108TH CONGRESS
1ST SESSION

S. 366

To amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2003

Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. REED, Mr. SARBANES, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes.

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 Power Act of 2003''.

SEC. 2. ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS.

(a) IN GENERAL.—The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"TITLE VII—ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS

"SEC. 701. FINDINGS.

"Congress finds that—

"(1) public health and the environment continue to suffer as a result of pollution emitted by powerplants across the United States, despite the success of Public Law 101–549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) in reducing emissions;

"(2) according to the most reliable scientific knowledge, acid rain precursors must be significantly reduced for the ecosystems of the Northeast and

Southeast to recover from the ecological harm caused by acid deposition;

''(3) because lakes and sediments across the United States are being contaminated by mercury emitted by powerplants, there is an increasing risk of mercury poisoning of aquatic habitats and fish-consuming human populations;

''(4)(A) electricity generation accounts for approximately 40 percent of the total emissions in the United States of carbon dioxide, a major greenhouse gas causing global warming; and

''(B) the quantity of carbon dioxide in the atmosphere is growing without constraint and well beyond the international commitments of the United States;

''(5) the cumulative impact of powerplant emissions on public and environmental health must be addressed swiftly by reducing those harmful emissions to levels that are less threatening; and

''(6)(A) the atmosphere is a public resource; and

''(B) emission allowances, representing permission to use that resource for disposal of air pollution from electricity generation, should be allocated to promote public purposes, including—

''(i) protecting electricity consumers from adverse economic impacts;

''(ii) providing transition assistance to adversely affected employees, communities, and industries; and

''(iii) promoting clean energy resources and energy efficiency.

''SEC. 702. PURPOSES.

''The purposes of this title are—

''(1) to alleviate the environmental and public health damage caused by emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and mercury resulting from the combustion of fossil fuels in the generation of electric and thermal energy;

''(2) to reduce by 2009 the annual national emissions from electricity generating facilities to not more than—

''(A) 2,250,000 tons of sulfur dioxide;

''(B) 1,510,000 tons of nitrogen oxides; and

''(C) 2,050,000,000 tons of carbon dioxide;

''(3) to reduce by 2008 the annual national emissions of mercury from electricity generating facilities to not more than 5 tons;

''(4) to effectuate the reductions described in paragraphs (2) and (3) by—

''(A) requiring electricity generating facilities to comply with specified emission limitations by specified deadlines; and

''(B) allowing electricity generating facilities to meet the emission limitations (other than the emission limitation for mercury) through an alternative method of compliance consisting of an emission allowance and transfer system; and

''(5) to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as long-range strategies, consistent with this title, for reducing air pollution and other adverse impacts of energy generation and use.

''SEC. 703. DEFINITIONS.

''In this title:

''(1) COVERED POLLUTANT.—The term 'covered pollutant' means—

''(A) sulfur dioxide;

''(B) any nitrogen oxide;

''(C) carbon dioxide; and

''(D) mercury.

''(2) ELECTRICITY GENERATING FACILITY.—The term 'electricity generating facility' means an

electric or thermal electricity generating unit, a combination of such units, or a combination of 1 or more such units and 1 or more combustion devices, that—

"(A) has a nameplate capacity of 15 megawatts or more (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

"(B) generates electric energy, for sale, through combustion of fossil fuel; and

"(C) emits a covered pollutant into the atmosphere.

"(3) ELECTRICITY INTENSIVE PRODUCT.—The term 'electricity intensive product' means a product with respect to which the cost of electricity consumed in the production of the product represents more than 5 percent of the value of the product.

"(4) EMISSION ALLOWANCE.—The term 'emission allowance' means a limited authorization to emit in accordance with this title—

"(A) 1 ton of sulfur dioxide;

"(B) 1 ton of nitrogen oxides; or

"(C) 1 ton of carbon dioxide.

''(5) ENERGY EFFICIENCY PROJECT.—The term 'energy efficiency project' means any specific action (other than ownership or operation of an energy efficient building) commenced after the date of enactment of this title—

''(A) at a facility (other than an electricity generating facility), that verifiably reduces the annual electricity or natural gas consumption per unit output of the facility, as compared with the annual electricity or natural gas consumption per unit output that would be expected in the absence of an allocation of emission allowances (as determined by the Administrator); or

''(B) by an entity that is primarily engaged in the transmission and distribution of electricity, that significantly improves the efficiency of that type of entity, as compared with standards for efficiency developed by the Administrator, in consultation with the Secretary of Energy, after the date of enactment of this title.

''(6) ENERGY EFFICIENT BUILDING.—The term 'energy efficient building' means a residential building or commercial building completed after the date of enactment of this title for which the projected

lifetime consumption of electricity or natural gas for heating, cooling, and ventilation is at least 30 percent less than the lifetime consumption of a typical new residential building or commercial building, as determined by the Administrator (in consultation with the Secretary of Energy)—

''(A) on a State or regional basis; and

''(B) taking into consideration—

''(i) applicable building codes; and

''(ii) consumption levels achieved in practice by new residential buildings or commercial buildings in the absence of an allocation of emission allowances.

''(7) ENERGY EFFICIENT PRODUCT.—The term 'energy efficient product' means a product manufactured after the date of enactment of this title that has an expected lifetime electricity or natural gas consumption that—

''(A) is less than the average lifetime electricity or natural gas consumption for that type of product; and

''(B) does not exceed the lesser of—

''(i) the maximum energy consumption that qualifies for the applicable Energy Star label for that type of product; or

''(ii) the average energy consumption of the most efficient 25 percent of that type of product manufactured in the same year.

