



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, MONDAY, JULY 29, 2002

No. 105

## House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, September 4, 2002, at 2 p.m.

## Senate

MONDAY, JULY 29, 2002

The Senate met at 4 p.m. and was called to order by the Honorable MARK DAYTON, a Senator from the State of Minnesota.

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, righteous, holy Judge of us all, every word we speak and action we take is heard and seen by You. Remind us that You bless those who humble themselves and put their trust in You completely. There is no limit to what You will do for a nation and its leaders if You are glorified as Sovereign.

May the knowledge of Your blessings to our Nation bring us to a deeper commitment to You. We want our motto: "In God we trust" to be more than a familiar phrase. You have told us,

*Where there is no vision, the people perish.—(Proverbs 29:18).*

And we remember Thomas Jefferson's warning: "God who gave us life, gave us liberty. Can the liberties of a Nation be secure when we have removed a conviction that these liberties are gifts of God?" With these words ringing in our souls, grant the Senators and all of us who work with them the courage to reaffirm You as Lord to whom we are responsible for the moral, spiritual, and cultural life of America.

Thank You for the miraculous recovery of the nine miners at Quecreek, Pennsylvania. Thank You for being on time and in time for all our needs. You are our Lord and Saviour. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable MARK DAYTON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 29, 2002.

#### To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK DAYTON, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. DAYTON thereupon assumed the Chair as Acting President pro tempore.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

### SCHEDULE

Mr. REID. Mr. President, the Chair will announce, very shortly, that the Senate will be in a period of morning business that will extend until 5:30 p.m. today. The time will be divided between the two leaders or their designees.

At 5:30, we are going to have three votes: Julia Smith Gibbons to be United States Circuit Judge for the Sixth Circuit, Joy Flowers Conti to be United States District Judge for the Western District of Pennsylvania, and John E. Jones III to be United States District Judge for the Middle District of Pennsylvania.

Mr. President, we have a busy week before the August break. The House, as the Presiding Officer knows, is out of session. We hope to complete consideration of the prescription drug bill, DOD appropriations, which by order we must take up by Wednesday, the fast track conference report, and we have a lot of executive nominations. And, of course, we also hope to begin consideration of the homeland defense legislation. We have a lot to do with a little bit of time to do it.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 5:30 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time to be equally divided and controlled by the two leaders.

The Senator from Nevada.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, we are in morning business, so I yield myself such time as I may consume.

The ACTING PRESIDENT pro tempore. The Senator, under the order, has up to 10 minutes.

#### PRESCRIPTION DRUG COVERAGE

Mr. GRASSLEY. Mr. President, for the third time in as many weeks, Senator GRAHAM and some of his Democrat colleagues have announced a mostly partisan Medicare prescription drug plan.

When it comes to prescription drug plans, it seems like Senator GRAHAM and his friends have tried everything.

They tried sunsets. They tried fixed copayments. They even tried limiting coverage for many brand name drugs seniors rely on. They tried spending \$800 billion. They tried spending \$600 billion. Each time they tried, they failed.

Today, to the tune of \$400 billion, they're trying something else entirely.

Despite their earlier calls for a universal, comprehensive benefit, Senator GRAHAM and his Democrat colleagues are trying to cut out the bulk of seniors altogether by covering only those with low incomes and extremely high drug costs.

This proposal is the same as the first two from Senator GRAHAM, except that it eliminates the prescription drug benefit for the 75 percent of Medicare beneficiaries with average incomes who will have spending less than \$4,000 in 2005.

This means that the average senior, who will spend \$3,059 on prescription drugs in 2005, according to CBO, gets nothing, no coverage at all.

That's quite a coverage gap. Or, to use a phrase that's become commonplace around here, that's quite a "donut." In fact, that lack of coverage—from \$0 to \$4,000 for most beneficiaries—is the biggest "donut" of them all.

I find this last fact especially ironic since it was these very same Democrats who last week said they wanted a comprehensive, universal prescription drug benefit in Medicare without any coverage gaps.

Besides having the biggest gap of them all, today's plan from Senator GRAHAM will still cost the taxpayers more than \$400 billion, even though it

provides no basic coverage at all for the average senior.

And the latest try from Senator GRAHAM still requires the government to decide which medicines to make available to the few seniors who qualify for coverage.

It is often said that the third try's a charm. I'm sorry to say that in this case, it isn't. It isn't even close.

Now, you might wonder whether there is another alternative that can get affordable coverage to all seniors, regardless of income.

I am happy to report that there is.

For \$30 billion less than the latest plan from Senator GRAHAM, it is possible to have a far better drug benefit that helps all seniors based on the tripartisan approach.

The tripartisan proposal costs only \$370 billion, including improvements to Medicare besides a meaningful drug benefit.

The tripartisan proposal lowers prices for all drug purchases due to negotiated discounts, and provides 50% coinsurance after a \$250 deductible, up to \$3,450 in drug spending.

It also provides catastrophic protection above \$3,700 in spending—better protection than in the more expensive Democrat plan before us today. All this is possible while spending billions less.

The tripartisan proposal also strengthens and improves Medicare by adding a voluntary, enhanced fee-for-service option. The new option provides protection against serious illness costs—something missing from Medicare today.

The new option also provides better protection against hospitalization costs and free preventive benefits. And seniors who want to keep the same basic Medicare they have today can do so if they wish. Everyone has access to affordable prescription drug coverage.

The bottom line is, the tripartisan proposal, at an official cost of \$370 billion, provides more generous prescription drug coverage for all seniors at a lower cost to taxpayers than the current Democrat plan, which leaves half of seniors with nothing at all at a cost of \$400 billion.

I will close by saying against that none of these attempts would have been necessary, had the Finance Committee been given the right to work its bipartisan will on a prescription drug proposal of its own.

If the committee process had been followed, we could have built bipartisan consensus and presented the Senate with a compromise proposal that could get 60 votes.

Instead, Senator GRAHAM, along with some of the Democrat caucus, has come to the floor time and time again this month with partisan proposals that get worse by the minute and that stand no chance of attracting bipartisan support.

In that regard, today's proposal is not different from the others. It's another partisan poison pill.

This pill, however, is more dangerous than those before it. It leaves most of

our seniors out in the cold, does nothing to contain increasing drug costs, and carries an all too expensive pricetag. I urge my colleagues to reject it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

#### UNITED NATIONS POPULATION FUND

Mr. BINGAMAN. Mr. President, on June 25, a little over a month ago, I spoke on the Senate floor about the issue of the United Nations Population Fund. At that time, I called on the President to release the funding for this organization. This is funding we had appropriated in the Congress last December.

I was extremely disappointed to learn that the Bush administration has now decided to eliminate the funding for the U.N. Population Fund. Once again, the administration has chosen to approach an issue unilaterally instead of to cooperate internationally with our allies. Once again, the administration has chosen domestic politics over the health and safety of women around the world.

The administration's decision is contrary to the finding of the administration's own expert panel. The administration did set up a panel and asked them to look into the issue to determine whether or not there was a problem that should prevent them from making this funding available.

That panel determined not only that the UNFPA, the United Nations Population Fund, does not condone or support in any way the violations of human rights or internationally agreed upon standards for family planning, it further found that the Fund is a force for progress, and that is a sentiment with which Secretary Powell himself publicly and wholeheartedly agreed when the panel came out with their announcement.

The United Nations Population Fund works in over 150 countries. They help to give women around the world access to reproductive health care and family planning services, as well as services to ensure safe pregnancy and delivery.

The U.N. Population Fund has been working in China and around the world to encourage nations to expand the availability of voluntary family planning information and services so that people everywhere have the right to decide freely and responsibly the number and the spacing of their children. The Fund is also a leader in the global effort to prevent the spread of HIV/AIDS.

From everything I have been able to read, it is clear that the U.N. Population Fund does not perform or support performing abortions in any way. Anyone who says that Fund does support that activity just has not looked into the issue as this expert panel has.

The U.N. Population Fund is a United Nations organization governed by the governments that make up the United

Nations. Many of these governments fundamentally oppose abortion, and they would never let the United Nations Population Fund be involved in supplying abortions. The UNFPA is simply a tool of the member nations that is designed to implement their will, and that will is to help the most desperate women and their families in some of the poorest countries in the world who are suffering every day in very terrible ways.

The \$34 million we are discussing that has been denied by the administration to be used as the Congress intended would directly contribute to effective modern contraception for over 1 million couples. This \$34 million would prevent over 100,000 unwanted pregnancies. It would prevent a quarter of a million unwanted births. It would help women avoid over 200,000 abortions and prevent thousands of maternal and child deaths in the same effort.

Further, the Fund's policies of constructive engagement in China have been shown to result in much-needed progress and a reduction in some of the worst violations of human rights in that country.

The administration's decision is another affront to the world's women. It follows on the administration's decision to impose the global gag rule on family planning providers, and also it follows upon the administration's unwillingness to champion the international treaty on the rights of women.

I hope that the Senate, when we consider the foreign operations appropriations bill—and I assume we will either this week or shortly, when we return in September—will have broad support for the \$50 million that hopefully will be included for the United Nations Population Fund in this upcoming fiscal year.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. BINGAMAN. I am glad to yield to my colleague.

Mr. REID. Senator BYRD has given a number of speeches in recent days on and off the floor about separation of powers; that we, the legislative branch, do something and the power is taken away by the executive branch of the Government. This is a perfect example; would the Senator agree?

Mr. BINGAMAN. Mr. President, I do agree this is a perfect example. This is a case where the Congress made a very clear decision to provide assistance to this United Nations Population Fund. It did give the administration discretion to look into the question of whether there were human rights problems, and the administration looked into it, and its own panel determined there were not. Yet in spite of that, the administration made a decision to withhold the funds. So I agree entirely with the statement of the Senator from Nevada that this is a case where the administration is acting contrary to the clear intent of the Congress.

Mr. REID. I so appreciate the statement of the Senator from New Mexico

for a number of reasons, not the least of which is that it seems those who oppose abortion the most are those who fight against us for these moneys; is that not a fair statement?

Mr. BINGAMAN. Mr. President, again, let me respond by saying that is my clear impression as well. The estimates which I have given in my floor statement are that there will be in the range of 200,000 abortions performed as a result of our Government, our administration, withholding this money.

I think those who are opposed to abortion are finding an odd way to pursue that goal by trying to keep these funds from being expended.

Mr. REID. Mr. President, I ask my friend, it is also true, is it not, that the 200,000 abortions are for a year's period of time? Over the years when we have been prevented, as we have on other occasions by Republican administrations, from letting this money go forward, hundreds of thousands of abortions each year are performed that would not have to be performed but for our not having this money; is that right?

Mr. BINGAMAN. Mr. President, in response, I say that is right. Obviously, the work of an organization such as this United Nations Population Fund can only be effective if they can put in place programs they can then sustain over a period of years and actually do some educational efforts in these underdeveloped countries. That is what is so unfortunate about the decision of the administration to withhold funds this year. We will have a chance, once again, to appropriate additional funds for the new fiscal year, but this year has been lost, and unfortunately there are other years, previous years, where our opportunity to help solve these problems has been squandered.

Mr. REID. I also ask my friend: It is true, is it not, that these programs are voluntary in nature, educational in nature, people are learning how to prevent pregnancies? Is that one of the programs that is involved?

Mr. BINGAMAN. In response to my friend's question, that is clearly the main thrust of this funding. It is to provide much-needed information to desperately poor women in these countries so they can make voluntary decisions about what they want to do, how many children they want to have, and what their options are as they move ahead. These are all voluntary programs by definition.

Mr. REID. Would my friend also acknowledge that these programs involve in various places well-baby programs to teach women how to take care of babies, and also prenatal care, which is such an important part, to countries outside the United States where these monies could go? Is that true?

Mr. BINGAMAN. Again, let me respond by saying that is very true. The thrust of these efforts is to reduce the incidents of mothers dying while giving birth, reduce the incidents of child deaths, infant deaths. Clearly, that is the main thrust of what we are trying to accomplish with these funds.

Mr. REID. Finally, I ask my friend, so I understand the numbers, as a result of this political ideology, just for this year alone, there are going to be 500,000 unwanted pregnancies; there will be 250,000 unwanted births, for lack of a better way to describe it, and some 200,000 abortions; is that a fair summary of the numbers?

