUIREMENTS.—Notwithstanding any provision to the contrary 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)—

''(1) the applicable implementation plan for each NO_X SIP Call State shall require full implementation of the required emission control measures starting no later than the first ozone season; and

''(2) starting January 1, 2008—

''(A) the owners and operators of a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D shall not longer be subject to the requirements in a NO_X SIP Call State's applicable implementation plan that meet the requirements of subsection (a) and paragraph (1); and

''(B) notwithstanding subparagraph (A), if the Administrator determines, by December 31, 2007, that a NO_X SIP Call State's applicable implementation plan meets the requirements of subsection (a) and paragraph (1), such applicable implementation plan shall be deemed to continue to meet such requirements; and

''(3)(A) The owner or operator of a boiler, combustion turbine, or combined cycle system may submit to the Administrator a petition to allow use of nitrogen oxides allowances allocated for 2005 to meet the applicable requirement to hold nitrogen oxides allowances at least equal to 2004 ozone season emissions of such boiler, combustion turbine, or combined cycle system.

''(B) A petition under this paragraph shall be submitted to the Administrator by February 1, 2004.

''(C) The petition shall demonstrate that the owner or operator made reasonable efforts to install, at the boiler, combustion turbine, or combined cycle system, nitrogen oxides control technology designed to allow the owner or operator to meet such requirement to hold nitrogen oxides allowances.

''(D) The petition shall demonstrate that there is an undue risk for the reliability of electricity supply (taking into account the feasibility of purchasing electricity or nitrogen oxides allowances) because—

''(i) the owner or operator is not likely to be able to install and operate the technology under subparagraph (C) on a timely basis; or

''(ii) the technology under subparagraph (C) is not likely to be able to achieve its design control level on a timely basis.

''(E) The petition shall include a statement by the NO_x SIP Call State where the boiler, combustion turbine, or combined cycle system is located that the NO_x SIP Call State does not object to the petition.

''(F) By May 30, 2004, by order, the Administrator shall approve the petition if it meets the requirements of subparagraphs (B) through (E).

''(c) SAVINGS PROVISION.—Nothing in this section or section 464 shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard, relating to a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

''SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO_X TRADING PROGRAM FOR EGUS.

''Starting January 1, 2008, with regard to any boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, the Administrator shall not administer any nitrogen oxides trading program included in any NO_X SIP Call State's applicable implementation plan and meeting the requirements of section 463(a) and (b)(1).

''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, is included in a NO_X SIP Call State's applicable implementation plan, and meets the requirements of section 463(a) and (b)(1).

''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 2003, 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 2002 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it served or serves during 2002 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 2003, 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 or 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
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) IN GENERAL.—Not later than 24 months before the commencement date of the mercury allowance requirement of section 472, the Administrator shall promulgate regulations determining allocations of mercury allowances for each year during 2010 through 2060 for units at a facility that commence operation by and 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) FAILURE TO PROMULGATE.—(1) For each year 2010 through 2060, if, by the date 18 months before January 1 of such year, the Administrator—

''(A) has promulgated regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances; and

''(B) has signed proposed regulations but has not promulgated final regulations determining allocations under subsection (a),

the Administrator shall allocate, for such year, for each facility where an affected EGU is located the amount of mercury allowances specified for that facility in such proposed regulations.

''(2) If, by the date 18 months before January 1 of each year 2010 through 2060, the Administrator has not signed proposed regulations determining allocations under subsection (a), the Administrator shall:

''(A) determine, for such year, for each unit with coal as its primary or secondary fuel listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 an amount of mercury allowances by multiplying 95 percent of the allocation amount under section 473 by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units with coal as their primary or secondary fuel;

''(B) allocate, for such year, for each facility where a unit under subparagraph (A) is located the total of the amounts of mercury allowances for the units at such facility determined under subparagraph (A); and

''(C) auction an amount of mercury allowances equal to 5 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.

''(3) For each year 2010 through 2060, if the Administrator has not signed proposed regulations under subsection (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 the date 18 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

''SEC. 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 2003, 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.

''(b) EMISSION STANDARDS.—

''(1) IN GENERAL.—No later than 12 months after the date of enactment of the Clear Skies Act of 2003, 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—

''(i) 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.

''(ii) 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, determined assuming no use of on-site or offsite pre-combustion treatment of coal and no use of technology that captures mercury, are reduced by 80 percent;

''(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 paragraph (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; or

''(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 2.0lb/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 regulation, 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.