''(8) LIFETIME.—The term 'lifetime' means—

''(A) in the case of a residential building that is an energy efficient building, 30 years;

''(B) in the case of a commercial building that is an energy efficient building, 15 years; and

''(C) in the case of an energy efficient product, a period determined by the Administrator to be the average life of that type of energy efficient product.

''(9) MERCURY.—The term 'mercury' includes any mercury compound.

''(10) NEW CLEAN FOSSIL FUEL-FIRED ELECTRICITY GENERATING UNIT.—The term 'new clean fossil fuel-fired electricity generating unit' means a unit that—

''(A) has been in operation for 10 years or less; and

''(B) is—

''(i) a natural gas fired generator that—

''(I) has an energy conversion efficiency of at least 55 percent; and

''(II) uses best available control technology (as defined in section 169);

''(ii) a generator that—

''(I) uses integrated gasification combined cycle technology;

''(II) uses best available control technology (as defined in section 169); and

''(III) has an energy conversion efficiency of at least 45 percent; or

''(iii) a fuel cell operating on fuel derived from a nonrenewable source of energy.

''(11) NONWESTERN REGION.—The term 'nonwestern region' means the area of the States that is not included in the western region.

''(12) RENEWABLE ELECTRICITY GENERATING UNIT.—The term 'renewable electricity generating unit' means a unit that—

''(A) has been in operation for 10 years or less; and

''(B) generates electric energy by means of—

"(i) wind;

"(ii) biomass;

"(iii) landfill gas;

"(iv) a geothermal, solar thermal, or photovoltaic source; or

"(v) a fuel cell operating on fuel derived from a renewable source of energy.

"(13) SMALL ELECTRICITY GENERATING FACILITY.—The term 'small electricity generating facility' means an electric or thermal electricity generating unit, or combination of units, that—

"(A) has a nameplate capacity of less than 15 megawatts (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

"(B) generates electric energy, for sale, through combustion of fossil fuel; and

"(C) emits a covered pollutant into the atmosphere.

"(14) WESTERN REGION.—The term 'western region' means the area comprising the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

"SEC. 704. EMISSION LIMITATIONS.

''(a) IN GENERAL.—Subject to subsections (b) and (c), the Administrator shall promulgate regulations to ensure that, during 2009 and each year thereafter, the total annual emissions of covered pollutants from all electricity generating facilities located in all States does not exceed—

''(1) in the case of sulfur dioxide—

''(A) 275,000 tons in the western region; or

''(B) 1,975,000 tons in the nonwestern region;

''(2) in the case of nitrogen oxides, 1,510,000 tons;

''(3) in the case of carbon dioxide, 2,050,000,000 tons; or

''(4) in the case of mercury, 5 tons.

''(b) EXCESS EMISSIONS BASED ON UNUSED ALLOWANCES.—The regulations promulgated under subsection (a) shall authorize emissions of covered pollutants in excess of the national emission limitations established under that subsection for a year to the extent that the number of tons of the excess emissions is less than or equal to the number of emission allowances that are—

''(1) used in the year; but

''(2) allocated for any previous year under section 707.

''(c) REDUCTIONS.—For 2009 and each year thereafter, the quantity of emissions specified for each covered pollutant in subsection (a) shall be reduced by the sum of—

''(1) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

''(2) any number of tons of reductions in emissions of the covered pollutant required under section 705(h).

''SEC. 705. EMISSION ALLOWANCES.

''(a) CREATION AND ALLOCATION.—

''(1) IN GENERAL.—For 2009 and each year thereafter, subject to paragraph (2), there are created, and the Administrator shall allocate in accordance with section 707, emission allowances as follows:

''(A) In the case of sulfur dioxide—

''(i) 275,000 emission allowances for each year for use in the western region; and

''(ii) 1,975,000 emission allowances for each year for use in the nonwestern region.

"(B) In the case of nitrogen oxides, 1,510,000 emission allowances for each year.

"(C) In the case of carbon dioxide, 2,050,000,000 emission allowances for each year.

"(2) REDUCTIONS.—For 2009 and each year thereafter, the number of emission allowances specified for each covered pollutant in paragraph (1) shall be reduced by a number equal to the sum of—

"(A) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

"(B) any number of tons of reductions in emissions of the covered pollutant required under subsection (h).

"(b) NATURE OF EMISSION ALLOWANCES.—

"(1) NOT A PROPERTY RIGHT.—An emission allowance allocated by the Administrator under subsection (a) is not a property right.

"(2) NO LIMIT ON AUTHORITY TO TERMINATE OR LIMIT.—Nothing in this title or any other provision of law limits the authority of the United States to terminate or limit an emission allowance.

''(3) TRACKING AND TRANSFER OF EMISSION ALLOWANCES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish an emission allowance tracking and transfer system for emission allowances of sulfur dioxide, nitrogen oxides, and carbon dioxide.

''(B) REQUIREMENTS.—The emission allowance tracking and transfer system established under subparagraph (A) shall—

''(i) incorporate the requirements of subsections (b) and (d) of section 412 (except that written certification by the transferee shall not be necessary to effect a transfer); and

''(ii) permit any entity—

''(I) to buy, sell, or hold an emission allowance; and

''(II) to permanently retire an unused emission allowance.

''(C) PROCEEDS OF TRANSFERS.—Proceeds from the transfer of emission allowances by any person to which the emission allowances have been allocated—

''(i) shall not constitute funds of the United States; and

''(ii) shall not be available to meet any obligations of the United States.