Mr. BINGAMAN. In response, those are the right numbers. I will go through them once more. The estimate we have is that this \$34 million the Congress appropriated last December, it was intended to provide effective, modern contraception for over a million couples to prevent over 500,000 unwanted pregnancies, to prevent a quarter of a million unwanted births and to help women avoid over 200,000 abortions. So that is what we estimate that funding would be able to accomplish. Now, obviously, none of that will be accomplished during this fiscal year.

Mr. REID. I said I had one last question, and this will be the last question: One of the programs involved, by virtue of what they are doing, would also prevent the spread of HIV; is that true?

Mr. BINGAMAN. In response to my friend from Nevada, that is the major thrust of this effort. As good information is given to parents, to mothers, about these issues, good education and information can also be provided about how to prevent the spread of HIV/AIDS, which is an enormous problem, a terrible tragedy afflicting many of the underdeveloped countries in the world.

Mr. REID. Which is costing American taxpayers money; is that also true?

Mr. BINGAMAN. That is exactly right. We are spending a very substantial amount in trying to deal with the problem of HIV/AIDS in the world. We are being called upon by many of the world's leaders to spend substantially more, and, frankly, I think the drumbeat for us to spend more and more to prevent the spread of HIV/AIDS will continue to grow.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. I appreciate very much the statement of the Senator from New Mexico. He is right on point with the critical issue facing the world, and it is a relatively small amount of money we are talking about with all the other monies being spent. This is one that will bring back dividends to our country. And even if it did not—which it will—it is the right thing to do.

As I have said, for political ideology, for the people who cry out against abortion, they are the ones who are opposing what we are trying to do to prevent abortions. This is hard for me to comprehend. It is wrong, and I hope people in the administration will weigh in.

I was very disappointed in Secretary of State Powell for making this announcement when in the past he had said what a great program this was we had going, and then, because of others, I guess, who have more power than he, he came out and gave this wishy-washy

statement about this program money being cut. I do not think his heart was in it, and I am certain his head was not, but I guess there are certain things one has to do. I hope he will not be doing other things like this that appear on the surface so wrong and something he apparently disagrees with so vehemently.

Mr. President, I ask unanimous consent that during the call of the quorum, which I would suggest, the time be charged equally against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### MEDICAL MALPRACTICE

Mr. THOMAS. Mr. President, I will visit for a few minutes about medical malpractice, which we will deal with tomorrow. Part of the bill originally had to do with pharmaceuticals. We have had a hard time focusing on pharmaceuticals. The amendment I will discuss expands health care access and has to do with the additional cost brought about by the difficulty arising with lawsuits and medical liability. We need some reform in this area.

In my State of Wyoming, the Wyoming Medical Society has been very concerned. Insurers have been pulling out of the markets or increasing premiums that are above affordable levels. It is a substantial problem. The crisis is now in Casper, WY. Of course, it is all over the country as well. We are beginning to lose some of the practitioners. That is difficult, particularly in an underserved area.

I rise today to support the McConnell amendment on medical malpractice tort reform. The Senate passed this exact language in 1995. There is little reason we should not pass it again. Physicians alone spent \$6.3 billion in malpractice insurance premiums last year. This does not include what other providers such as hospitals have paid. This amendment is a good step in the right direction to reduce or limit the cost of health care to all persons.

The McConnell amendment does a number of things, all of which are very important and necessary. It limits punitive damages to two times the sum of compensatory damages. The amendment only allows punitive damages in cases where the award has been by clear and convincing evidence. It also places limits on attorney's fees, limiting lawyers to collecting a third of the first \$150,000 of an award and 25 per-

cent of the award for amounts above \$150,000. It requires lawsuits be filed within 2 years of the claimant's discovery of the injury. It encourages States to develop alternative dispute resolution mechanisms to help resolve issues before the court.

It seems to me it is a step in the right direction in doing something about these costs. Some of the premiums that physicians are required to pay to practice are amazing. The result is many retreat from practice are particularly those in Medicare where relatively low fees are being paid.

Median malpractice awards increased by 43 percent in 2002 to \$1 million; 52 percent of all jury awards are now over \$1 million. These excessive awards only contribute to the overall costs of health care for all Americans. Since awards drive up malpractice premiums and physicians must pass that on to their consumers, health insurance premiums for everyone continue to go up.

Many Americans are not now able to afford health insurance. They are currently 40 million uninsured Americans.

Recent reports show that medical malpractice is responsible for 7 percent or \$5 billion of the overall increases in health care costs. Last year, one of the largest physician insurers in the Nation stopped its medical malpractice business. As a direct result, some doctors and hospitals see their premiums rising 20 to 100 percent. Some specialists are paying over \$100,000 a year in premiums. Obstetrics is a particular problem. Hospitals in two rural counties in West Virginia have stopped delivering babies; half of 93 obstetricians in Clark County no longer accept new patients. One Nevada obstetrician closed her 10-year practice after her malpractice premiums went from \$37,000 to \$150,000. All of this, of course, must come from the patients.

It is clear something needs to be done to address this growing crisis. According to the American Medical Association, 12 States are in crisis now; 30 are showing signs of being in crisis; 8 are currently OK.

I hope as we talk about this tomorrow, we can do some things that start us moving in the right direction. The cost of health care is certainly an important issue to all of us. We have to deal with it in pharmaceutical costs. We have sought to deal with it by getting physicians into underserved areas by various means. But one of the ways that is important and has changed is the matter of the cost of medical malpractice tort reform. I hope we can deal with it tomorrow.

I yield the floor.

The ACTING President pro tempore. The Senator from Pennsylvania.

#### THE MINERS AND SOMERSET COUNTY

Mr. SPECTER. Mr. President, I have sought recognition to speak about the gallant men, nine miners from Somerset County in my State of Pennsyl-

vania, who went through a most extraordinary ordeal—77 hours trapped in a mine. The eyes and ears of the world were on Somerset County, people wondering if it was possible for men in an underground mine shaft, immersed in water reportedly 4 feet to 5 feet high, no food, no communication with the outside world—people wondered whether those men could survive. Almost in a miraculous way, finally, through the extraordinary efforts of Federal, State, and local rescuers, those nine men were rescued at 2:44 a.m. on Sunday, just yesterday. Their ordeal started on Wednesday, July 24, at 9 p.m., and ended on Sunday morning, July 28 at 2:44 a.m.

People are in amazement around the world, at their successful rescues. It is very unusual, very odd to say the least, that a small county in western Pennsylvania, more than 50 miles southeast of Pittsburgh, would be the focus of so much international attention.

Last September 11, as we all know, a flight crashed into Somerset, one of the four hijacked by terrorists on September 11, the flight widely believed to be headed to this building, the Capitol of the United States. No one can be sure—some have speculated it might have been headed to the White House—but the speculation was that the plane which crashed into the Pentagon was headed to the White House.

In any event, Somerset County was the site of an international tragedy less than a year ago. It is more than lightning, but to have lightning, so to speak, strike twice in such a small county in western Pennsylvania is unusual. But this time, instead of tragedy, instead of the loss of lives, these men were rescued.

In an era where there is so much bad news around the world, so much difficulty with terrorism around the world, the problems with the Palestinian terrorists against Israel, the grave difficulties between India and Pakistan over Kashmir, the differences and fighting between the North Koreans and South Koreans and all the problems of Africa—and that litany could be the subject of a lengthy conversation—to find a bright spot, find a success, find a rescue, is certainly more than a breath of fresh air for the entire world but especially, of course, for the miners who were involved: Mr. Randy Fogle, Mr. Harry Blaine Mayhugh, Mr. Thomas Foy, Mr. John Unger, Mr. John Phillippi, Mr. Ronald Hileman, Mr. Dennis Hall, Jr., Mr. Robert Pugh, and Mr. Mark Popernack.

Representing Pennsylvania, as I have for some 22 years now, I have obviously been intimately connected with the issue of the coal miners, with some 30 billion tons of bituminous in western Pennsylvania and 7 billion tons of anthracite in northeastern Pennsylvania and the mining industries being struggling industries, this industry has taken up a great deal of time—not only of mine, but of the entire Pennsylvania delegation, really beyond the Pennsylvania delegation.

I have had occasion to go underground. I must say it is an eerie, desolate feeling to take one of those elevators down about 20 stories and then hunch over, in the miner's gear with a little light on your cap, and lean backwards in a rail car which moves several miles underground because you can't sit up straight, there isn't sufficient room. I have marveled at the courage and the tenacity of the miners who go into those deep mines, day after day after day, risking life and limb.

There was a time not too long ago when a thousand miners a year were killed there. Fortunately, with mine safety, that situation has improved materially, but it is still a very risky line of work.

I got through today to Mr. Ron Hileman who lives in Gray, PA, and talked to him about his experiences. As you might imagine, he is a real hero. When I said to Mr. Hileman that he was a hero, he dissented, but that is the way heroes are. They do not acknowledge being heroes.

We talked about being in that enclosed area with 60 million gallons of water pouring in. A miner of 27 years with a wife and two children, of course, the joy in the Hileman family was overwhelming. Mr. Hileman expressed his own very deep gratitude.

I asked him what had happened. I asked him if the maps might have foretold the problem.

He said no because the maps did the best they could. But when other miners came in adjacent, as Mr. Hileman put it, some of the miners would snatch a little extra coal—go a little extra distance and go beyond the line which they had and into another area. Then, when the miners went down there last week, they ran into an old mine shaft. The old mine shaft had caused the enormous problem with the flooding.

I want to pay tribute to Pennsylvania's Governor, Mark Schweiker, an international figure, a hero in his own right—and for good cause—on the job, persevering, leading Federal, State, and local officials, meeting with the families. I talked to him over the weekend and he was there, on the job, and certainly deserves the commendation, not only of Pennsylvania but the commendation of the Nation, the commendation of the world.

This accident points up the need for greater concern for miners' safety as they are performing very important work, providing energy, providing coal, providing a resource in our effort to try to free ourselves from the dominance of OPEC oil. With progress in clean coal technology, as I have said on this floor on many occasions, the coal industry across America, Pennsylvania, West Virginia to Wyoming and beyond, could provide that alternative source of energy.

When I look over what we have done on the subcommittee for the Department of Labor appropriations going back to September of 1981, there were efforts to reduce the mine surface in-

spection from twice a year to once a year. Many of us resisted, and that was stopped.

We had a mining hearing August 1991 where there were operators who were tampering with coal mine dust devices. Then there have been efforts made to cut the Mine Safety and Health Administration repeatedly.

This body, the U.S. Senate, and Senator HARKIN, as ranking member in 1995 when I took over the chairmanship, and now Senator HARKIN as chairman, on a bipartisan approach has maintained the safety funding so that where there have been efforts to cut, we have resisted. We maintain the black lung clinics.

I believe that this is a good day for the United States and the U.S. Senate to pay tribute to the coal miners of America for what they are doing for the Nation by providing needed energy for domestic purposes and also for national security.

Especially thanks for the rescue of the nine mine workers; and we pay tribute to those men and their families and to the heroic rescuers led by Governor Schweiker that brought them to safety.

I thank the Chair. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, how much time remains on our side?

The ACTING PRESIDENT pro tempore. Seven minutes 43 seconds remaining.

Mr. ENZI. Thank you. I have a more extensive speech, but I will limit my remarks so that the Senator from North Dakota will have his full time.

#### FOREST MANAGEMENT

Mr. ENZI. Mr. President, I just returned from a normal weekend. On Fridays, my wife and I usually go to Wyoming, and we come back on Sunday night, which actually turns out to be Monday morning by the time we make the trip. This time I was able to concentrate a little bit of time in the area just outside Yellowstone Park, on the east side of Yellowstone Park between Cody and the park. I was there last year.

There was a fire inside Yellowstone Park. I wanted to see how the new fire plan was working. I got a very extensive and excellent tour. It was educational, but it pointed out some problems that need to be taken care of in the West.

Of course, those problems wouldn't be quite as extensive except for the drought we are having. This is the third year of the drought in Wyoming. One of our lakes in the northern part of the State that drains up into Montana is dropping almost 2 feet a week. It is down 125 feet from its normal level. Most lakes in the Nation would be dry if they were down 125 feet. This one still has some water, but it doesn't have boating anymore. That not only affects recreation in the area; it affects

the communities in the area because they do not get the revenues they would normally get from tourism and visitors.