''SEC. 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, 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 United States 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;

''(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; and

''(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 scrubbers 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) MONITORING AND ASSESSMENT.—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; and

''(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 January 1, 2008, and not later than every 4 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 PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.

''(a) MAJOR SOURCE EXEMPTION.—An affected unit shall 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 parts 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 3 years after the date of enactment of the Clear Skies Act of 2003:

''(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 8 years after the date of enactment of the Clear Skies Act of 2003, 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 2003 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, as 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; and

''(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 that increases the maximum hourly emissions of any pollutant regulated under this Act above the maximum hourly emissions achievable at that unit during the 5 years prior to the change or that results in the emission of any pollutant regulated under this Act and not previously emitted.

''(e) SAVINGS CLAUSE.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt to enforce any regulation, requirements, 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.''.

SEC. 3. OTHER AMENDMENTS.

(a) Title I of the Clean Air Act is amended as follows:

(1) In section 103 by repealing subparagraphs (E) and (F).

(2) In section 107—

(A) By amending subparagraph (A) of subsection (d)(1) as follows:

(i) strike ''or'' at the end of clause (ii);

(ii) strike the period at the end of clause (iii) and insert '', or'';

(iii) add the following clause (iv) after clause (iii):

''(iv) notwithstanding clauses (i) through (iii), an area may be designated transitional for the PM 2.5 national primary or secondary ambient air quality standards or the 8-hour ozone national primary or secondary 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 the applicable standard or standards 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.''.

(iv) add at the end a sentence to read as follows: ''For purposes of the PM 2.5 national primary or secondary ambient air quality standards, the time period for the State to submit the designations shall be extended to no later than December 31, 2003.''.

(B) By amending clause (i) of subsection (d)(1)(B) by adding at the end a sentence to read as follows: ''The Administrator shall not be required to designate areas for the revised PM 2.5 national primary or secondary ambient air quality standards 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 December 31, 2004.''.

(3) In section 110 as follows:

(A) By amending clause (i) of subsection (a)(2)(D) by inserting ''except as provided in subsection (q),'' before the word ''prohibiting''.

(B) By adding the following new subsections at the end thereof:

''(q) REVIEW OF CERTAIN PLANS.—(1) The Administrator shall, in reviewing, under clause (i) of subsection (a)(2)(D), any plan with respect to affected units, within the meaning of section 126(d)(1)—

''(A) consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the other State or States;

''(B) not require submission of plan provisions mandating emissions reductions from such affected units, unless the Administrator determines that—

''(i) 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

''(ii) reductions in such emissions will improve air quality in the other State's or States' nonattainment areas 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;

''(C) develop and appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006; and

''(D) not require submission of plan provisions subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to January 1, 2012.

''(2) In making the determination under clause (ii) of subparagraph (B) of paragraph (1), the Administrator will use the best available peer- reviewed models and methodology that consider the proximity of the source or sources to the other State or States and incorporate other source characteristics.

''(3) Nothing in paragraph (1) 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);''.

''(r) 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 shall 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 title.

''(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015.—No later than June 30, 2016, the Administrator shall determine whether each area designated as transitional for the 8-hour ozone standard or for the PM 2.5 standard has attained that standard. If the Administrator 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) By adding to section 111(b)(1) a new subparagraph (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) By amending section 112 as follows:

(A) Paragraph (1) of subsection (c) is amended to read as follows:

''(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). Electric utility steam generating units not subject to section 3005 of the Solid Waste Disposal Act 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). Any such regulations shall be promulgated within, and shall not take effect before, the date 8 years after the commencement date of the mercury allowance requirement of section 472. 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 (A) of subsection (n)(1) is amended to read as follows:

''(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) Section 126 is amended as follows:

(A) By replacing ''section 110(a)(2)(D)(ii) or this section'' in subsection (b) with ''section 110(a)(2)(D)(i)''.

(B) By replacing ''this section and the prohibition of section 110(a)(2)(D)(ii)'' in subsection (e)(1) with ''the prohibition of section 110(a)(2)(D)(i)''.

(C) In the flush language at end of subsection (c) by striking ''section 110(a)(2)(D)(ii)'' and inserting ''section 110(a)(2)(D)(i)'' and deleting the last sentence.

(D) By amending 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 2003 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 or areas 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 the determination under clause (ii), the Administrator shall 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 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 the 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.—Section 307(d)(1)(G) of title III of the Clean Air Act is amended to read as follows:

''(G) the promulgation or revision of any regulation under title IV,''.