''(c) IDENTIFICATION AND USE.—

''(1) IN GENERAL.—Each emission allowance allocated by the Administrator shall bear a unique serial number, including—

''(A) an identifier of the covered pollutant to which the emission allowance pertains; and

''(B) the first year for which the allowance may be used.

''(2) SULFUR DIOXIDE EMISSION ALLOWANCES.—In the case of sulfur dioxide emission allowances, the Administrator shall ensure that the emission allowances allocated to electricity generating facilities in the western region are distinguishable from emission allowances allocated to electricity generating facilities in the nonwestern region.

''(3) YEAR OF USE.—Each emission allowance may be used in the year for which the emission allowance is allocated or in any subsequent year.

''(d) ANNUAL SUBMISSION OF EMISSION ALLOWANCES.—

''(1) IN GENERAL.—On or before April 1, 2010, and April 1 of each year thereafter, the owner or operator of each electricity generating facility shall submit to the Administrator 1 emission allowance for the applicable covered pollutant (other than mercury) for each ton of sulfur dioxide, nitrogen oxides, or carbon dioxide emitted by the electricity generating facility during the previous calendar year.

''(2) SPECIAL RULE FOR OZONE EXCEEDANCES.—

''(A) IDENTIFICATION OF FACILITIES CONTRIBUTING TO NONATTAINMENT.—Not later than December 31, 2008, and the end of each 3-year period thereafter, each State, consistent with the obligations of the State under section 110(a)(2)(D), shall identify the electricity generating facilities in the State and in other States that are significantly contributing (as determined based on guidance issued by the Administrator) to nonattainment of the national ambient air quality standard for ozone in the State.

''(B) SUBMISSION OF ADDITIONAL ALLOWANCES.—In 2009 and each year thereafter, on petition from a State or a person demonstrating

that the control measures in effect at an electricity generating facility that is identified under subparagraph (A) as significantly contributing to nonattainment of the national ambient air quality standard for ozone in a State during the previous year are inadequate to prevent the significant contribution described in subparagraph (A), the Administrator, if the Administrator determines that the electricity generating facility is inadequately controlled for nitrogen oxides, may require that the electricity generating facility submit 3 nitrogen oxide emission allowances for each ton of nitrogen oxides emitted by the electricity generating facility during any period of an exceedance of the national ambient air quality standard for ozone in the State during the previous year.

''(3) REGIONAL LIMITATIONS FOR SULFUR DIOXIDE.—The Administrator shall not allow—

''(A) the use of sulfur dioxide emission allowances allocated for the western region to meet the obligations under this subsection of electricity generating facilities in the nonwestern region; or

''(B) the use of sulfur dioxide emission allowances allocated for the nonwestern region to meet the obligations under this subsection of electricity generating facilities in the western region.

''(e) EMISSION VERIFICATION, MONITORING, AND RECORDKEEPING.—

''(1) IN GENERAL.—The Administrator shall ensure that Federal regulations, in combination with any applicable State regulations, are adequate to verify, monitor, and document emissions of covered pollutants from electricity generating facilities.

''(2) INVENTORY OF EMISSIONS FROM SMALL ELECTRICITY GENERATING FACILITIES.—On or before January 1, 2005, the Administrator, in cooperation with State agencies, shall complete, and on an annual basis update, a comprehensive inventory of emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and particulate matter from small electricity generating facilities.

''(3) MONITORING INFORMATION.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this title, the Administrator shall promulgate regulations

to require each electricity generating facility to submit to the Administrator—

"(i) not later than April 1 of each year, verifiable information on covered pollutants emitted by the electricity generating facility in the previous year, expressed in—

"(I) tons of covered pollutants; and

"(II) tons of covered pollutants per megawatt hour of energy (or the equivalent thermal energy) generated; and

"(ii) as part of the first submission under clause (i), verifiable information on covered pollutants emitted by the electricity generating facility in 2000, 2001, and 2002, if the electricity generating facility was required to report that information in those years.

"(B) SOURCE OF INFORMATION.—Information submitted under subparagraph (A) shall be obtained using a continuous emission monitoring system (as defined in section 402).

"(C) AVAILABILITY TO THE PUBLIC.—The information described in subparagraph (A) shall be made available to the public—

"(i) in the case of the first year in which the information is required to be submitted under that subparagraph, not later than 18 months after the date of enactment of this title; and

"(ii) in the case of each year thereafter, not later than April 1 of the year.

"(4) AMBIENT AIR QUALITY MONITORING FOR SULFUR DIOXIDE AND HAZARDOUS AIR POLLUTANTS.—

"(A) IN GENERAL.—Beginning January 1, 2005, each coal-fired electricity generating facility with an aggregate generating capacity of 50 megawatts or more shall, in accordance with guidelines issued by the Administrator, commence ambient air quality monitoring within a 30-mile radius of the coal-fired electricity generating facility for the purpose of measuring maximum concentrations of sulfur dioxide and hazardous air pollutants emitted by the coal-fired electricity generating facility.

''(B) LOCATION OF MONITORING POINTS.—Monitoring under subparagraph (A) shall include monitoring at not fewer than 2 points—

''(i) that are at ground level and within 3 miles of the coal-fired electricity generating facility;

''(ii) at which the concentration of pollutants being monitored is expected to be the greatest; and

''(iii) at which the monitoring shall be the most frequent.

''(C) FREQUENCY OF MONITORING OF SULFUR DIOXIDE.—Monitoring of sulfur dioxide under subparagraph (A) shall be carried out on a continuous basis and averaged over 5-minute periods.