Ranchers are having to sell off their herds. They don't have any grazing because of the drought. This is the third year they have had to diminish their herds. Most of them are completely wiped out from that aspect.

We have another little problem. That is the way the Tax Code is arranged. The Tax Code says if you have to do an emergency sale and you have some revenue in the next 2 years you can apply that so you don't have to pay taxes. They have been wiped out with the herds, and they are going to have to pay taxes because there is no revenue to take it against.

There are many peripheral issues that happen with the drought.

We need to concentrate in this body on fire prevention in our forests. This is what some of the forests look like right now—just tremendous blazes. You can see the way the tinder lays up in layers. It forms a chimney, and it goes to the top of really big trees. When it gets to the top of the trees, the fire itself creates a wind. The wind will sway the trees, and the trees throw the crown a half mile away to start another fire. Once a fire starts, it can be very extensive.

We have a new plan that says put it out as soon as you can. That is helping tremendously. We used to let it burn. We tried to do some of what they call natural foresting. When natural foresting was actually natural foresting, there weren't people inhabiting those areas.

In this particular area near Yellowstone, there is a huge pine needle forest because of pine bores. They bore into the trees when they are young. They eat a circle around the tree, and it kills the tree. Then the tree looks rusty. The next year and the year after, all the needles are gone, and it is just a standing dead pine tree.

Of course, the best time for it to burn is when it is all rusty. When the needles are dried out and they burn, they form a chimney effect, going up to the top of the tree. That is how huge parts of the forests are between Yellowstone Park and Cody, WY, right now.

Those trees need to be taken out. If they are not taken out, a Boy Scout camp, 12 lodges, and 68 homes will go up in smoke.

Last year, when there was a fire in the park, they pointed out the pine needle forest and the need to get those trees taken out. I have been working on that since then. We haven't been able to get it done. There are a few very easy court actions that can prohibit that sort of thing from happening. But it is absolutely essential.

Those lodges have post-evacuation plans. As the fire starts, they have to call all their guests in and explain how they are going to be able to get out of this valley to keep from being trapped by the fires, fires such as these where

you can see the animals are having a little bit of concern about how they could be trapped by the fire.

That cuts into the tourism. People don't go home and tell about the great experience they had. They go home and tell about the extreme pressure they were under with fires. Consequently, they spread the advertising in a very negative way. We want it to be in a positive way.

There are things that can be done and that should be done. I will be taking some more time to explain what they are and steps that are being taken by the Forest Service at the moment. But more extensive steps need to be taken.

Senator DASCHLE has an amendment on a supplemental spending bill to take care of some of the problems bordering Wyoming in the Black Hills. It very explicitly allows them to go in and cut down those trees, which will reduce the amount of tinder. There are some ways that we can do that.

I introduced a bill, S. 2811, the Emergency Forest Rescue Act of 2002. That gives the Secretaries of Agriculture and Interior the ability to recognize emergency conditions that exist in the forests and allows the land managers to act to protect them from the extreme threat of fire, specifically those suffering from drought and high tree mortality. Those two circumstances have to be present. It also requires the approval of the Council on Environmental Quality.

I have some protections built in and some ability to move forward quickly so we don't burn up huge valleys and extend the fire into Yellowstone Park, which is one of our great natural treasures. In fact, all of our forests should be national treasures. Present conditions do not make them as usable as they could be or as pretty as they could be.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. The Senator has 20 minutes under the order.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I believe the Senator from Alaska would like to use the last 5 minutes. I ask unanimous consent that he be recognized for the final 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### THE TRADE AGREEMENT

Mr. DORGAN. Mr. President, in the coming days I assume there will be a lot of suspender-snapping, back-thumping, chortling, and crowing about the

new fast track trade agreement that was announced in the weekend press.

There was a conference in the House and Senate. They came out with a new trade agreement. The moniker is trade promotion authority. It is a fancy way of saying fast-track trade authority for President Bush.

I didn't support fast track trade authority for President Clinton, and I don't support it for President Bush. This is not a victory for our country.

I assume, this week, because the conference report has passed the House, it will come to the Senate. We will have speeches by people wearing dark suits who talk about how wonderful this is for our country, what a wonderful thing it is that we now have fast-track trade authority. So some of our trade negotiators can go overseas somewhere, go into a room, close the door, lock it, keep the public out, and negotiate in secret a new trade agreement, and then come back to the Congress and say: Here it is. Take it or leave it. No amendments. Up or down. No changes.

The people who apparently believe in this do not believe in the first law of holes; that is, when you find yourself in a hole, stop digging. They believe, if you find yourself in a hole, keep digging, look for more shovels.

Let me talk for a moment about where we are with our trade deficits. This chart shows the record trade deficits we have seen over the past decade. When the year 2002 figures are posted, they will be way off the chart up here: about a \$480 billion trade deficit in goods. That is money we owe to others, money we owe to people outside this country. They will have a future claim on America's income. This is very serious for our country. Yet we have people walking around here saying: We just need to do more of the same.

One of the more recent trade agreements we did was NAFTA. They promised us hundreds of thousands of new jobs, if we melded the economies of the United States and Mexico, for trade purposes. I have a chart that shows what has happened as a result of NAFTA: 700,000 jobs lost.

Incidentally, prior to NAFTA, we had a very small trade surplus with Mexico. After NAFTA, we turned that small surplus into a huge deficit. We had a modest trade deficit with Canada. It turned into a very large deficit. So we have this very large trade deficit now with Canada and Mexico, and people say: Gosh, that is wonderful; isn't it? No, it is not wonderful. It is moving in the wrong direction.

It is not that I don't believe in the global economy and the ability of nations and businesses to exchange goods and services back and forth. I studied economics, taught economics for a while, and understand the doctrine of comparative advantage: Doing that which you do best, and trading with others who do what they do best. All of that makes sense to me.

But I also think the rules have to be fair, and open markets have to be

opened. The rules have to be transparent and fair. And they are not.

If I might just give some examples of these rules and the problems with the rules.

I use, often, the example of automobile trade with Korea. Korea is a good friend of the United States. South Korea has been an ally of ours for some long while. We have a trading relationship with Korea. But let me show you what has happened between the United States and Korea in one area of trade.

Last year, the Koreans shipped 618,000 cars into the United States—Hyundais, Daewoos—Korean cars. So 618,000 Korean cars came here from Korea, and we were able to ship Korea 2,800 cars; in other words, 217 to 1. Is it because our cars are bad cars? No, that is not it. It is because if you try to ship a Ford Mustang to Korea, they will throw up all kinds of trade barriers. They just do not want United States cars shipped to Korea. They want only for Korean cars to access the American marketplace.

Is that fair? No, it is not fair. Does anybody in this country have the backbone and nerve to stand up to another country and say to them: Look, we like you a lot. You are allies of ours. We are good friends. But I will tell you what. In international trade, we have a notion of fairness. Open your markets to us, and we will open our markets to you. But if you close your markets to the United States, ship your cars to Nigeria or perhaps Iran, and see how quickly they sell.

Let's talk about beef exports to Europe. Go to Europe. The Presiding Officer has been in Europe. Pick up a newspaper in Europe—I have been there this year—and you read about European trade restrictions on U.S. beef, allegedly because of hormones. The way they picture it, it is as if we are shipping them beef that came from cows with two heads. That is the way it is portrayed in the European press. They keep United States beef out of Europe.

So our country actually tried to do something about that. We said: Look, you either allow United States beef into Europe or we are going to take action against you. So, finally, a little bit of backbone from our trade representatives, right? Finally, we have some nerve. Finally, we have the good old American spirit and we are going to stand up for our producers. We couldn't get beef into Europe, so we took action.

Our trade representatives filed a case at the WTO against the Europeans for their restrictions on our beef. The WTO actually ruled on it, which itself is a surprise. The WTO said: Europe, you are wrong. You must allow United States beef into Europe. Europe said: It doesn't matter. We are not going to do it. So our trade negotiators said: We are going to take action against the Europeans. Do you know what we are going to do? We are going to retaliate by imposing tariffs on European truffles, goose livers, and Roquefort cheese.

Now, that will strike fear in any country, won't it? They will not allow our beef in Europe, but we are going to make it tough for them. We are going to take action against truffles, goose livers, and Roquefort cheese. Good for us.

When, on Earth, will we have the nerve to say to other countries, we demand—we insist—on fair trade?

Twelve years ago we reached an agreement with Japan on beef. All the trade negotiators celebrated as if they just won the 100-yard dash in the Olympics, as if they were all wearing gold medals because we reached a trade agreement with Japan on beef. But 12 years later, every single pound of American beef going into Japan still bears a 38.5-percent tariff.

Try to send T-bones to Tokyo, a 37.5-percent tariff—every pound of beef. We have a \$60 to \$70 billion trade deficit with Japan, yet we cannot get beef into Japan without a tariff near 40 percent. It doesn't make any sense to me.

This issue goes on and on. In my part of the country, we face an avalanche of unfairly subsidized Canadian grain coming in from a monopoly called the Canadian Wheat Board. We can't do a thing about it because the last trade agreement that came through here limited our remedies under section 301. We don't do a thing about it, so this grain floods into our country from Canada. It is unfair.

Our Canadian friends, they are good friends of ours, but they are not playing fair with respect to trade and grain. So U.S. wheat producers, family farmers, put together the information to file a complaint. They won the complaint. The U.S. Trade Representative judged that the Canadians, through the Canadian Wheat Board, are engaged in unfair trade.

What is the remedy? Well, apparently, according to our trade ambassador, the remedy is just to say that the Canadians ought to really watch it. No tariffs. No effective actions. No sanctions. Just: You had better watch it. That is not the way to deal with international trade.

When this so-called fast-track authority agreement was reached in conference, the committee of jurisdiction issued a memorandum describing what they did in conference and what a terrific deal it is.

Trade adjustment assistance: They tripled it. That provides assistance with health insurance for displaced workers. So if you lose your job because of these trade agreements, guess what? We are going to exchange for your job some health insurance for you. Boy, that is quite a deal, isn't it?

We are going to expand coverage to secondary workers who are affected by a firm moving overseas. These trade agreements make it easier to move a firm overseas, so if you lose your job, and if you are not a primary worker but a secondary worker, we are going to cover you for the first time. That is going to make you feel really good as

you go home and tell your family: I have lost my job. But guess what. I am a secondary worker, and I think I am covered with some health insurance for a while. I think I am going to get a little health insurance here.

There is a pilot program for providing wage insurance for older workers, realizing the difficulty for older workers to change careers. Why would you to have change a career? Because your job just went to Sri Lanka or Bangladesh or Indonesia, where they are going to do for 20 cents an hour what you did for a living wage in this country.

There is a new benefit for farmers and ranchers who have been losing money hand over fist because of price collapses. If they lose money now because of these new trade agreements, there is a little help for them. Somebody takes their market away, we give them just a little bit of help in trade adjustment assistance. Lose your job? Lose your farm? Lose your ranch? Guess what. We will help you out a little.

The issue, according to these folks, is not about fair trade. The fight is about how can we provide assistance to Americans who are going to lose their jobs.

For me, the question is this: What are the elements of fair trade? What is price for admission to the American marketplace? We fought for a century about fair labor standards, about not having children go down in coal mines, and not having children work in factories, about requiring safe workplaces, about a minimum wage, about the right to organize. Then some companies decided: We can skip all of that. We can pole vault over all those things. We can hire someone in Indonesia and pay them 24 cents an hour to make shoes. We don't have to worry about all those things we had to worry about in the United States.

When we in the Senate were debating the current fast track bill in May, the Presiding Officer offered an amendment which I cosponsored, the Dayton-Craig amendment. It said: If in the next negotiation, there is any attempt to weaken the remedies for American producers, countervailing duties, any number of remedies to take action against unfair trade, if that is the case, there is going to be a separate vote in the Congress on that. The amendment passed in the Senate by a wide, bipartisan vote. Sixty one Senators voted for it. But when the bill got to conference, the provision got dropped, just got dropped. Instead, we got the right to do a sense-of-the-Senate vote. Well, thank you very much. You could do that before, and the new provision does nothing to defend our trade laws. It doesn't mean anything. If you just like to be here and put your suit and necktie on to vote for the heck of it, be our guest, come and do it, but this doesn't mean anything. They dropped an effective provision from the Senate version of the trade bill, one that would have helped producers in this country.