(c) NOISE POLLUTION.—Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.) is redesignated as title VII and amended by renumbering sections 401 through 403 as sections 701 through 703, respectively.

(d) SECTION 406.—Title IV of the Clean Air Act Amendments of 1990 (relating to acid deposition control) is amended by repealing section 406 (industrial SO_2 emissions).

(e) MONITORING.—Section 821(a) of 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 as of December 31, 2009, 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 (2002), amended as appropriate by the Administrator.''.

By Mr. DOMENICI (for himself, Mr. KENNEDY, Mr. COLEMAN, Mr. DAYTON, Mr. GRASSLEY, Mr. REED, Mr. COCHRAN, Mr. DODD, Mr. WARNER, Mr. REID, Mr. THOMAS, Mr. JOHNSON, Mr. SPECTER, Mr. HARKIN, Mr. LUGAR, Mr. DASCHLE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Ms. COLLINS, Ms. CANTWELL, Mr. ROBERTS, Mr. EDWARDS, Mr. CHAFEE, Mrs. LINCOLN, Mr. BENNETT, and Mr. LAUTENBERG):

S. 486. A bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Mr. President, I rise today with my friend Senator KENNEDY to introduce the ''Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003.''

I have mixed emotions today, because, while we are once again fighting for parity, my long time partner, Paul Wellstone is not standing across the aisle from me. Unfortunately, my colleagues are to aware of Senator Wellstone's tragic passing last year. So, while I feel a profound sense of sadness, I also have a renewed determination to win a parity victory for the millions of Americans affected by these dreaded diseases.

The time has come to end this blatant pattern of discrimination against people merely because they suffer from a mental illness. The human brain is the organ of the mind and just like the other organs of our body, it is subject to illness. And just as we must treat illnesses to our other organs, we must also treat illnesses of the brain.

Building upon that, I would ask the following question: what if forty years ago our Nation had decided to exclude heart disease from health insurance coverage? Think about some of the wonderful things we would not be doing today like angioplasty, bypasses, and valve replacements and the millions of people helped because insurance covers these procedures.

I would submit these medical advances have occurred because insurance dollars have followed the patient through the health care system. The presence of insurance dollars has provided an enticing incentive to treat those individuals suffering from heart disease. But sadly, those suffering from a mental illness do not enjoy those same benefits of treatment and medical advances because all too often insurance discriminates against illnesses of the brain.

Individuals suffering from a mental illness face this discrimination even though medical science is in an era where we can accurately diagnosis mental illnesses and treat those afflicted so they can be productive. I simply do not understand, why with this evidence would we not cover these individuals and treat their illnesses like any other disease? There simply should not be a difference in the coverage provided by insurance companies for mental health benefits and medical benefits, merely because an individual suffers from a mental illness.

The introduction of our Bill marks a historic opportunity for us to take the next step towards mental health parity. The timing of our Bill is even more important because the second consecutive one year extension of the landmark Mental Health Parity Act of 1996 will sunset later this year.

As my colleagues know, this is an issue I have a long involvement with

and I would like to begin with a few observations.

I believe that we have made great strides in providing parity for the coverage of mental illness. However, mental illness continues to exact a heavy toll on many, many lives.

Even though we know so much more about mental illness, it can still bring devastating consequences to those it touches; their families, their friends, and their loved ones. These individuals and families not only deal with the societal prejudices and suspicions hanging on from the past, but they also must contend with unequal insurance coverage.

I would submit the Mental Health Parity Act of 1996 is a good first start, but the Act is also not working. While there may adherence to the letter of the law, there are certainly violations of the spirit of the law. For instance, ways are being found around the law by placing limits on the number of covered hospital days and outpatient visits.

That is why I believe it is time for a change.

Some will immediately say we cannot afford it or that inclusion of this treatment will cost too much. But, the facts simply do not support that conclusion. First, I would direct them to the Congressional Budget Office's, CBO, score of the bill. CBO scored the cost of the bill as 0.9 percent or less than one percent. Second, I would point out the Mental Health Parity Act of 1996 contains a provision allowing companies to no longer comply with the law if their costs increase by more than one percent. And do you know how many companies have opted out because their costs have increased by more than one percent? Less than ten companies throughout our entire country.