''(D) AVAILABILITY TO THE PUBLIC.—The results of the monitoring under subparagraph (A) shall be made available to the public.

''(f) EXCESS EMISSION PENALTY.—

''(1) IN GENERAL.—Subject to paragraph (2), section 411 shall be applicable to an owner or operator of an electricity generating facility.

''(2) CALCULATION OF PENALTY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the penalty for failure to submit emission allowances for covered pollutants as required under subsection (d) shall be equal to 3 times the product obtained by multiplying—

''(i) as applicable—

''(I) the number of tons emitted in excess of the emission limitation requirement applicable to the electricity generating facility; or

''(II) the number of emission allowances that the owner or operator failed to submit; and

''(ii) the average annual market price of emission allowances (as determined by the Administrator).

''(B) MERCURY.—In the case of mercury, the penalty shall be equal to 3 times the product obtained by multiplying—

''(i) the number of grams emitted in excess of the emission limitation requirement for mercury applicable to the electricity generating facility; and

''(ii) the average cost of mercury controls at electricity generating units that have a nameplate capacity of 15 megawatts or more in all States (as determined by the Administrator).

''(g) SIGNIFICANT ADVERSE LOCAL IMPACTS.—

''(1) IN GENERAL.—If the Administrator determines that emissions of an electricity generating facility may reasonably be anticipated to cause or contribute to a significant adverse impact on an area (including endangerment of public health, contribution to acid deposition in a sensitive receptor area, and other degradation of the environment), the Administrator shall limit the emissions of the electricity generating facility as necessary to avoid that impact.

''(2) VIOLATION.—Notwithstanding the availability of emission allowances, it shall be a violation of this Act for any electricity generating facility to exceed any limitation on emissions established under paragraph (1).

''(h) ADDITIONAL REDUCTIONS.—

''(1) PROTECTION OF PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT.—If the Administrator determines that the emission levels necessary to achieve the national emission limitations established

under section 704 are not reasonably anticipated to protect public health or welfare or the environment (including protection of children, pregnant women, minority or low-income communities, and other sensitive populations), the Administrator may require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

''(2) EMISSION ALLOWANCE TRADING.—

''(A) STUDIES.—

''(i) IN GENERAL.—In 2011 and at the end of each 3-year period thereafter, the Administrator shall complete a study of the impacts of the emission allowance trading authorized under this title.

''(ii) REQUIRED ASSESSMENT.—The study shall include an assessment of ambient air quality in areas surrounding electricity generating facilities that participate in emission allowance trading, including a comparison between—

''(I) the ambient air quality in those areas; and

''(II) the national average ambient air quality.

''(B) LIMITATION ON EMISSIONS.—If the Administrator determines, based on the results of a study under subparagraph (A), that adverse local impacts result from emission allowance trading, the Administrator may require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

''(i) USE OF CERTAIN OTHER EMISSION ALLOWANCES.—

''(1) IN GENERAL.—Subject to paragraph (2), emission allowances or other emission trading instruments created under title I or IV for sulfur dioxide or nitrogen oxides shall not be valid for submission under subsection (d).

''(2) EMISSION ALLOWANCES PLACED IN RESERVE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an emission allowance described in paragraph (1) that was placed in reserve under section 404(a)(2) or 405 or through regulations implementing controls on nitrogen oxides, because an affected unit emitted fewer tons of sulfur dioxide or nitrogen oxides than were permitted under an emission

limitation imposed under title I or IV before the date of enactment of this title, shall be considered to be equivalent to ¼ of an emission allowance created by subsection (a) for sulfur dioxide or nitrogen oxides, respectively.

''(B) EMISSION ALLOWANCES RESULTING FROM ACHIEVEMENT OF NEW SOURCE PERFORMANCE STANDARDS.—If an emission allowance described in subparagraph (A) was created and placed in reserve during the period of 2001 through 2008 by the owner or operator of an electricity generating facility through the application of pollution control technology that resulted in the achievement and maintenance by the electricity generating facility of the applicable standards of performance required of new sources under section 111, the emission allowance shall be valid for submission under subsection (d).

''SEC. 706. PERMITTING AND TRADING OF EMISSION ALLOWANCES.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish a permitting and emission allowance trading compliance program to implement

the limitations on emissions of covered pollutants from electricity generating facilities established under section 704.

''(b) EMISSION ALLOWANCE TRADING WITH FACILITIES OTHER THAN ELECTRICITY GENERATING FACILITIES.—

''(1) IN GENERAL.—Subject to paragraph (2) and section 705(i), the regulations promulgated to establish the program under subsection (a) shall prohibit use of emission allowances generated from other emission control programs for the purpose of demonstrating compliance with the limitations on emissions of covered pollutants from electricity generating facilities established under section 704.

''(2) EXCEPTION FOR CERTAIN CARBON DIOXIDE EMISSION CONTROL PROGRAMS.—The prohibition described in paragraph (1) shall not apply in the case of carbon dioxide emission allowances generated from an emission control program that limits total carbon dioxide emissions from the entirety of any industrial sector.

''(c) METHODOLOGY.—The program established under subsection (a) shall clearly identify the methodology for the allocation of emission allowances, including stand-

ards for measuring annual electricity generation and energy efficiency as the standards relate to emissions.

"SEC. 707. EMISSION ALLOWANCE ALLOCATION.