They also dropped my amendment that said on investor dispute resolutions in NAFTA, proceedings must be open, they must be transparent. The door must be open. The public must see it. Now it is done in secrecy.

They dropped my amendment. They dropped anything that was good. Then they put a sort of chocolate coating on things that were bad, sent it out here, and said: Hope that tastes good. Well, it doesn't taste good. This doesn't make any sense to us.

It is interesting, there is only one view of trade that you can embrace these days. We have the largest trade deficit in history; last month over \$41 billion—last month alone. A lot of major papers won't run a piece on the trade deficit on their op-ed page because there is only one view on their op-ed pages: You are either for global trade or you are against it. If you are against it, you are some sort of xenophobic isolationist stooge who just doesn't get it. Everybody else sees over the horizon. Those who oppose fast track don't.

That is one of the most thoughtless approaches to a trade debate I can imagine. We will have a lengthier discussion on this, this week. I will have much more to say.

Let me say again, I believe expanded trade is helpful to this country provided expanded trade is fair trade. We have been victimized in so many ways by so many trade agreements—recently, NAFTA and the WTO. You name it, I will show you the trade agreement that has expanded our trade deficit, hurt our producers, moved our jobs overseas, and nobody seems to care very much. Do you hear one peep on the floor of the Senate about the largest trade deficit in history? Just one? I don't hear a thing. Yet it hurts this country. It is going to cause this country serious economic problems in the future.

I have so much more to say today, and so little time to say it. I want the Senator from Alaska to have the opportunity to speak for the last 5 minutes. So when this legislation comes to the floor of the Senate, I will speak at greater length later in the week. In the meantime, suffice it to say, some of us don't celebrate as much as others when they talk about the ingredients of this conference report on fast track. This is not advancing our country's interest. It is not fair to producers and to workers.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. I thank Senator DORGAN for his courtesy.

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#### COMMEMORATING THE 50TH ANNIVERSARY OF THE UNITED STATES EUROPEAN COMMAND HEADQUARTERS

Mr. STEVENS. Mr. President, I, along with General Joe Ralston, the Supreme Allied Commander Europe,

commend the past success and continued contributions of those men and women of our Armed Services who comprise the United States European Command.

This Thursday, August 1, the U.S. European Command will celebrate its 50th anniversary. Over the last 50 years the European Command has played a critical part in the successful preservation of peace and stability in and around Europe, and they continue to do so today.

For more than 35 years during the cold war, the primary mission of the European Command Headquarters, established in Frankfurt, Germany in 1952, was to fulfill United States treaty obligations to NATO by providing combat ready forces to counter the Soviet threat and ensure peace in Europe, Africa and portions of the Middle East.

With the collapse of the Soviet empire, the responsibilities of the European Command changed dramatically. Since that time, it has engaged in a wide spectrum of security cooperation activities that have helped ensure stability and promote Democratic and market-oriented governments in countries emerging from Communism and other authoritarian regimes.

Simultaneously, it has conducted numerous operations to end regional wars, reduce ethnic conflict and limit the suffering caused by man-made and natural disasters.

Our European Command continues to make valuable contributions today. To conduct security cooperation activities and respond to regional threats to our national interests, The Command typically has approximately 117,000 service members, or about eight percent of the U.S. active duty military. This is a small investment by any measure for such a vast range of responsibilities across Europe, the Middle East and two-thirds of Africa.

As I speak, the European Command is involved in five on-going combat operations. Its forces are patrolling the skies over the northern no-fly zone to enforce United Nations Security Council Resolutions against Iraq as part of Operation Northern Watch.

In Bosnia and Kosovo, the European Command contributes with our NATO allies in Operations Joint Forge and Joint Guardian respectively, to ensure security, promote stability and allow those fragmented societies to rebuild their civil institutions and restore the rule of law.

In the former Yugoslav Republic of Macedonia, it is providing on-call support to the international community's monitors working there as part of Operation Amber Fox. And, U.S. European Command is making substantial contributions to Operation Enduring Freedom and to the global war on terrorism in general. Most recently, it deployed a small force to the Republic of Georgia to train and equip their forces to more effectively protect their own territorial integrity.

The invaluable contributions of our military men and women working at

the Headquarters—today located in Stuttgart, Germany—have continued without interruption.

The legacy of their service, dedication and accomplishments is to be highly commended, and the importance of their continued contributions to future regional peace and to the preservation of our national interests cannot be overstated.

On the 50th anniversary of the establishment of the U.S. European Command, it is fitting that we honor the millions of dedicated American men and women who have served, and continue to serve our Nation overseas.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, has 5:30 p.m. arrived?

The PRESIDING OFFICER. It has.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF JULIA SMITH GIBBONS TO BE UNITED STATES CIRCUIT JUDGE—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to vote on Executive Calendar No. 810, which the clerk will report.

The legislative clerk read the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

#### CONFIRMATION OF JUDGE JULIA SMITH GIBBONS

Mr. LEAHY. Mr. President, with today's vote, the Senate will confirm the 12th judge to our Federal courts of appeals and our 61st judicial nominee since the change in Senate majority last summer. In little more than 1 year, the Senate Judiciary Committee has already voted on 75 of this President's judicial nominees, including 15 nominees to the courts of appeals. This is more circuit and district court nominees than in any of the previous 6½ years of Republican control. In fact, we have given votes to more judicial nominees than in 1996 and 1997 combined, as well as in 1999 and 2000 combined.

Despite the partisan din about blockades and stalls and inaction as well as

absurd claims that judicial nominees are being held "hostage"—the fact is that since the change in majority last summer the Senate, and in particular the Judiciary Committee, has been working at a much faster rate than in the 6½ years of Republican control. With respect to courts of appeals nominees, we confirmed the first of President Bush's nominees last July 20 and today we confirm the 12th. That is a confirmation rate of approximately one circuit court nominee confirmed per month. By contrast, in the 76 months in which Republicans were in charge, only 46 courts of appeals judges were confirmed, at a rate closer to one every two months. Thus, despite the additional obstacles and roadblocks that the partisan practices of the new administration have created and the partisan rhetoric of our critics, we are actually achieving almost twice as much as our Republican counterparts did. With a little cooperation from the administration and the nomination of more moderate, mainstream candidates, we would be even further along.

During the 76 months under the Republican control before the Judiciary Committee was allowed to reorganize, vacancies on the Federal courts rose from 63 to 110. Vacancies on the Courts of Appeals more than doubled from 16 to 33. That is the situation created by Republican inaction and that is the situation we inherited. Since the change in majority, confirmations have gone up and vacancies have been going down.

Courts of Appeals vacancies are being decreased rather than continuing to increase, despite the high level of attrition since the shift in Senate majority last summer.

Indeed, in the last year the Judiciary Committee held the first hearing on a Fifth Circuit nominee in 7 years, the first hearing on a Tenth Circuit nominee in 6 years, the first hearing on a Sixth Circuit nominee in almost 5 years, the first hearing on a Fourth Circuit nominee in 3 years, the first hearing on a Ninth Circuit nominee in 2 years. This week we held hearings on a third nominee to the Fifth Circuit in less than a year. This contrasts with the lack of any confirmation hearing on any of President Clinton's nominees to the Fifth Circuit in the last 5½ years of Republican control of the confirmation process, despite three qualified nominees to vacancies there.

The nominee being considered today is the first nominee to the Sixth Circuit to be given a vote by the Senate since 1997.

After that, the Republican majority locked the gates and despite a number of well-qualified nominees sent to the Senate by President Clinton between 1995 and 2001, none were allowed to receive a hearing or a vote for all of 1998, 1999, 2000 and the first 3 months of 2001. Most of the vacancies that exist on the Sixth Circuit arose during the Clinton administration and before the change in majority last summer.

Yet not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership and one of a number of examples of circuits in which the vacancies were preserved rather than filled by the former Republican majority in the Senate.

That is what created the problem that we are now trying to correct. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis, and Professor Kent Markus to those vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Courts of appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year.

Judge White's nomination may have set one or a number of unfortunate records for obstruction established during the years 1996–2001. Her nomination was pending without a hearing before this committee for over 4 years 51 months.

She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination.

This was at a time when the committee averaged hearings on only nine courts of appeals nominees a year and, in 2000, held only five hearings on courts of appeals nominees all year. In contrast, Judge Gibbons was the 11th courts of appeals nominees voted on by the committee during the first 10 months of a Democratic majority.

As of today, the Democratic-led Judiciary Committee has held hearings for 17 of President Bush's courts of appeals nominees in less than 13 months, and we will hold our 18th hearing for a courts of appeals nominee this week.

Kathleen McCree Lewis, a distinguished lawyer from a prestigious Michigan law firm, also did not receive a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001. She is the daughter of Wade McCree, a former Solicitor General of the United States and former Sixth Circuit judge.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000.

While Professor Markus' nomination was pending, his confirmation was sup-

ported by individuals of every political stripe, including: 14 past presidents of the Ohio State Bar Association; more than 80 Ohio law school deans and professors; prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON; the National District Attorneys Association; and virtually every major newspaper in the State.

Professor Markus summarized his experience as a Federal judicial nominee in testimony this May in a hearing before Senator SCHUMER. Here are some of things he said:

On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . . At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.

With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.

Over and over again they told me two things: No. (1) There will be no more confirmations to the 6th Circuit during the Clinton Administration, and No. (2) This has nothing to do with you; don't take it personally it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . .

The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Republicans were unwilling to move forward, even knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now eight vacancies on the Sixth Circuit and why it is half empty.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations, to no avail.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations.

The former chief judge of the Sixth Circuit, Judge Gilbert Merritt, wrote

to the Judiciary Committee chairman years ago to ask that the nominees get hearings and that the vacancies be filled.

The chief judge noted that, with four vacancies—the four vacancies that arose in the Clinton administration—the Sixth Circuit “is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court.”

He predicted: “By the time the next President is inaugurated, there will be 6 vacancies on the Courts of appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them.” Nonetheless, no Sixth Circuit hearings were held in the last 3 years of the Clinton administration, despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and were pending before the committee for anywhere from 1 year to over 4 years. We have not stopped there but have proceeded to hold a hearing on a second Sixth Circuit nominee, Professor John Rogers of Kentucky, and the Judiciary Committee has acted on that nomination, as well.

Large numbers of vacancies continue to exist on many courts of appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's courts of appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the courts of appeals during the entire 1996 session. As I have noted, from the time the Republicans took over majority control of the Senate in 1995 until the reorganization of the committee last July, circuit vacancies increased from 16 to 33, more than doubling.

Democrats have broken with the Republican majority's history of inaction. I certainly understand the frustration of Senator LEVIN and Senator STABENOW. I know first hand the efforts they have made to solve the problems in their circuit. I know that many of us have suggested ways to the White House to break through and resolve the impasse. As the chairman of the Judiciary Committee, despite my personal doubts and reservations about this nominee due to some of her decisions as a Federal district court judge, I will vote to confirm her, due to her overall record, her testimony before the committee and the strong support of Senator THOMPSON.

I respect the effort and views of Senator THOMPSON and want to send what help we can to the Sixth Circuit. Far from payback for Republican actions in the recent past, this action is being taken in spite of those wrongs and to begin solving the problems that they have created.

Mr. HATCH. Mr. President, I rise in support of the nominations of three excellent Federal court judges, Judge Julia Smith Gibbons, Joy Flowers Conti, and John E. Jones.

Judge Gibbons, nominated to the Sixth Circuit Court of Appeals last fall, is a jurist with a fine legal mind, a strong work ethic, and a widely admired judicial temperament. I have reviewed few records of public service and personal accomplishment more outstanding than hers. It seems to me that it was for good reason that in 2000 she received a recognition called Heroine for Women in the Law Award.

But that is just one of her accomplishments. Judge Gibbons graduated magna cum laude and Phi Beta Kappa from Vanderbilt University and then with honors from the University of Virginia School of Law, where she was an editor for the Law Review. She went on to clerk for the late Honorable William E. Miller on the Sixth Circuit Court of Appeals, where we now hope she will soon return after a distinguished career which has included service as deputy counsel for Governor Lamar Alexander and Tennessee State court judge. Since 1983 she has served as U.S. District Court Judge for the Western District of Tennessee, sitting with the Sixth Circuit Court of Appeals several times. Notably she was the first female Federal judge in Tennessee and one of the youngest Federal judges in history.