With that in mind I would like to share a couple of facts about mental illness with my colleagues: within the developed world, including the United States, 4 of the 10 leading causes of disability for individuals over the age of five are mental disorders; in the order of prevalence the disorders are major depression, schizophrenia, bipolar disorder, and obsessive compulsive disorder; one in every five people—more than 40 million adults—in this Nation will be afflicted by some type of mental illness; and schizophrenia alone is 50 times more common than cystic fibrosis, 60 times more common than muscular dystrophy and will strike between 2 and 3 million Americans.

Let us also look at the efficacy of treatment for individuals suffering from certain mental illnesses, especially when compared with the success rates of treatments for other physical ailments. For a long time, many who are in this field—especially on the insurance side—have behaved as if you get far better results for angioplasty than you do for treatments for bipolar illness.

Treatment for bipolar disorders—that is, those disorders characterized by extreme lows and extreme highs—have an 80 percent success rate if you get treatment, both medicine and care. Schizophrenia, the most dreaded of mental illnesses, has a 60-percent success rate in the United States today if treated properly. Major depression has a 65 percent success rate.

Let's compare those success rates to several important surgical procedures that everybody thinks we ought to be doing: Angioplasty has a 41-percent success rate and Atherectomy has a 52-percent success rate.

I would now like to take a minute to discuss the Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003. The Bill seeks a very simple goal: provide the same mental health benefits already enjoyed by Federal employees.

The Bill is modeled after the mental health benefits provided through the Federal Employees Health Benefits Program, FEHBP, and expands the Mental Health Parity Act of 1996 to prohibit a group health plan from imposing treatment limitations or financial requirements on the coverage of mental health benefits unless comparable limitations are imposed on medical and surgical benefits.

Our Bill provides full parity for all categories of mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, DSM IV, with coverage being contingent on the mental health condition being included in an authorized treatment plan, the treatment plan is in accordance with standard protocols, and the treatment plan meets medical necessity determination criteria.

Like the Mental Health Parity Act of 1996, the Bill does not require a health plan to provide coverage for alcohol and substance abuse benefits. Moreover, the Bill does not mandate the coverage of mental health benefits, but rather the Bill only applies if the plan already provides coverage for mental health benefits.

In conclusion, the Bill provides mental heath benefits on par with those already enjoyed by Federal employees and members of Congress and I would urge my colleagues to support this important piece of legislation.

I ask 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. 486

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003''.

SEC. 2. AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Section 712 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a) is amended to read as follows:

''SEC. 712. MENTAL HEALTH PARITY.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits, such plan or coverage shall not impose any treatment limitations or financial requirements with respect to the coverage of benefits for mental illnesses unless comparable treatment limitations or financial requirements are imposed on medical and surgical benefits.

''(b) CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits.

''(2) MEDICAL MANAGEMENT OF MENTAL HEALTH BENEFITS.—Consistent with subsection (a), nothing in this section shall be construed to prevent the medical management of mental health benefits, including through concurrent and retrospective utilization review and utilization management practices, preauthorization, and the application of medical necessity and appropriateness criteria applicable to behavioral health and the contracting and use of a network of participating providers.

''(3) NO REQUIREMENT OF SPECIFIC SERVICES.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide coverage for specific mental health services, except to the extent that the failure to cover such services would result in a disparity between the coverage of mental health and medical and surgical benefits.

''(c) SMALL EMPLOYER EXEMPTION.—

''(1) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of any employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year.

''(2) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subsection—

''(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—In the case of a plan or coverage option that provides in-network mental health benefits, out-of-network mental health benefits may be provided using treatment limitations or financial requirements that are not comparable to the limitations and requirements applied to medical and surgical benefits if the plan or coverage provides such in-

network mental health benefits in accordance with subsection (a) and provides reasonable access to in-network providers and facilities.

''(f) DEFINITIONS.—For purposes of this section—

''(1) FINANCIAL REQUIREMENTS.—The term 'financial requirements' includes deductibles, coinsurance, co-payments, other cost sharing, and limitations on the total amount that may be paid by a participant or beneficiary with respect to benefits under the plan or health insurance coverage and shall include the application of annual and lifetime limits.

''(2) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

''(3) MENTAL HEALTH BENEFITS.—The term 'mental health benefits' means benefits with respect to services, as defined under the terms and conditions of the plan or coverage (as the case may be), for all categories of mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV–TR), or the most recent edition if different than the Fourth Edition, if such services are included as part of an authorized treatment plan that is in accordance with standard protocols and such services meet the plan or issuer's medical necessity criteria. Such term does not include benefits with respect to the treatment of substance abuse or chemical dependency.