''(a) ALLOCATION TO ELECTRICITY CONSUMERS.—

''(1) IN GENERAL.—For 2009 and each year thereafter, after making allocations of emission allowances under subsections (b) through (f), the Administrator shall allocate the remaining emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to households served by electricity.

''(2) ALLOCATION AMONG HOUSEHOLDS.—The allocation to each household shall reflect—

''(A) the number of persons residing in the household; and

''(B) the ratio that—

''(i) the quantity of the residential electricity consumption of the State in which the household is located; bears to

''(ii) the quantity of the residential electricity consumption of all States.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the allocation of emission

allowances to households under this subsection, including as necessary the appointment of 1 or more trustees—

"(A) to receive the emission allowances for the benefit of the households;

"(B) to obtain fair market value for the emission allowances; and

"(C) to distribute the proceeds to the beneficiaries.

"(b) ALLOCATION FOR TRANSITION ASSISTANCE.—

"(1) IN GENERAL.—For 2009 and each year thereafter through 2018, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury in the following manner:

"(A) 80 percent shall be allocated to provide transition assistance to—

"(i) dislocated workers (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)) whose employment has been terminated or who have been laid off as a result of the emission reductions required by this title; and

''(ii) communities that have experienced disproportionate adverse economic impacts as a result of the emission reductions required by this title.

''(B) 20 percent shall be allocated to producers of electricity intensive products in a number equal to the product obtained by multiplying—

''(i) the ratio that—

''(I) the quantity of each electricity intensive product produced by each producer in the previous year; bears to

''(II) the quantity of the electricity intensive product produced by all producers in the previous year;

''(ii) the average quantity of electricity used in producing the electricity intensive product by producers that use the most energy efficient process for producing the electricity intensive product; and

''(iii) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity

generated by electricity generating facilities in all States.

''(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

''(A) in the case of 2009, 6 percent;

''(B) in the case of 2010, 5.5 percent;

''(C) in the case of 2011, 5 percent;

''(D) in the case of 2012, 4.5 percent;

''(E) in the case of 2013, 4 percent;

''(F) in the case of 2014, 3.5 percent;

''(G) in the case of 2015, 3 percent;

''(H) in the case of 2016, 2.5 percent;

''(I) in the case of 2017, 2 percent; and

''(J) in the case of 2018, 1.5 percent.

''(3) REGULATIONS FOR ALLOCATION FOR TRANSITION ASSISTANCE TO DISLOCATED WORKERS AND COMMUNITIES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the distribution of emission allowances under paragraph (1)(A), including as necessary the appointment of 1 or more trustees—

''(i) to receive the emission allowances allocated under paragraph (1)(A) for the benefit of the dislocated workers and communities;

''(ii) to obtain fair market value for the emission allowances; and

''(iii) to apply the proceeds to providing transition assistance to the dislocated workers and communities.

''(B) FORM OF TRANSITION ASSISTANCE.—Transition assistance under paragraph (1)(A) may take the form of—

''(i) grants to employers, employer associations, and representatives of employees—

''(I) to provide training, adjustment assistance, and employment services to dislocated workers; and

''(II) to make income-maintenance and needs-related payments to dislocated workers; and

''(ii) grants to States and local governments to assist communities in attracting new employers or providing essential local government services.

''(c) ALLOCATION TO RENEWABLE ELECTRICITY GENERATING UNITS, EFFICIENCY PROJECTS, AND CLEANER ENERGY SOURCES.—For 2009 and each year thereafter, the Administrator shall allocate not more than 20 percent of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury—

''(1) to owners and operators of renewable electricity generating units, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity generated in the previous year by each renewable electricity generating unit; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States;

''(2) to owners and operators of energy efficient buildings, producers of energy efficient products, and entities that carry out energy efficient projects, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity or cubic feet of natural gas saved in

the previous year as a result of each energy efficient building, energy efficient product, or energy efficiency project; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per, as appropriate—

''(i) megawatt hour of electricity generated by electricity generating facilities in all States; or

''(ii) cubic foot of natural gas burned for a purpose other than generation of electricity in all States;

''(3) to owners and operators of new clean fossil fuel-fired electricity generating units, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity generated in the previous year by each new clean fossil fuel-fired electricity generating unit; and

''(B) with respect to the previous year, ½ of the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States; and

''(4) to owners and operators of combined heat and power electricity generating facilities, in a number equal to the product obtained by multiplying—

''(A) the number of British thermal units of thermal energy produced and put to productive use in the previous year by each combined heat and power electricity generating facility; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per British thermal unit of thermal energy generated by electricity generating facilities in all States.

''(d) TRANSITION ASSISTANCE TO ELECTRICITY GENERATING FACILITIES.—

''(1) IN GENERAL.—For 2009 and each year thereafter through 2018, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to the owners or operators of electricity generating facilities in the ratio that—

''(A) the quantity of electricity generated by each electricity generating facility in 2001; bears to

"(B) the quantity of electricity generated by all electricity generating facilities in 2001.

"(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

"(A) in the case of 2009, 10 percent;

"(B) in the case of 2010, 9 percent;

"(C) in the case of 2011, 8 percent;

"(D) in the case of 2012, 7 percent;

"(E) in the case of 2013, 6 percent;

"(F) in the case of 2014, 5 percent;

"(G) in the case of 2015, 4 percent;

"(H) in the case of 2016, 3 percent;

"(I) in the case of 2017, 2 percent; and

"(J) in the case of 2018, 1 percent.