Judge Gibbons exemplifies the qualities of the nominees the President has sent us—superbly accomplished, fully devoted to public service, and well prepared for the Federal bench. Judge Gibbons enjoys the support of Democrats and Republicans and everyone who knows her work. She is backed by her home State legislators. Senator THOMPSON says she is “an outstanding person and jurist . . . [who will] serve the court with dignity and distinction.” Senator FRIST has described her a “trailblazer for women in the legal profession [who] exemplifies in both her professional and personal life the character that makes us a great Nation.” Democratic Congressman HAROLD FORD, JR., has noted that Judge Gibbons has “earned a solid reputation of applying the law in a manner consistent with our nation’s commitment to equal protection under the law.”

Judge Gilbert S. Merritt, whose seat on the Sixth Circuit Judge Gibbons will occupy, calls her a “very able and distinguished Federal judge” and adds that he would be “very happy to be replaced by her on our court.”

Members of the Memphis, TN, legal community have added their own high praise. For example, Pat Arnoult, president of the Memphis Bar Association, cites her “keen mind” and “good work ethic.” Charles Burson, former

chief of staff and legal counsel to former Vice President Gore and Tennessee attorney general, cites with first hand experience her intellect, knowledge, evenhandedness, and exceptional judicial temperament. Judge Gibbons has won the respect and bipartisan support of legislators, attorneys, Federal judges, and Tennessee citizens.

Judiciary Committee unanimously approved Judge Gibbons’s nomination on May 2 after a hearing that raised no issues of concern. We have waited too long to act on her nomination on the Senate floor. With a 50 percent vacancy rate in the Sixth Circuit, we cannot afford to delay any longer.

The two Pennsylvania district court nominees currently on the floor also deserve our full support. Joy Flowers Conti, nominated to the Western District of Pennsylvania, possesses years of civil litigation experience and years of meaningful service and leadership in her community. After graduation from Duquesne University School of Law, where she graduated summa cum laude and finished first in her class, Ms. Conti clerked for Justice Louis Manderino of the Supreme Court of Pennsylvania.

For the following two years, Ms. Conti worked with the Pittsburgh firm of Kirkpatrick & Lockhart, where she focused on business bankruptcy, commercial finance, and other corporate law matters. She then joined the faculty of Duquesne School of Law as a professor, teaching classes on civil procedure, corporate finance, corporate readjustments and reorganizations, corporations and creditors’ and debtors’ rights.

In 1982, Ms. Conti returned to her former firm, Kirkpatrick & Lockhart, and was named a partner in 1983. She again concentrated her practice in business bankruptcy. She remained with the firm until 1996, when she joined her current firm, Buchanan Ingersoll, to handle business bankruptcy cases, health care matters, and non-profit corporation issues.

While serving as cochair of the Pennsylvania Bar Association’s Task Force for the Poor, she has helped with efforts to improve access to legal services for indigent residents. She also initiated a program providing employment for disadvantaged high school students in local legal offices, donating approximately 200 ours to the cause.

John E. Jones, our nominee to the U.S. District Court for the Eastern District of Pennsylvania, is similarly distinguished jurist. Mr. Jones earned his undergraduate and law degrees from Dickinson College. After graduation, he joined the Pottsville law firm of Dolbin & Cori as an associated and worked part time as a clerk for Judge Guy A. Bowe of the Schuylkill County Court of Common Pleas. After 2 years, Mr. Jones became a partner at Dolbin & Cori.

In 1984, Mr. Jones began an 11-year association as a part-time assistant public defender with the Schuylkill County Public Defender’s Office. His caseload included defending capital

murder and criminal homicide cases. Mr. Jones now works for his own firm, concentrating on bankruptcy, personal injury, family, real estate, and corporate law.

In 1995, Mr. Jones was appointed and confirmed to the office of chairman of the Pennsylvania Liquor Control Board. The Control Board is responsible for the sale and regulation of all alcohol products in Pennsylvania. The Control Board also runs the State’s Alcohol Education Program. As chairman, Mr. Jones has utilized his skills and experience as a practicing attorney to change the State’s liquor licensing procedures. As head of the State’s Alcohol Education Program, he has been a tireless advocate against drunk driving and underage drinking. In November 2000, Mr. Jones received the Government Leadership Award from the National commission Against Drunk Driving in Washington, DC. In May 1999, he was renominated and confirmed for a second 4-year term as Control Board’s Chairman.

I am confident that these three Federal court nominees—Julia Smith Gibbons, Joy F. Conti, and John E. Jones—will each make fine additions to the Federal judiciary. They deserve our swift confirmation.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit? The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. NELSON), is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. DEWINE), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Kentucky (Mr. MCCONNELL), are necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 194 Ex.]

YEAS—95

Akaka	Burns	Craig
Allard	Byrd	Crapo
Allen	Campbell	Daschle
Baucus	Cantwell	Dayton
Bayh	Carnahan	Dodd
Bennett	Carper	Domenici
Biden	Chafee	Dorgan
Bingaman	Cleland	Durbin
Bond	Clinton	Edwards
Boxer	Cochran	Ensign
Breaux	Collins	Enzi
Brownback	Conrad	Feingold
Bunning	Corzine	Feinstein

Fitzgerald	Landrieu	Sarbanes
Frist	Leahy	Schumer
Graham	Levin	Sessions
Gramm	Lieberman	Shelby
Grassley	Lincoln	Smith (NH)
Gregg	Lott	Smith (OR)
Hagel	Lugar	Snowe
Harkin	McCain	Specter
Hatch	Mikulski	Stabenow
Hollings	Miller	Stevens
Hutchison	Murkowski	Thomas
Inhofe	Murray	Thompson
Inouye	Nickles (NE)	Thurmond
Jeffords	Nickles	Torricelli
Johnson	Reed	Voinovich
Kennedy	Reid	Warner
Kerry	Roberts	Wellstone
Kohl	Rockefeller	Wyden
Kyl	Santorum	

NOT VOTING—5

DeWine	Hutchinson	Nelson (FL)
Helms	McConnell	

Mr. FRIST. Mr. President, I rise today to thank my colleagues for the confirmation of Julia Smith Gibbons to the U.S. Court of Appeals for the Sixth Circuit. I am also grateful to President Bush for his nomination of this outstanding judge whose distinguished life is an example of the American dream.

Raised in Pulaski, TN, Judge Gibbons has been a trailblazer for women in the legal profession, and exemplifies in both her professional and personal life the character that makes us a great nation—active in her church and community, a supportive and loving wife to her husband, Bill, for 29 years, and a proud mother of two wonderful children, Carey and Will. A product of small town America and the solid values that her family instilled in her, as valedictorian of her senior class at Giles County High School, Julia was obviously poised to accomplish great things.

With an outstanding record of achievement at Vanderbilt University and the University of Virginia Law School, Judge Gibbons headed home to Tennessee to begin her legal career. She served then-Governor Lamar Alexander as his legal advisor, and in 1981, she became the first female trial judge of a court of record in Tennessee. President Reagan recognized her talent and skill, and just 2 years later, in 1983, she was confirmed by the Senate as a U.S. District Judge in the Western District of Tennessee. At that time, Julia became the first female Federal judge in Tennessee, and was the youngest person on the Federal bench in the country, and the second youngest in the Nation's history ever appointed to a district court judgeship. Despite her tender years, her legal acumen and human touch soon made her one of the brightest stars in our Federal judicial system.

Judge Gibbons is known for being bright, industrious, thorough, evenhanded and someone who truly loves the law. She is everything anyone could want in a judge, and will continue to serve our country with distinction on the Sixth Circuit.

NOMINATION OF JOY FLOWERS CONTI, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes for debate equally divided prior to the vote on Executive Calendar No. 827, which the clerk will report.

The legislative clerk read the nomination of Joy Flowers Conti, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, with today's votes on these judicial nominations to the Federal district courts in Pennsylvania, the Democratic-led Senate will have confirmed 63 judicial nominees since the change in Senate majority a little more than 1 year ago. I commend Majority Leader DASCHLE for having worked through the problems created by the White House's refusal to proceed in a bipartisan way with nominations to bipartisan boards and commissions and for having worked with Senator MCCAIN to get to this point.

I understand Senator MCCAIN's frustration with the White House and how it is treating nominations but thank him for allowing us to proceed with these judicial nominations at this time. In fact, this majority leader has worked hard to bring these nominations to the floor and his efforts have included having to proceed by way of cloture on three nominees in the last few weeks. He has gone the extra mile and that should be acknowledged.

Similarly, the Judiciary Committee continues to make efforts that were not made by the Republican leadership.

We have held hearings on a record number of nominees and reported a record number of nominees. Seventy-five judicial nominees have been voted on by the Judiciary Committee since the change in majority last summer. This week we will hold a hearing for the 82nd, 83rd, 84th and 85th judicial nominees, including our 18th circuit court nominee. We have proceeded with nominees to fill vacancies even though Republicans held up moderate nominees by President Clinton to those same vacancies. We have confirmed new judges for the Fourth, Fifth, and Sixth Circuit courts of appeals for the first time in three, six and five years, respectively. So much for the partisan critics who scream about a blockage of President Bush's nominees by Democrats in the Senate. The facts are that we have been fairer to President Bush's nominees than the Republicans were to President Clinton's.

Today is another example. The Senate has acted quickly on these nominations to the district courts in Pennsylvania. Joy Flowers Conti participated in a hearing in May, within weeks of her paperwork being complete. I know that Senator SPECTER strongly sup-

ports Ms. Conti's nomination, as well as Mr. JONES, and he specifically requested that she be accorded a hearing as soon as possible. Likewise John Jones received a hearing in May, shortly after his paperwork was completed.

With today's votes on two Pennsylvania nominees, the Judiciary Committee will have held hearings for 10 district court nominees from that State, including Judge Davis, Judge Baylson, and Judge Rufe, who were confirmed in April, and Judge Conner, who was just confirmed last Friday. Those confirmations illustrate the progress being made under Democratic leadership and the fair and expeditious way this President's nominees are being treated.

With today's confirmations, there is no State in the Union that has had more Federal judicial nominees confirmed by this Senate than Pennsylvania. I think that the Senate Judiciary Committee and the Senate as a whole have done well by Pennsylvania. Contrast this with the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate, particularly regarding nominees in the western half of the State.

Despite the best efforts and diligence of my good friend from Pennsylvania, Senator SPECTER, to secure confirmation of all of the judicial nominees from every part of his home State, there were seven nominees by President Clinton to Pennsylvania vacancies that never got a hearing or a vote.

A good example of the contrast is the nomination of Judge Legrome Davis. He was first nominated to the position of U.S. District Court Judge for the Eastern District of Pennsylvania by President Clinton on July 30, 1998.

The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after 2 more years.

Under Republican leadership, Judge Davis' nomination languished before the committee for 868 days without a hearing. Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania during the Republican control of the Senate.

The lack of Senate action on Judge Davis's initial nominations is in no way attributable to a lack of support from the senior Senator from Pennsylvania. Far from it. In fact, I give Senator SPECTER full credit for getting President Bush to renominate Judge Davis earlier this year and commended him publicly for all he has done to support this nomination from the outset.

This year we moved expeditiously to consider Judge Davis, and he was confirmed in just 84 days.

The saga of Judge Davis recalls for us so many nominees from the period of

January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

In contrast, the hearing we had earlier this year for Ms. Conti was the very first hearing on a nominee to the Western District of Pennsylvania since 1994, in almost a decade, despite President Clinton's qualified nominees. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate in the Clinton administration.

One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given the courtesy of a hearing or a vote. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the Federal bench. Today's confirmation vote on Ms. Conti will be the first on a nominee to the Western District of Pennsylvania in almost 8 years, since Judge McLaughlin and Judge Cindrich were confirmed in October of 1994. Despite this history of poor treatment of President Clinton's nominees, we continue to move forward fairly and expeditiously.

Large numbers of vacancies continue to exist, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than 50 of President Clinton's judicial nominees, many of whom waited for years and never received a vote on their nomination. It is Democrats who have broken with that history of inaction from the Republican era of control, delay, and obstruction.

With today's confirmations of Judge Conti and Judge Jones to the Federal district courts in Pennsylvania, the Senate will have confirmed 51 district court nominees and 63 judges overall since the change in majority last summer. Contrast this with the Republican average, during their past 6½ years on control, of 31 district court judges a year and 38 judges a year overall. I congratulate the nominees and their families on their confirmations today and commend Senator SPECTER and Majority Leader DASCHLE for all they have done to bring us to this day.