''(4) TREATMENT LIMITATIONS.—The term 'treatment limitations' means limitations on the frequency of treatment, number of visits or days of coverage, or other similar limits on the duration or scope of treatment under the plan or coverage.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning on or after January 1, 2004.

SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.

(a) IN GENERAL.—Section 2705 of the Public Health Service Act (42 U.S.C. 300gg–5) is amended to read as follows:

''SEC. 2705. MENTAL HEALTH PARITY.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits, such plan or coverage shall not impose any treatment limitations or financial requirements with respect to the coverage of benefits for mental illnesses unless comparable treatment limitations or financial requirements are imposed on medical and surgical benefits.

''(b) CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits.

''(2) MEDICAL MANAGEMENT OF MENTAL HEALTH BENEFITS.—Consistent with subsection (a), nothing in this section shall be construed to prevent the medical management of mental health benefits, including through concurrent and retrospective utilization review and utilization management practices, preauthorization, and the application of medical necessity and appropriateness criteria applicable to behavioral health and the contracting and use of a network of participating providers.

''(3) NO REQUIREMENT OF SPECIFIC SERVICES.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide coverage for specific mental health services, except to the extent that the failure to cover such services would result in a disparity between the coverage of mental health and medical and surgical benefits.

''(c) SMALL EMPLOYER EXEMPTION.—

''(1) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of any employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year.

''(2) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subsection—

''(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—In the case of a plan or coverage option that provides in-network mental health benefits, out-of-network mental health benefits may be provided using treatment limitations or financial requirements that are not comparable to the limitations and requirements applied to medical and surgical benefits if the plan or coverage provides such in-network mental health benefits in accordance with subsection (a) and provides reasonable access to in-network providers and facilities.

''(f) DEFINITIONS.—For purposes of this section—

''(1) FINANCIAL REQUIREMENTS.—The term 'financial requirements' includes deductibles, coinsurance, co-payments, other cost sharing, and limitations on the total amount that may be paid by a participant, beneficiary or enrollee with respect to benefits under the plan or health insurance coverage and shall include the application of annual and lifetime limits.

''(2) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

''(3) MENTAL HEALTH BENEFITS.—The term 'mental health benefits' means benefits with respect to services, as defined under the terms and conditions of the plan or coverage (as the case may be), for all categories of mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV–TR), or the most recent edition if different than the Fourth Edition, if such services are included as part of an authorized treatment plan that is in accordance with standard protocols and such services meet the plan or issuer's medical necessity criteria. Such term does not include benefits with respect to the treatment of substance abuse or chemical dependency.

''(4) TREATMENT LIMITATIONS.—The term 'treatment limitations' means limitations on the frequency of treatment, number of visits or days of coverage, or other similar limits on the duration or scope of treatment under the plan or coverage.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning on or after January 1, 2004.

SEC. 4. PREEMPTION.

Nothing in the amendments made by this Act shall be construed to preempt any provision of State law, with respect to health insurance coverage offered by a health insurance issuer in connection with a group health plan, that provides protections to enrollees that are greater than the protections provided under such amendments. Nothing in the amendments made by this Act shall be construed to affect or modify section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

SEC. 5. GENERAL ACCOUNTING OFFICE STUDY.

(a) STUDY.—The Comptroller General shall conduct a study that evaluates the effect of the implementation of the amendments made by this Act on the cost of health insurance coverage, access to health insurance coverage (including the availability of in-network providers), the quality of health care, and other issues as determined appropriate by the Comptroller General. Such study shall also include an estimate of the cost that would be incurred if such amendments were extended in a manner so as to provide coverage for the treatment of substance abuse and chemical dependency.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to the appropriate committees of Congress a report containing the results of the study conducted under subsection (a).

Mr. KENNEDY. Mr. President, it is an honor to be here today with Senator DOMENICI to renew the battle in the Senate to end one of the most shameful forms of discrimination in our society discrimination against mental illness. We renew the battle in the name of our friend and colleague Paul Wellstone who did so much to advance this cause we share and whom we miss so dearly now.

Senator PETE DOMENICI and Senator Paul Wellstone led us with great skill in the Senate in this bipartisan battle in the past, and I'm proud to join Senator DOMENICI today to carry on this very important effort in the Senate.

This bill brings first class medicine to millions of Americans who have been second class patients for too long.