"(e) ALLOCATION TO ENCOURAGE BIOLOGICAL CARBON SEQUESTRATION.—

"(1) IN GENERAL.—For 2009 and each year thereafter, the Administrator shall allocate, on a competitive basis and in accordance with paragraphs (2) and (3), not more than 0.075 percent of the carbon dioxide emission allowances created by section 705(a) for the year for the purposes of—

"(A) carrying out projects to reduce net carbon dioxide emissions through biological car-

bon dioxide sequestration in the United States that—

"(i) result in benefits to watersheds and fish and wildlife habitats; and

"(ii) are conducted in accordance with project reporting, monitoring, and verification guidelines based on—

"(I) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project;

"(II) comprehensive carbon accounting that—

"(aa) reflects net increases in carbon reservoirs; and

"(bb) takes into account any carbon emissions resulting from disturbance of carbon reservoirs in existence as of the date of commencement of the project;

"(III) adjustments to account for—

"(aa) emissions of carbon that may result at other locations

as a result of the impact of the project on timber supplies; or

''(bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and

''(IV) adjustments to reflect the expected carbon storage over various time periods, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir; and

''(B) conducting accurate inventories of carbon sinks.

''(2) CARBON INVENTORY.—The Administrator, in consultation with the Secretary of Agriculture, shall allocate not more than ⅓ of the emission allowances described in paragraph (1) to not more than 5 State or multistate land or forest management agencies or nonprofit entities that—

''(A) have a primary goal of land conservation; and

''(B) submit to the Administrator proposals for projects—

''(i) to demonstrate and assess the potential for the development and use of carbon inventorying and accounting systems;

''(ii) to improve the standards relating to, and the identification of, incremental carbon sequestration in forests, agricultural soil, grassland, or rangeland; or

''(iii) to assist in development of a national biological carbon storage baseline or inventory.

''(3) REVOLVING LOAN PROGRAM.—The Administrator shall allocate not more than ⅔ of the emission allowances described in paragraph (1) to States, based on proposals submitted by States to conduct programs under which each State shall—

''(A) use the value of the emission allowances to establish a State revolving loan fund to provide loans to owners of nonindustrial private forest land in the State to carry out forest and forest soil carbon sequestration activities that will achieve the purposes specified in paragraph (2)(B); and

''(B) for 2010 and each year thereafter, contribute to the program of the State an amount equal to 25 percent of the value of the

emission allowances received under this paragraph for the year in cash, in-kind services, or technical assistance.

''(4) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

''(5) RECOMMENDATIONS CONCERNING CARBON DIOXIDE EMISSION ALLOWANCES.—

''(A) IN GENERAL.—Not later than 4 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture, shall submit to Congress recommendations for establishing a system under which entities that receive grants or loans under this section may be allocated carbon dioxide emission allowances created by section 705(a) for incremental carbon sequestration in forests, agricultural soils, rangeland, or grassland.

''(B) GUIDELINES.—The recommendations shall include recommendations for development, reporting, monitoring, and verification guide-

lines for quantifying net carbon sequestration from land use projects that address the elements specified in paragraph (1)(A).

''(f) ALLOCATION TO ENCOURAGE GEOLOGICAL CARBON SEQUESTRATION.—

''(1) IN GENERAL.—For 2009 and each year thereafter, the Administrator shall allocate not more than 1.5 percent of the carbon dioxide emission allowances created by section 705(a) to entities that carry out geological sequestration of carbon dioxide produced by an electric generating facility in accordance with requirements established by the Administrator—

''(A) to ensure the permanence of the sequestration; and

''(B) to ensure that the sequestration will not cause or contribute to significant adverse effects on the environment.

''(2) NUMBER OF EMISSION ALLOWANCES.—For 2009 and each year thereafter, the Administrator shall allocate to each entity described in paragraph (1) a number of emission allowances that is equal to the number of tons of carbon dioxide produced by the electric generating facility during the

previous year that is geologically sequestered as described in paragraph (1).

''(3) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

"SEC. 708. MERCURY EMISSION LIMITATIONS.

''(a) IN GENERAL.—

''(1) REGULATIONS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish emission limitations for mercury emissions by coal-fired electricity generating facilities.

''(B) NO EXCEEDANCE OF NATIONAL LIMITATION.—The regulations shall ensure that the national limitation for mercury emissions from each coal-fired electricity generating facility established under section 704(a)(4) is not exceeded.

''(C) EMISSION LIMITATIONS FOR 2008 AND THEREAFTER.—In carrying out subparagraph

(A), for 2008 and each year thereafter, the Administrator shall not—

''(i) subject to subsections (e) and (f) of section 112, establish limitations on emissions of mercury from coal-fired electricity generating facilities that allow emissions in excess of 2.48 grams of mercury per 1000 megawatt hours; or

''(ii) differentiate between facilities that burn different types of coal.

''(2) ANNUAL REVIEW AND DETERMINATION.—

''(A) IN GENERAL.—Not later than April 1 of each year, the Administrator shall—

''(i) review the total mercury emissions during the 2 previous years from electricity generating facilities located in all States; and

''(ii) determine whether, during the 2 previous years, the total mercury emissions from facilities described in clause (i) exceeded the national limitation for mercury emissions established under section 704(a)(4).

''(B) EXCEEDANCE OF NATIONAL LIMITATION.—If the Administrator determines under

subparagraph (A)(ii) that, during the 2 previous years, the total mercury emissions from facilities described in subparagraph (A)(i) exceeded the national limitation for mercury emissions established under section 704(a)(4), the Administrator shall, not later than 1 year after the date of the determination, revise the regulations promulgated under paragraph (1) to reduce the emission rates specified in the regulations as necessary to ensure that the national limitation for mercury emissions is not exceeded in any future year.