Mr. HATCH. Mr. President, I had no intention of bringing up the topic of judicial nominations today, but I feel I must respond to the comments made just now.

Currently there are 92 empty seats in the Federal judiciary, a 10.7 percent vacancy rate—one of the highest in modern times. This means that 10.7 percent of all Federal courtrooms are presided over by an empty chair.

There are currently 22 nominees pending who are slated to fill positions which have been declared judicial emergencies by the Administrative Office of the Courts. Of those, 13 are courts of appeals nominees.

During President Clinton's second year in office, the Senate confirmed 100

of his judicial nominees. I would expect the Senate Democrats to do the same for President Bush. But they are not doing so.

Only 4 of President Bush's first 11 nominees—nominated on May 9, 2001—have had hearings. In other words, the Judiciary Committee has taken no action whatsoever on nearly two-thirds of the circuit court nominations that have been pending for over 14 months. There is no reason for this other than stall tactics. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

There were 31 vacancies in the Federal courts of appeals on May 9, 2001, and there are 30 today. The Senate Democrats are trying to create an illusion of movement by creating great media attention and controversy concerning a small handful of nominees in order to make it look like progress. But we are hardly making any progress in filling circuit vacancies.

President Bush has responded to the vacancy crisis in the appellate courts by nominating a total of 31 top-notch men and women to these posts—but the Senate is simply stalling them. Over the past year, the Senate has confirmed only nine. There are still 22 circuit court nominees pending in committee. By comparison, at the end of President Clinton's second year in office, we had confirmed 19 circuit judges and had 15 circuit court vacancies.

Mr. President, the comparison does not end there. There were only two Circuit Court nominees left pending in Committee at the end of President Clinton's first year in office. In contrast, there were 23 of President Bush's circuit court nominees pending in committee at the end of last year.

Mr. President, some try to blame the Republicans for the vacancy crisis, but that is bunk. At the end of the 106th Congress when I was chairman, we had 67 vacancies in the Federal judiciary. During the past 9 months, the vacancy rate has been hovering right around 100. Today it is at 92.

The real story here, Mr. President, is that the Senate's Democratic leadership is treating President Bush unfairly when it comes to judicial nominees. Some would justify this unfair treatment of President Bush as tit for tat, or business as usual, but the American people should not accept such a smokescreen. What the Senate leadership is doing is unprecedented.

Historically, a President can count on seeing all of his first 11 circuit court nominees confirmed. Presidents Reagan, Bush and Clinton all enjoyed a 100 percent confirmation rate on their first 11 circuit court nominees. In stark contrast, 8 of President Bush's first 11 nominations are still pending now for over 1 whole year.

History also shows that Presidents can expect almost all of their first 100 nominees to be confirmed swiftly. Presidents Reagan, Bush, and Clinton got 97, 95 and 97, respectively, of their

first 100 judicial nominations confirmed. But the Senate has confirmed only 57 of President Bush's first 100 nominees.

In sum, Mr. President, I think that the American people deserve better, President Bush deserves better, and the Judicial Branch of our Government deserves better. I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, it is a proud moment for me to speak on behalf of Joy Flowers Conti. I had the privilege of practicing with her as a lawyer in Pittsburgh. She is an outstanding litigator and outstanding person in the community, and I am very grateful that her nomination is coming to the Senate floor.

The next vote will be on John E. Jones for the Middle District, another outstanding litigator and someone who is going to be a credit to the court. We still have six district court judges in Pennsylvania who have yet to be confirmed in the Senate and two third circuit—Pennsylvania positions that need to be filled. I am hopeful those nominations will also make their way to the floor quickly.

The PRESIDING OFFICER. Who yields time?

Mr. SANTORUM. I yield the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on the confirmation of the nomination.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Joy Flowers Conti, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. DEWINE), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Kentucky (Mr. MCCONNELL), are necessarily absent.

The PRESIDING OFFICER (Ms. CANTWELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 195 Ex.]

YEAS—96

Akaka	Campbell	Dodd
Allard	Cantwell	Domenici
Allen	Carnahan	Dorgan
Baucus	Carper	Durbin
Bayh	Chafee	Edwards
Bennett	Cleland	Ensign
Biden	Clinton	Enzi
Bingaman	Cochran	Feingold
Bond	Collins	Feinstein
Boxer	Conrad	Fitzgerald
Breaux	Corzine	Frist
Brownback	Craig	Graham
Bunning	Crapo	Gramm
Burns	Daschle	Grassley
Byrd	Dayton	Gregg

Hagel	Lincoln	Schumer
Harkin	Lott	Sessions
Hatch	Lugar	Shelby
Hollings	McCain	Smith (NH)
Hutchinson	Mikulski	Smith (OR)
Inhofe	Miller	Snowe
Inouye	Murkowski	Specter
Jeffords	Murray	Stabenow
Johnson	Nelson (FL)	Stevens
Kennedy	Nelson (NE)	Thomas
Kerry	Nickles	Thompson
Kohl	Reed	Thurmond
Kyl	Reid	Torricelli
Landrieu	Roberts	Voinovich
Leahy	Rockefeller	Warner
Levin	Santorum	Wellstone
Lieberman	Sarbanes	Wyden

NOT VOTING—4

DeWine	Hutchinson
Helms	McConnell

The nomination was confirmed.

**NOMINATION OF JOHN E. JONES III, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote on Executive Calendar No. 828, which the clerk will report.

The assistant legislative clerk read as follows:

John E. Jones, III, of Pennsylvania to be United States District Judge for the Middle District of Pennsylvania.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I will yield time on this side, if the distinguished Republican leader wants to yield the time on his side.

Madam President, I withhold that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, John E. Jones III is a very distinguished lawyer. I have known him personally for 15 years. He comes from Pottsville, PA. He had an outstanding practice. He has an exemplary academic record. He served as chairman of a very important agency, the Liquor Control Board of Pennsylvania, which has quasi-judicial functions.

Joy Flowers Conti was just voted on.

I thank the chairman, Senator LEAHY, for moving these two judges. I urge him to follow the calendar, which has next in line D. Brooks Smith, who is the present judge of the Western District of Pennsylvania and who has been approved by the committee for the Court of Appeals for the Third Circuit.

We are taking up another judge tomorrow.

I trust that Judge Smith will be up for confirmation.

I yield the remainder of my time.

Mr. LEAHY. Madam President, in my earlier statement, I praised the distinguished senior Senator from Pennsylvania for working hard to get through the judges on the Western District of Pennsylvania.

For year, after year, after year, after year, after year, after year, a Republican hold blocked any consideration of the nominations by President Clinton

for those same seats. But thanks to the distinguished senior Senator from Pennsylvania, we have been able to move forward quickly.

This, incidentally, will be the 63rd judge confirmed by the Senate since the change in majority about this time last year.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John E. Jones III, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

Mr. LEAHY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arizona (Mr. HUTCHINSON), the Senator from Ohio (Mr. DEWINE), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 196 Ex.]

YEAS—96

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feingold	Murray
Biden	Feinstein	Nelson (FL)
Bingaman	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Boxer	Graham	Reed
Breaux	Gramm	Reid
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Santorum
Byrd	Harkin	Sarbanes
Campbell	Hatch	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
Dodd	Lieberman	Wellstone
Domenici	Lincoln	Wyden
	Lott	

NOT VOTING—4

DeWine	Hutchinson
Helms	McConnell

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

**GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001**

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

McConnell amendment No. 4326 (to amendment No. 4299), to provide for health care liability reform.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Arizona be recognized for up to 30 minutes to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARMS CONTROL

Mr. KYL. Madam President, I thank the distinguished assistant majority leader and would note that Senator SPECTER also wanted to address the Senate, but since he is not here, I will go ahead with my remarks.

Mr. KYL. Madam President, on June 13 the United States officially withdrew from the 1972 Anti-Ballistic Missile, ABM, Treaty, closing a chapter in U.S.-Soviet relations, and beginning another with Russia. The lapsing of the ABM Treaty, combined with the Senate's defeat of the Comprehensive Test Ban Treaty in 1999 and the signing of a new type of nuclear reduction treaty with Russia in May, represent a fundamental shift in the way the United States approaches strategic security. We have moved away from reliance on traditional arms control treaties toward a reliance on our own capabilities—namely missile defenses and a credible nuclear deterrent.

Proponents of the ABM Treaty were convinced that it was the "cornerstone of strategic stability," and that U.S. withdrawal would damage the improving U.S.-Russia relationship, spark a new arms race, and even lead, as one of my colleagues remarked, to "Cold War II." Those predictions were wrong. Yet some still cling to the notion that arms control is the key elements in U.S. national security.

Over the past 6 months, I have addressed the Senate on the strategic justification for U.S. withdrawal from the ABM Treaty, the question of how much a missile defense system will cost, and the President's constitutional authority to exercise the right of withdrawal without legislative consent. And, today, in response to those who continue to believe in the utopian aims of traditional arms control agreements, I rise to address the President's decision to abrogate the ABM Treaty, this time

in the broader context of the utility of such measures as a means to protect U.S. security interests.

The past 10 years have completely changes the Cold War strategic environment that gave rise to the ABM Treaty and other traditional arms limitation and arms reduction agreements. First, the United States and Russia have moved beyond enmity toward a more cooperative relationship. Second, the threats we face today are far more numerous and complex than those we faced during the Cold War.

The proliferation of weapons of mass destruction has become one of our most pressing national security challenges. As many as three dozen countries now have or are developing ballistic missiles. Used by once between 1945 and 1980, such weapons have become an increasingly common component in regional conflicts. In fact, thousands of shorter range missiles have been used in at least six conflicts since 1980. And, as a recent National Intelligence Estimate NIE, on foreign ballistic missile developments warned, "The probability that a missile with a weapon of mass destruction will be used against U.S. forces or U.S. interests is higher today than during most of the Cold War, and it will continue to grow as the capabilities of potential adversaries mature."

Iran, for example, continues to place much emphasis on its missile activities. According to the recent NIE, that country's "longstanding commitment to its ballistic missile program . . . is unlikely to diminish." In early May, Tehran conducted a successful test of its 1,300 km-range Shahab-3 missile—capable of reaching Israel, as well as U.S. troops deployed in the Middle East and South Asia—and some press reports indicate that Iran is now set to begin domestic production of the missile. Additionally, on May 7, the Associated Press, citing an administration official, reported that Iran is continuing development of a longer-range missile, the Shahab-4. With an estimated range of 2,000 km, the Shabab-4 will be able to reach well into Europe.

North Korea's missile programs are also of great concern. That country has extended its moratorium of testing its intercontinental-range Taepo Dong missiles until 2003; however, its surprise August 1998 test flight over Japan of the Taepo Dong 1 missile should serve as a clear indication of its intent to develop missiles with intercontinental ranges. Indeed, Pyongyang is continuing its development of the longer-range Taepo Dong 2 missile, capable of reaching parts of the United States with a nuclear weapon-sized payload. According to the NIE:

The Taepo Dong 2 in a two-stage ballistic missile configuration could deliver a several-hundred kg payload up to 10,000 km—sufficient to strike Alaska, Hawaii, and parts of the continental United States. If the North uses a third stage similar to the one used on the Taepo Dong 1 in 1998 in a ballistic missile configuration, then the Taepo Dong 2 could deliver a several hundred kg payload up to

15,000 km—sufficient to strike all of North America.

In Iraq, Saddam Hussein continues to obstruct the international verification of commitments made to the United Nations, and still fails to comply with arms control agreements he accepted at the end of the gulf war. The recent NIE concluded that, "Despite U.N. resolutions limiting the range of Iraq's missiles to 150 km, Baghdad has been able to maintain the infrastructure and expertise to develop longer range missile systems." And Iraq's ability to surprise us in the past with the scale of its missile, nuclear, chemical, and biological programs should serve as a warning. Secretary of Defense Rumsfeld recently discussed Baghdad's weapons of mass destruction capabilities, stating:

They have them, and they continue to develop them, and they have weaponized chemical weapons. They've had an active program to develop nuclear weapons. It's also clear that they are actively developing biological weapons. I don't know what other kinds of weapons fall under the rubric of weapons of mass destruction, but if there are more, I suspect they're working on them, as well.