We know that millions of Americans across the country with mental illness faced stigma and misunderstanding. Even worse, they have been denied treatment that can cure or ease their cruel afflictions. Too often, they are the victims of discrimination by health insurance companies. It is unacceptable that the nation continues to tolerate actions by insurers that deny medical care for mental illnesses even though the very same insurers fully cover the treatment of physical illnesses that are often more costly, less debilitating and less curable. Mental illnesses are treatable and curable, and

it's high time to bring relief to those who experience them.

Equal treatment of the mentally ill is not just an insurance issue, it is a civil rights issue. At its heart, mental health parity is a question of simple justice.

The need is clear. One in five Americans will suffer some form of mental illness this year—but only one-third of them will receive treatment. According to a report of the Surgeon General, at least 4 million children suffer from a major mental illness that results in significant impairments at home, at school, and with their peers. Families must often make painful choices about how to pay for the care their child needs to live a normal life.

The cost is low. As we have seen in state after state and in the Federal Employees Health Benefits Program, insurance parity does not cause soaring insurance premiums. When parity for both mental health coverage and substance abuse coverage was provided for federal employees, they paid only $1 a month more for individual coverage and $2 for family coverage. The Congressional Budget Office has estimated that this bill will raise insurance rates by less than one percent a small cost that will bring health care and financial security to many families.

It is tragic when a child is diagnosed with any illness. It is heart wrenching for parents to watch their children suffer. The tragedy is even greater when an insurance company denies treatment for a child solely because the illness is a mental illness. It's wrong for insurance companies to promote modern medicine for physical diseases, but leave mental health in the dark ages.

It is wrong to force parents to choose between the care their child needs and the other financial needs of the family. I have heard countless stories from mothers and fathers whose children desperately needed the care that their insurance companies refused to provide.

There is hope for the future. Today we were presented with 30,000 petitions signed by young people asking Congress to provide affordable coverage for mental health services. The petitions were signed in concerts held across the country to raise awareness for suicide prevention. PETE DOMENICI and I are here today to bring hope to these parents and to these young people. It is long past time to end insurance discrimination, and guarantee all people with mental illnesses the coverage they deserve.

By Mr. DORGAN (for himself, Mr. BREAUX, Mr. DURBIN, Mr. LEAHY, Mr. HARKIN, and Mr. JOHNSON):

S. 488. A bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for electricity produced from wind; to the Committee on Finance.

Mr. DORGAN. Mr. President, today, I am joined by Senators BREAUX, DURBIN, LEAHY, HARKIN and JOHNSON in introducing legislation to extend the current federal wind energy production tax credit, PTC, for an additional five years. This tax credit is scheduled to expire at the end of the year. A long-term extension of the credit will give wind energy developers the certainty they need to grow this important domestic industry with its seemingly limitless energy potential.

One of the most promising alternative energy sources on this country's horizon comes from one of nature's most abundant assets: the wind. Over 2,000 megawatts of new wind energy capacity has been added to the nation's electricity grid in just the last 2 years. This new wind generation has pumped over $2 billion into the struggling economy.

Congress has helped promote wind energy by making significant financial investments in Federal research and private-sector development over the last decade. Among other things, Congress has provided a Federal income tax credit for facilities that produce electricity from wind, which allows them to bring state-of-the-art wind turbines to the marketplace at a competitive rate.

More and more utilities that have produced electricity from traditional fossil fuels are now looking to wind energy and other alternative energy sources to meet a larger share of this country's future energy demands. Soaring oil and natural gas prices also remind us of the importance of reducing our reliance on foreign energy sources and keeping a diverse energy supply here at home.

However, despite broad bipartisan congressional support for the wind energy production tax credit, its fate remains cloudy. As I mentioned, the wind energy tax credit is scheduled to expire at the end of the year. Congress will surely extend the credit. But we can't wait until the last day of the session—or even later—to do so.

Unfortunately, this is not merely polemics. Congress has twice allowed the PTC to expire. First, Congress allowed it to expire in July 1999 and failed to reinstate it until December 1999. As a result, wind energy investments plummeted from 661 megawatts installed in 1999 to only 53 megawatts in 2000. Inexplicably, the Congress let the PTC expire a second time—at the end of 2001—and did not reinstate the credit until March of the following year. This failure contributed to another major drop in wind investments dropping from 1696 megawatts installed in 2001 to just 410 megawatts in 2002.