''(3) COMPLIANCE FLEXIBILITY.—

''(A) IN GENERAL.—Each coal-fired electricity generating facility subject to an emission limitation under this section shall be in compliance with that limitation if that limitation is greater than or equal to the quotient obtained by dividing—

''(i) the total mercury emissions of the coal-fired electricity generating facility during each 30-day period; by

''(ii) the quantity of electricity generated by the coal-fired electricity generating facility during that period.

''(B) MORE THAN 1 UNIT AT A FACILITY.—In any case in which more than 1 coal-fired electricity generating unit at a coal-fired electricity generating facility subject to an emission limitation under this section was operated in 1999 under common ownership or control, compliance with the emission limitation may be determined by averaging the emission rates of all coal-fired electricity generating units at the electricity generating facility during each 30-day period.

''(b) PREVENTION OF RE-RELEASE.—

''(1) REGULATIONS.—Not later than January 1, 2005, the Administrator shall promulgate regulations to ensure that any mercury captured or recovered by emission controls installed at an electricity generating facility is not re-released into the environment.

''(2) REQUIRED ELEMENTS.—The regulations shall require—

''(A) daily covers on all active waste disposal units, and permanent covers on all inactive waste disposal units, to prevent the release of mercury into the air;

''(B) monitoring of groundwater to ensure that mercury or mercury compounds do not migrate from the waste disposal unit;

''(C) waste disposal siting requirements and cleanup requirements to protect groundwater and surface water resources;

''(D) elimination of agricultural application of coal combustion wastes; and

''(E) appropriate limitations on mercury emissions from sources or processes that reprocess or use coal combustion waste, including manufacturers of wallboard and cement.

''SEC. 709. OTHER HAZARDOUS AIR POLLUTANTS.

''(a) IN GENERAL.—Not later than January 1, 2004, the Administrator shall issue to owners and operators of coal-fired electricity generating facilities requests for information under section 114 that are of sufficient scope to generate data sufficient to support issuance of standards under section 112(d) for hazardous air pollutants other than mercury emitted by coal-fired electricity generating facilities.

''(b) DEADLINE FOR SUBMISSION OF REQUESTED INFORMATION.—The Administrator shall require each recipient of a request for information described in subsection

(a) to submit the requested data not later than 180 days after the date of the request.

''(c) PROMULGATION OF EMISSION STANDARDS.—The Administrator shall—

''(1) not later than January 1, 2005, propose emission standards under section 112(d) for hazardous air pollutants other than mercury; and

''(2) not later than January 1, 2006, promulgate emission standards under section 112(d) for hazardous air pollutants other than mercury.

''(d) PROHIBITION ON EXCESS EMISSIONS.—It shall be unlawful for an electricity generating facility subject to standards for hazardous air pollutants other than mercury promulgated under subsection (c) to emit, after December 31, 2007, any such pollutant in excess of the standards.

''(e) EFFECT ON OTHER LAW.—Nothing in this section or section 708 affects any requirement of subsection (e), (f)(2), or (n)(1)(A) of section 112, except that the emission limitations established by regulations promulgated under this section shall be deemed to represent the maximum achievable control technology for mercury emissions from electricity generating units under section 112(d).

"SEC. 710. EFFECT OF FAILURE TO PROMULGATE REGULATIONS.

"If the Administrator fails to promulgate regulations to implement and enforce the limitations specified in section 704—

"(1)(A) each electricity generating facility shall achieve, not later than January 1, 2009, an annual quantity of emissions that is less than or equal to—

"(i) in the case of nitrogen oxides, 15 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of nitrogen oxides; and

"(ii) in the case of carbon dioxide, 75 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of carbon dioxide; and

"(B) each electricity generating facility that does not use natural gas as the primary combustion fuel shall achieve, not later than January 1, 2009, an annual quantity of emissions that is less than or equal to—

"(i) in the case of sulfur dioxide, 5 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of sulfur dioxide; and

''(ii) in the case of mercury, 10 percent of the annual emissions by a similar electricity generating facility that has no controls included specifically for the purpose of controlling emissions of mercury; and

''(2) the applicable permit under this Act for each electricity generating facility shall be deemed to incorporate a requirement for achievement of the reduced levels of emissions specified in paragraph (1).

''SEC. 711. PROHIBITIONS.

''It shall be unlawful—

''(1) for the owner or operator of any electricity generating facility—

''(A) to operate the electricity generating facility in noncompliance with the requirements of this title (including any regulations implementing this title);

''(B) to fail to submit by the required date any emission allowances, or pay any penalty, for which the owner or operator is liable under section 705;

''(C) to fail to provide and comply with any plan to offset excess emissions required under section 705(f); or

''(D) to emit mercury in excess of the emission limitations established under section 708; or

''(2) for any person to hold, use, or transfer any emission allowance allocated under this title except in accordance with regulations promulgated by the Administrator.

''SEC. 712. MODERNIZATION OF ELECTRICITY GENERATING FACILITIES.

''(a) IN GENERAL.—Beginning on the later of January 1, 2014, or the date that is 40 years after the date on which the electricity generating facility commences operation, each electricity generating facility shall be subject to emission limitations reflecting the application of best available control technology on a new major source of a similar size and type (as determined by the Administrator) as determined in accordance with the procedures specified in part C of title I.

''(b) ADDITIONAL REQUIREMENTS.—The requirements of this section shall be in addition to the other requirements of this title.