China presents an even more complex case. While not a member of the axis of evil, that country's exceedingly belligerent attitude toward the United States and our longstanding, democratic ally Taiwan requires a clear-eyed approach to our relationship with the communist government in Beijing. China currently has about 20 intercontinental ballistic missiles capable of reaching the United States, and is in the midst of a long-running modernization program to expand the size of its strategic nuclear arsenal and to develop road-mobile and submarine-launched ICBMs. According to the NIE, by 2015, "Chinese ballistic missile forces will increase several-fold." Additionally, by that time, "Most of China's strategic missile force will be mobile." As Secretary Rumsfeld stated on September 6 in reference to China's strategic missile modernization and buildup, "It is a long pattern that reflects a seriousness of purpose about the People's Republic of China with respect to their defense establishment."

President Bush's fresh approach to strategic security with Russia—called the "New Strategic Framework"—takes into account these changed circumstances. The President's framework entails unilateral reductions in offensive nuclear weapons and the development and deployment of defensive systems to deter and protect against missile attacks. President Bush outlined this approach before his election, and upon taking office, immediately began to develop a plan for action.

The central component of that framework is the development of missile defenses, critical to which is U.S. withdrawal from the ABM Treaty which totally prohibits deployment of a national missile defense. Indeed, our withdrawal represents a fundamental shift away from reliance on consensual vulnerability, perpetuated by arms control treaties, and a move toward prudent defensive measures.

The ABM Treaty was a classic example of arms control—promising much more than it was ever able to deliver. The theory was that by ensuring mutual vulnerability to nuclear missile attack, the incentive to build increasing numbers of offensive forces would be removed. History proved that theory wrong. Between the treaty's signing in 1972 and 1987, the Soviet Union's inventory of strategic nuclear warheads grew from around 2,000 to about 10,000; and the U.S. arsenal grew from around 3,700 to 8,000. In fact, strategic nuclear forces expanded not just quantitatively, but also qualitatively. The decade following the ABM Treaty's signing witnessed the introduction into the Soviet arsenal of entire generations of new long-range missiles, not just in contradiction of the intent of the ABM Treaty, but in contravention of the accompanying SALT I accord as well. Clearly, deliberate vulnerability did not promote arms control; rather, it fueled the arms race.

It is important to reiterate the history of the ABM Treaty because those who purport that it was the "cornerstone of strategic stability" seem to misunderstand the original impetus for it. The truth is that the United States gave up the right to field defensive systems because the Nixon administration was faced, in 1971, with a Congress that refused to fund more than two of the original 12 sites that the Administration had proposed in 1969. This, in addition to a rapid Soviet offensive buildup, caused the Nixon administration to acquiesce in the negotiation of the ABM Treaty, to be coupled with the SALT agreement. And I should note that, two years after the ABM Treaty was negotiated, it was amended to limit to one the number of sites allowed because Congress did not even continue to fund the second site.

Thus, making necessity a virtue, political theorists embraced the notion that, in order to deter a nuclear attack, the threatened response had to be the murder of millions of innocent civilians. President Reagan once referred to this philosophy, named Mutual Assured Destruction, as "a sad commentary on the human condition." And, in my view, its acronym "M-A-D" describes it well.

It is debatable whether that theory explains the absence of a nuclear exchange in the second half of the 20th century. Whatever the case, this idea certainly seems mad today, when we have friendly relations with Russia, and are confronted with an entirely different set of threats. It simply does not make sense to remain deliberately vulnerable to the increasing threat of a ballistic missile attack, especially when alternatives, such as missile defenses, now exist.

Surely a sign of the changed times, President Bush returned from Russia in May having signed a new treaty under which both sides intend to reduce strategic warheads to 1,700-2,200. Just three pages long, this treaty

merely states what both sides intend to do. There are no interim limits, no sub-limits, or verification schemes. More importantly, the treaty simply affirms what the United States had already decided were its strategic requirements—President Bush announced that we were unilaterally going to this level of warheads last November. This is important enough to repeat: this treaty memorialized what President Bush determined were our strategic requirements. Thus, this treaty is a complete break with the arms control orthodoxy of the past, which made each side's limitations or reductions dependent on the other, required difficult verification and enforcement provisions, and artificially pre-determined our strategic levels.

Recognizing that we no longer live in a bipolar world, we must shift our attention to the threat to our security from a number of rogue states that already have, or are seeking to obtain, weapons of mass destruction capabilities. Despite the existence of a plethora of multilateral arms control agreements, the threat to the United States and its allies from chemical, biological, and nuclear weapons has not been limited. The fundamental flaw of such measures lies in the fact that they focus on weapons, rather than on the real problem: the dangerous regimes that possess them. And whether they've signed these treaties or not, the rogue regimes cannot be trusted to comply.

Historians have traced that flawed approach back to the Catholic Church's attempt to ban the crossbow—the terrible new weapon of the 1100s—in 1139. That endeavor proved as ineffective as the arms control efforts that followed in later centuries. Perhaps there is no better example of this futility than the attempts after World War I to outlaw war altogether. The 1928 Kellogg-Briand Pact, to which the Senate provided its advice and consent on January 25, 1929 by a vote of 85 to 1, was signed by all of the major countries. It renounced war as “an instrument of national policy.” It also paved the way for other arms control treaties and negotiations that left the Western democracies unprepared to fight and unable to deter World War II, a mere decade later.

Indeed, in looking back at the arms control efforts of the 1920s and 1930s, Walter Lippman, the celebrated historian who championed the agreements when they were signed, wrote that, “The disarmament movement was, as the event has shown, tragically successful in disarming the nations that believed in disarmament. The net effect was to dissolve the alliance among the victors of the first World War, and to reduce them to almost disastrous impotence on the eve of the second World War.”

Mr. Lippman's assessment offers an important lesson. Arms control works best where it is needed least—among honorable, morally upstanding nations. It does not work where it is needed

most—against rogue nations. Countries that act clandestinely and in bad faith will simply ignore the legal requirements of arms control agreements when it suits their interests. Moreover, morally-upstanding nations depending upon these agreements for security and stability have often lacked the will to respond forcefully to violations. Even when evidence is clear, there are almost always overriding diplomatic reasons for overlooking or treading lightly on the violating parties.

The international community's response to Iraq's use of chemical weapons is a prime example. When that country used chemical weapons against Iran in the 1980's in violation of the 1925 Geneva Protocol banning the use of such weapons, the U.N. Security Council passed a resolution calling for both sides in the conflict to exercise restraint. After Saddam Hussein again used chemical weapons—this time against his own Kurdish population—the Security Council again passed a resolution of condemnation that failed even to mention the use of chemical weapons. International resolve was so weak that when the United States proposed a resolution at the U.N. Human Rights Commission in 1989 condemning Iraq's use of those weapons against the Kurds, the initiative was defeated by a vote of 17 to 13.

Unwilling to enforce the existing Geneva Protocol when Iraq had, without dispute, violated its terms, the international community, in an effort to demonstrate its commitment to arms control, agreed upon a new ban on the possession of chemical weapons. Yet possession is inherently harder to verify than already-banned use. This new ban—the Chemical Weapons Convention, CWC—unrealistically aims to control states that are confident that they can violate its terms without detection and without punishment. And while the United States is destroying its chemical deterrent under the requirements of the CWC, chemical weapons programs in other states that have signed the treaty—like Iran—have not been curbed. Still others, like Iraq, North Korea, Libya, and Syria have not even joined the convention.

There is no moral equivalence between Western democracies and rogue regimes like those in place in Iran, Iraq, and North Korea. Yet arms control treaties like the Biological Weapons Convention BWC and the CWC assume that all participants operate with the same objectives in mind. They place under one umbrella—under a unitary set of constraints—states that are certain to comply and those that are certain to cheat. And therein lies their failure to serve any meaningful purpose. As Richard Perle, former Assistant Secretary of Defense, stated in a 1999 speech, “The failure to distinguish guns in the hands of cops and guns in the hands of robbers is not just a practical absurdity, it is a profound moral failure.”

Other arms control efforts like the Nuclear Nonproliferation Treaty NPT,

while more realistic in terms of their objectives, have also had questionable success. Under the terms of the NPT, the five declared nuclear weapons states—the United States, the United Kingdom, Russia, France, and China—agreed “not in any way to assist” any nonweapons state to acquire nuclear weapons. Other parties to the treaty agree not to develop nuclear weapons and to allow the International Atomic Energy Agency, IAEA to inspect their nuclear facilities.

Just a brief examination of the records of parties to the treaty illustrates that its objectives are not supported equally by all.

The United States intelligence community suspects that Russia and China, despite their NPT obligations, may be providing assistance to the nuclear weapons programs of certain states.

North Korea—despite the optimism of some that the 1994 Agreed Framework would curb that country's nuclear weapons program—continues to evade certain IAEA inspections needed to ensure that country is in full compliance with the NPT and the Framework. And yet, the United States continues to support the Agreed Framework with U.S. taxpayer dollars.

The U.S. intelligence community suspects that Russian nuclear-related assistance to Iran—ostensibly for Tehran's civilian nuclear program may, indeed, be contributing to Iran's nuclear ambitions.

And the full extent of Iraq's covert nuclear programs, after years without inspections, is not fully known. In fact, even when inspectors were in the country, Saddam made use of information provided by Iraqi IAEA inspectors to evade detection.

It is clear that multilateral arms control agreements have not delivered on their promise to make the world a safer place. As such, prudence demands that we take steps to ensure the safety of the American people—this will involve a combination of defense and deterrence.

Though the ABM Treaty was bilateral agreement between the United States and the Soviet Union, President Bush's decision to withdraw the United States was, in fact, necessitated by our need to deal with other states that are developing ballistic missiles. Deterrence is simply inadequate in dealing with rogue dictators. To depend on nuclear deterrence alone with a dictator like Saddam Hussein, for instance—a man who used chemical weapons against his own people—would be to place American lives in the hands of a madman. As Winston Churchill warned in his 1955 “Balance of Terror” speech, “The deterrent does not cover the case of lunatics or dictators in the mood of Hitler when he found himself in his final dugout.”

The alternative—which will be permitted now that we have withdrawn from the ABM Treaty—is to develop and deploy missile defenses. A missile

defense system will give us more flexible options in a crisis. First, defenses against missiles will help the United States to avoid nuclear blackmail, intended to freeze us into inaction by the very threat of a missile attack. Imagine the impact on our decision to go to war against Saddam Hussein in 1991 had he been able to threaten the United States or our allies with nuclear missiles. Additionally, missile defense will reduce the incentive for ballistic missile proliferation by de-valuing offensive missiles. Finally, missile defenses, in a worst-case scenario, will save American lives.

The development of missile defenses and the end of the superpower rivalry does not obviate the need for traditional deterrence, however. As the world's remaining superpower, we need to maintain maximum flexibility and the ability to play the ultimate trump card if need be. Deterrence and defenses—with neither, of course, being 100 percent fail-safe—will be mutually reinforcing. The prudence of maintaining a nuclear deterrent was shown during the Gulf War when we hinted that we might draw on that capability if Iraq attacked allied troops with chemical or biological agents. As then-Secretary of Defense Dick Cheney warned during a visit to the Middle East on December 23, 1991: “Were Saddam Hussein foolish enough to use weapons of mass destruction, the U.S. response would be absolutely overwhelming, and it would be devastating.” Iraqi Foreign Minister Tariq Aziz acknowledged several years later that Iraq did not attack the forces of the U.S.-led coalition with chemical weapons because such warnings were interpreted as meaning nuclear retaliation.

Of course, with the end of the U.S.-Soviet standoff, we can maintain our deterrent at lower levels—thus President Bush's decision to unilaterally reduce our arsenal. But lower levels require greater attention to the safety and reliability of our remaining arsenal. This will, I believe, require renewed testing of that arsenal at some point.

Thankfully, this body defeated the Comprehensive Test Ban Treaty, CTBT—which would have obligated the United States to give up for all time the option of testing our nuclear weapons—in October 1999. The Bush administration has made it clear that it strongly opposes the treaty. While it has no plans to do so, the administration has retained the option of nuclear testing to assure the safety and reliability of our nuclear arsenal. It is also moving to improve the test readiness posture. As Assistant Secretary of Defense J.D. Crouch stated during a briefing on the Nuclear Posture Review, NPR, the “NPR does state . . . that we need to improve our readiness posture to test from its current two to three year period to something substantially better.” I am pleased that the House version of the Defense authorization bill contains a provision that requires

the Department of Energy to reduce to one year the time between the Presidential decision to conduct a nuclear test and the test itself, and I hope that the Senate will ultimately choose to include such a provision, as well.