Today, wind energy industry officials tell me that if we do not extend the production tax credit by mid-year, thousands of jobs and billions of dollars in economic activity would be lost. And this shouldn't come as a surprise to my Senate colleagues. For many years, wind energy developers have told us that one of the major stumbling blocks to greater deployment of new wind technologies is the continued uncertainty surrounding the availability of the wind energy production tax credit. Even so, we still provided for just another short-term extension of the tax credit last March. A few short months from now, financial lenders will stop providing needed capital to new wind initiatives. As a result, projects already underway will quickly come to a halt, while new projects will be shelved. Many developers will simply be unable to build and purchase equipment and secure the financing that is needed to bring wind turbine generators on-line by year's end.

When the tax credit last expired, I heard from manufacturers in my state and across the nation about impending layoffs, because of the lack of certainty at that time. A tower developer in my state of North Dakota has again laid off 17 workers, because of the uncertainty this industry still faces, due to the soon-to-expire tax credit. We can help eliminate this uncertainty by extending the production tax credit for a longer term.

If we fail to act promptly to extend the tax credit this time around, North Dakota's wind energy industry would suffer another serious economic blow. I am told that DMI Industries, a major producer of wind turbine towers in North Dakota, would experience a 40-percent drop in business activity, resulting in some $15 million in lost revenue. The company's plan to expand its operation by 75 employees in 2004 would also be derailed. Delay in extending the production tax credit would mean that 100–125 new jobs would not be created in the coming year by LM Glasfiber, which is a major blade manufacturer in Grand Forks.

There is a great deal of discussion in Washington, D.C. about passing a stimulus package to provide a needed boost to our ailing economy. This very effort would be needlessly undermined if we fail to extend the wind energy production tax credit in a timely manner and make it available over the long term.

In North Dakota, we put up several wind turbines last year and launched an 80-megawatt project for North Dakota and South Dakota. At a time when this industry is just beginning to ramp up in the Great Plains, it would be foolish to thwart these efforts by failing to extend this wind energy production tax credit for sufficient time to get substantial new projects off the design boards and up and running.

Again, the bill I'm introducing today would extend the current production tax credit for qualifying wind facilities that are placed in service on or before December 31, 2008. The wind energy production tax credit has enjoyed strong bipartisan support in both the Senate and the House of Representatives in previous years, so we should be able to pass this legislation quickly this year.

I urge my Senate colleagues to cosponsor this legislation and work with me to get it enacted into law as soon as

possible. If we fail to act promptly, many new wind energy initiatives will come to a halt at a time when this country can least afford it.

By Mr. DEWINE (for himself, Mr. GRAHAM of Florida, Mr. LUGAR, Mr. DURBIN, Mr. CHAFEE, and Mr. NELSON of Florida):

S. 489. A bill to expand certain preferential trade treatment for Haiti; to the Committee on Finance.

HAITI ECONOMIC RECOVERY OPPORTUNITY ACT OF 2003

Mr. DEWINE. Mr. President, I returned this week from my 12th trip to Haiti. As my colleagues are aware, I have many long-standing concerns about the dire political, economic, and humanitarian situation in Haiti.

In a nation just over an hour's flight from Miami, there is abject poverty, suffering, and disease. We absolutely must pay closer attention to what is happening to our neighbors in our hemisphere. We must be engaged.

That is why I am so pleased to be joining several of my Senate and House colleagues in introducing the ''Haiti Economic Recovery Opportunity Act of 2003.'' I'd like to thank our Senate Cosponsors, who include Senators GRAHAM of Florida, LUGAR, DURBIN, NELSON of Florida, and Representatives Congressmen SHAW and CONYERS for their leadership in getting support for this bill, as well as our other House Cosponsors, Representatives CRANE, RANGEL, WATSON, LEE of California, LEE of Texas, MEEK, GOSS, FOLEY, WATERS, and Delegate CHRISTENSEN of the Virgin Islands.

Our bill would take a major step in improving the economic and political situation in Haiti through an important tool of our foreign policy—and that is trade.

As my colleagues, Senators DURBIN, NELSON, and CHAFEE, and Representative MEEK—all of whom traveled with me to Haiti over the course of this last month—the situation in Haiti is bleak. Haiti is the poorest country in our Hemisphere, with approximately 70 percent of its population out of work and 80 percent living in abject poverty. Less than one-half of Haiti's 7 million people can read or write. Haiti's infant mortality rate is the highest in our hemisphere. And one in four children under the age of five are malnourished.

roughly one in 12 Haitians has HIV/AIDS and, according to the Centers for Disease Control projections, Haiti will experience up to 44,000 new HIV/AIDS cases this year—that's 4,000 more than the number expected here in the United States, where our population is 35 times that of Haiti's. AIDS already has orphaned over 200,000 children, and this number is expected to skyrocket to between 323,000 and 393,000 over the next ten years.