''SEC. 713. RELATIONSHIP TO OTHER LAW.

''(a) IN GENERAL.—Except as expressly provided in this title, nothing in this title—

''(1) limits or otherwise affects the application of any other provision of this Act; or

''(2) precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.

''(b) REGIONAL SEASONAL EMISSION CONTROLS.—Nothing in this title affects any regional seasonal emission control for nitrogen oxides established by the Administrator or a State under title I.''.

(b) CONFORMING AMENDMENT.—Section 412(a) of the Clean Air Act (42 U.S.C. 7651k(a)) is amended in the first sentence by striking ''opacity'' and inserting ''mercury, opacity,''.

SEC. 3. SAVINGS CLAUSE.

Section 193 of the Clean Air Act (42 U.S.C. 7515) is amended by striking ''date of the enactment of the Clean Air Act Amendments of 1990'' each place it appears and inserting ''date of enactment of the Clean Power Act of 2003''.

SEC. 4. ACID PRECIPITATION RESEARCH PROGRAM.

Section 103(j) of the Clean Air Act (42 U.S.C. 7403(j)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (F)(i), by striking ''effects; and'' and inserting ''effects, including an assessment of—

''(I) acid-neutralizing capacity; and

''(II) changes in the number of water bodies in the sensitive ecosystems referred to in subparagraph (G)(ii) with an acid-neutralizing capacity greater than zero; and''; and

(B) by adding at the end the following:

''(G) SENSITIVE ECOSYSTEMS.—

''(i) IN GENERAL.—Beginning in 2005, and every 4 years thereafter, the report under subparagraph (E) shall include—

''(I) an identification of environmental objectives necessary to be achieved (and related indicators to be used in measuring achievement of the objectives) to adequately protect and restore sensitive ecosystems; and

''(II) an assessment of the status and trends of the environmental objec-

tives and indicators identified in previous reports under this paragraph.

''(ii) SENSITIVE ECOSYSTEMS TO BE ADDRESSED.—Sensitive ecosystems to be addressed under clause (i) include—

''(I) the Adirondack Mountains, mid-Appalachian Mountains, Rocky Mountains, and southern Blue Ridge Mountains;

''(II) the Great Lakes, Lake Champlain, Long Island Sound, and the Chesapeake Bay; and

''(III) other sensitive ecosystems, as determined by the Administrator.

''(H) ACID DEPOSITION STANDARDS.—Beginning in 2005, and every 4 years thereafter, the report under subparagraph (E) shall include a revision of the report under section 404 of Public Law 101–549 (42 U.S.C. 7651 note) that includes a reassessment of the health and chemistry of the lakes and streams that were subjects of the original report under that section.''; and

(2) by adding at the end the following:

''(4) PROTECTION OF SENSITIVE ECOSYSTEMS.—

''(A) DETERMINATION.—Not later than December 31, 2011, the Administrator, taking into consideration the findings and recommendations of the report revisions under paragraph (3)(H), shall determine whether emission reductions under titles IV and VII are sufficient to—

''(i) achieve the necessary reductions identified under paragraph (3)(F); and

''(ii) ensure achievement of the environmental objectives identified under paragraph (3)(G).

''(B) REGULATIONS.—

''(i) IN GENERAL.—Not later than 2 years after the Administrator makes a determination under subparagraph (A) that emission reductions are not sufficient, the Administrator shall promulgate regulations to protect the sensitive ecosystems referred to in paragraph (3)(G)(ii).

''(ii) CONTENTS.—Regulations under clause (i) shall include modifications to—

''(I) provisions relating to nitrogen oxide and sulfur dioxide emission reductions;

''(II) provisions relating to allocations of nitrogen oxide and sulfur dioxide allowances; and

''(III) such other provisions as the Administrator determines to be necessary.''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR DEPOSITION MONITORING.

(a) OPERATIONAL SUPPORT.—In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2004 through 2013—

(1) for operational support of the National Atmospheric Deposition Program National Trends Network—

(A) $2,000,000 to the United States Geological Survey;

(B) $600,000 to the Environmental Protection Agency;

(C) $600,000 to the National Park Service; and

(D) $400,000 to the Forest Service;

(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—

(A) $400,000 to the Environmental Protection Agency;

(B) $400,000 to the United States Geological Survey;

(C) $100,000 to the National Oceanic and Atmospheric Administration; and

(D) $100,000 to the National Park Service;

(3) for the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,500,000 to the National Oceanic and Atmospheric Administration;

(4) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency; and

(5) for the Temporally Integrated Monitoring of Ecosystems and Long-Term Monitoring Program $2,500,000 to the Environmental Protection Agency.

(b) MODERNIZATION.—In addition to amounts made available under any other law, there are authorized to be appropriated—

(1) for equipment and site modernization of the National Atmospheric Deposition Program National Trends Network $6,000,000 to the Environmental Protection Agency;

(2) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Mercury Deposition Network $2,000,000 to the Environmental Protection Agency;

(3) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,000,000 to the National Oceanic and Atmospheric Administration; and

(4) for equipment and site modernization and network expansion of the Clean Air Status and Trends Network $4,600,000 to the Environmental Protection Agency.

(c) AVAILABILITY OF AMOUNTS.—Each of the amounts appropriated under subsection (b) shall remain available until expended.

SEC. 6. TECHNICAL AMENDMENTS.

Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)—

(1) is amended by redesignating sections 401 through 403 as sections 801 through 803, respectively; and

(2) is redesignated as title VIII and moved to appear at the end of that Act.

○