The violence, corruption, and instability caused by the flow of drugs through Haiti cannot be overstated. An estimated 15 percent of all cocaine entering the United States passes through Haiti, the Dominican Republic, or both.

All of this creates an environment where the logical course of action for many Haitians is simply to flee. We have seen this in the past, and we may see it again. So far this fiscal year, the Coast Guard has interdicted and rescued over 813 Haitian migrants at sea—compared to 1,113 during the entire fiscal year 2000. And, according to the State Department, migrants recently interdicted and repatriated to Haiti have cited economic conditions as their reason for attempting to migrate by sea. I do not think that a mass exodus is imminent, but we cannot ignore any increase in migrant departures from Haiti. In addition to being an immigration issue for the United States, these migrant departures frequently result in the loss of life at sea.

When I visited Haiti last month, we toured a textile assembly factor. What we saw was that this operation was providing about 800 Haitian laborers with jobs and giving them an income to help support their families. This is in a country that went from having 100,000 assembly jobs to only 30,000 today. There is no reason we can't reverse that trend.

The bill we are introducing today attempts to change the economic situation by granting limited duty-free treatment on certain Haitian apparel articles if—and only if—the President is able to certify that the Haitian government is making serious market, political, and social reforms. The bill would correct a glitch or oversight in U.S. trade law that recognized the special economic needs of least developed countries in Africa, but did not recognize those needs for the least developed country in the Western Hemisphere—Haiti.

Specifically, the bill would allow duty-free entry of Haitian apparel articles assembled from fabrics from countries with which the U.S. has a free trade or a regional trade agreement. It also would grant duty-free status on articles, regardless of the origin of the fabrics and yarns, if the fabrics and yarns were not commercially available in the United States.

The bill would cap duty-free apparel imports made of fabrics and yarns from the designated countries at 1.5 percent of total U.S. apparel imports. This limit grows modestly over time to 3.5 percent.

The enactment of this legislation would promote employment in Haitian industry by allowing the country to become a garment production center. While the benefits of bill would be modest by U.S. standards, in Haiti they are substantial. It is estimated that the bill could create thousands of jobs, thereby reducing the unemployment rate and breaking the shackles of poverty. Before the 1991 coup, Haiti was one of the largest apparel suppliers in the Caribbean. Today, Haitian apparel accounts for less than one percent of all apparel imports into the United States.

The type of assembly carried out in Haiti would have minimal impact on employment in the United States. Actually, it would encourage the emigration of jobs from the Far East back to our hemisphere, including the United States, because most Haitian foreign exchange earnings, unlike in the Far East, are utilized to purchase American products. And, the ''Trade and Development Act'' already includes strong safeguards against transshipment.

In order for Haiti to be eligible for the trade benefits under the bill, the President must certify that Haiti is making progress on matters like the rule of law. This will not be an easy task for the Haitian government. However, I believe that because of the incentives provided in the bill, it would be more and more apparent to them that it is in their interest to reform.

Adopting the Haiti Economic Recovery Opportunity Act of 2002 would be a powerful demonstration of our commitment to helping reverse the downward spiral in Haiti. I encourage my colleagues to join in support of this legislation.

By Mr. REID (for himself and Mr. ENSIGN):

S. 490. A bill to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to reintroduce the Washoe Tribe Land Conveyance Act.

I introduced this bill in both the 106th and 107th Congress, and it passed the Senate unanimously in 2000 and 2002. The bill has also been favorably received in the House: in the 106h Congress, it passed the House with unrelated amendments. Unfortunately, due to a shortage of time, the two versions of the bill were never reconciled and neither version became law.

In 1997, I helped convene the Lake Tahoe Presidential Forum to discuss the future of the Lake Tahoe Basin. At that Forum a diverse group of federal, state, and local government leaders considered the challenges facing the extraordinary natural, recreational, and ecological resources of the Lake Tahoe region. I am pleased to note that the Forum provided the basis for the Lake Tahoe Restoration Act that Senator FEINSTEIN and I introduced and President Clinton signed into law. This law authorizes $300 million of federal investment to protect and rehabilitate the Lake over a ten-year period. In addition, I have been able to steadily increase the federal investment in the Basin. We are well on our way to fulfilling the promises of the Forum.

During the Forum a commitment was made to support the traditional