The threats to the United States today are more complex and difficult to predict than those we faced during the cold war. Recognizing their inherent limitations, it is therefore time to move beyond traditional arms control treaties as a means to protect American lives from these threats. President Bush has committed to do just that. He has set the United States on a course that unequivocally places faith not in traditional arms control, but in the time-honored philosophy that led to the West's victory without war over the Soviet Empire: Peace through strength. As a result, we will be able to pursue the development of missile defenses and maintain a credible nuclear deterrent. These demonstrations of strength, coupled, of course, with the maintenance of robust conventional capabilities—not more pieces of paper—are what will keep this nation secure.

President Bush's overall security strategy rightly focuses on the root of the problem—the dangerous regimes that possess the weapons. As Margaret Thatcher once stated, “. . . the fundamental risk to peace is not the existence of weapons of particular types. It is the disposition on the part of some states to impose change on others by resorting to force.” The heart of the matter is that our strategy should seek to change the regimes themselves, whether through military, diplomatic, or economic means. The United States has made clear its intention to pursue that objective, and I have no doubt that our efforts will lead to success.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Utah.

#### FTC REPORT

Mr. HATCH. Mr. President, my staff just attended a non-embargoed briefing conducted by the Federal Trade Commission. It is our understanding that tomorrow the FTC will transmit to the Congress and the American people a copy of its comprehensive study of the pharmaceutical industry with respect to litigation involving the two major components of the pending legislation: first, the report examined the use and abuses of the statutory 30-month stay. Second, the report examines how the 180-day marketing exclusivity rule has been the source of collusive arrangements between pioneer and generic firms.

I will be very interested to study the full report when it released tomorrow morning.

Let me say this tonight. First, I want to commend Chairman Muris and the other FTC Commissioners for undertaking this important study. I would also like to acknowledge the efforts of the FTC staff including, Maryann

Kane, Mike Wroblenski and Sarah Browers for their work on this report.

It is my understanding that the key recommendations contained in the report are somewhat at odds with the legislation on the floor.

It is my understanding the first FTC recommendation, consistent with the position that I took at the Health Committee hearing May 8 and my floor statements the past two weeks, will basically say that there should only be one automatic 30-month stay per drug product per ANDA to resolve challenges to patents listed in the FDA Orange Book prior to the filing date of the generic drug application.

Senator GREGG took this position in the HELP Committee and I commend him for his work to strengthen the bill.

Clearly, as I have laid out in some detail in earlier speeches, the Edwards-Collins substitute delves into areas way beyond this recommendation.

I also understand the second FTC recommendation, which touches upon the so-called reverse payment agreements whereby generic firms are paid not to market generic drugs, will suggest that the Congress pass legislation to require brand-name companies and first generic applicants to provide copies of certain agreements to the FTC.

This is exactly what Senator LEAHY's bill, S. 754, the Drug Competition Act, requires. As I discussed in my previous statements, I voted for Senator LEAHY's bill in the Judiciary Committee and worked with him to refine the final language. In my view, S. 754 contains a much more measured—and certainly more comprehensible—approach than does the Edwards-Collins substitute.

Because the staff briefing just occurred and the full report will be issued tomorrow, I am not prepared tonight to give you my full evaluation of the FTC report. But I can say that the major recommendations of the FTC appear to be somewhat at odds with key provisions of the legislation that is pending on the floor, the Edwards-Collins substitute to S. 812.

I look forward to examining the data collected by the FTC and analyzing the report's two major recommendations and its several subsidiary recommendations.

Frankly, I think that it would be appropriate for the relevant committees, the Judiciary Committee, the Commerce Committee, and HELP Committee, to have the opportunity to examine this comprehensive study before we adopt legislation in this area.

I will be interested to learn if the sponsors of the bill on the floor would be open to a process that will allow a careful evaluation of what the FTC study reveals and will not just act to ram this legislation through in the last week before August recess.

I have lodged my concerns about the way this bill so hastily was adopted by the committee and appeared on the floor, and urged that we take the time necessary to get this legislation right.

The Hatch-Waxman Act is an important consumer bill that has helped save about \$8 billion to \$10 billion each year since 1984. So we should not be playing around with this bill, especially without the benefit of carefully studying this soon-to-be-released FTC report.

Once again, I urge my colleagues to do the right thing and give us an adequate opportunity to factor in this FTC study.

It would be advisable to spend the time before the recess to adopt trade promotion authority rather than to continue to struggle with the hastily crafted and not fully vetted Edward-Collins substitute.

In that regard, I pay specific tribute to our colleague, Senator BAUCUS, who represented the Senate so well in the trade conference that occurred Thursday evening and early Friday morning. I was a member of the conference committee. Senator BAUCUS did himself proud, did our body proud, did a very good job, as did Chairman THOMAS. Those two worked very well together to come up with what is landmark legislation to help our economy move forward. It is one of the reasons I think the stock market turned around today. It is not the only reason. I think we would have another reason if we would treat the Hatch-Waxman language with the care and treatment it deserves before we go off half cocked to enact a bill before we examine the FTC study and its recommendations.

I am grateful I serve on the Finance Committee with Senator BAUCUS and Senator GRASSLEY, both of whom did a good job in this last conference on trade promotion authority. I also am very pleased one of my long-term friends in the Congress has been Chairman BILL THOMAS in the House. It is a tough job being chairman of the Ways and Means Committee. It is a very divided committee in many respects; yet it works very well. There is no one in this Congress who does a better job on health care issues than Chairman THOMAS.

All of them deserve credit, as do the ranking members, CHARLIE RANGEL, without whom this agreement probably could not have come to pass, a man for whom I have tremendous respect; and, of course, Senator GRASSLEY in our body who has worked so well with Senator BAUCUS on so many pieces of legislation that mean so much to our economy and our country.

These are important issues. I have given some rather lengthy speeches on the Hatch-Waxman issue and even some lengthy speeches on the trade promotion authority. I was one of those in the Finance Committee who pushed very hard to get the trade promotion bill on the floor and get us to conference. I express my regard for all concerned. I hope we can resolve this matter on the floor this week, but I believe trade promotion authority deserves even greater precedence than what we are trying to do in the under-

lying bill S. 812. If we act on the underlying bill, it ought to be done in a thoughtful fashion. It should not be done just politically. We ought to pay attention to the experts at FTC and elsewhere who have spent so much time on the issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

#### JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to speak about three nominees from Pennsylvania who have been confirmed by the Senate. It is a very happy day, indeed. We will have a judge to the western district of Pennsylvania and two judges to the middle district of Pennsylvania, both districts being in dire need of assistance. These three individuals were recommended by a bipartisan nominating commission which Senator SANTORUM and I have established, where there is independent review in each of the districts. These individuals were recommended to Senator SANTORUM and myself and then, in turn, we recommended them to the President. They have passed the examinations of the American Bar Association with flying colors, the FBI check, the Judiciary Committee hearing, and finally have been voted upon by the Senate.

Earlier today, the Senate confirmed Ms. Joy Flowers Conti for the United States District Court for the Western District of Pennsylvania. Ms. Conti brings an outstanding academic record to the bench: Her bachelor of arts degree from Duquesne University in 1970; her law degree also from Duquesne in 1973; summa cum laude, the highest honors; and she was the first woman to serve as editor in chief of the Duquesne Law Journal. She has had an outstanding career in private practice. She has been associated with the distinguished Pittsburgh law firm, Buchanan, Ingersoll, from 1974 until the present time; served as a professor of law at Duquesne from 1976 to 1982; has worked as a judicial officer, hearing examiner for the Commonwealth of Pennsylvania in the Department of State Bureau of Occupational and Professional Affairs.

She received a "well qualified" rating by the American Bar Association's Standing Committee on the Federal Judiciary, has served in the House of Delegates of the American Bar Association, and is currently serving in the Pennsylvania Bar Association's House of Delegates.

She received the Pennsylvania Bar Association's Anne X. Alpern Award, a very distinguished award named for the first woman supreme court justice in the Commonwealth of Pennsylvania—Justice Alpern, whom I knew and practiced before many years ago when I was chief of the appeals division in Philadelphia's Attorney General's office. Mrs. Conti brings the highest credentials to the western district, a court

very much in need of additional judicial manpower, or in this case woman power.

Also confirmed earlier today was a distinguished lawyer from Pottsville, PA, John E. Jones. Mr. Jones has an outstanding academic record from Dickinson College, 1977, and the Dickinson School of Law in 1980. He has been engaged in the active practice of law in Pottsville for the past 21 years.

I have personally known Mr. Jones for 15 years. Just earlier today I was talking to the former Governor of Pennsylvania, Tom Ridge, now serving as President Bush's homeland security adviser, and we compared notes on Mr. Jones and agree that he has outstanding credentials.

His background includes being the assistant public defender in Schuylkill County from 1985 until 1985. That is a part-time job. But the defender's office will give him a good background and balance, looking at the defense side of the bar. He served as Pennsylvania's State attorney general for the Drug Abuse Resistance Education Program, and more recently has been chairman of the Pennsylvania Liquor Control Board, having been appointed there in May of 1995.

In Pennsylvania, that is a major board, quasi-judicial, and serving as chairman gives one very extensive administrative responsibilities. In that capacity, he has simplified the procedures there in a context of some 20,000 licensees, so that he has a very extensive background to give diversity to the middle district.

On Friday, the Senate confirmed another distinguished lawyer, Christopher C. Conner, from Harrisburg, PA. Mr. Connor is chair of the litigation department of Mette, Evans and Woodside, one of the largest law firms in Pennsylvania.

He, too, brings excellent academic credentials, being a graduate of Cornell University in 1979 and the Dickinson Law School in 1982, where he was editor of the National Appellate Moot Court Team.

He has been active in bar association affairs, taking on the vice presidency of the Pennsylvania bar, coauthoring a Law Review article on "Partisan Elections, the Albatross of the Pennsylvania Appellate Judiciary."

Interestingly, with the Supreme Court of the United States recently declaring that candidates for judicial office are now free to campaign, that may be a great impetus to take judges out of elective office; something which I believe should have been done years ago in Pennsylvania and something I urged as long ago as 1968 when we were preparing Pennsylvania's constitution, which was adopted in 1969.

Mr. Connor has also served as adjunct professor at the Widner University School of Law on the Harrisburg campus where he taught pretrial procedure. So he brings a very diversified background and an excellent background to the middle district.

I am pleased to note that the majority leader is going to go right down the list on nominees and has stated earlier today that we would consider the nomination of Judge Brooks Smith, who is the chief judge of the Western District of Pennsylvania. The Third Circuit being in dire need of additional judicial manpower.

Chief Judge Edward R. Becker, one of the most distinguished judges in the United States, has commented about the serious state of affairs there, and I am anxious to see District Court Judge Brooks Smith receive his vote tomorrow. I am confident that he will be confirmed.

Judge Smith was reported out of the Judiciary Committee on a vote of 12 to 7, with three Democrats—Senator BIDEN, Senator KOHL, and Senator EDWARDS—voting for Judge Smith.

It is my hope that we will soon establish a protocol to eliminate the partisan differences which have plagued the Federal judicial nominating process for many years.

Now, with a Republican President, President Bush, and a Senate controlled by the Democrats, there have been delays which I believe are excessive. But I have to say at the same time that when President Clinton, a Democrat, was in the White House, and the Senate was controlled by Republicans, similarly the delays were excessive.

It is my view that the Federal judgeships are too important to be embroiled in partisan politics or payback or delay. I have proposed a protocol which would establish a timetable: So many days after a nominee is submitted by the President there ought to be a Judiciary Committee hearing. So many days later there ought to be action by the Judiciary Committee, voted up or down; and, if voted up, so many days later there ought to be floor consideration for confirmation by the entire Senate—with that not being an ironclad schedule. If cause is shown, at the discretion of the chairman of the committee on notification to the ranking member there could be a reasonable delay. Similarly, with the majority leader upon notice to the minority leader, there could be a reasonable delay on the vote before the Senate.

But I believe the American people generally are sick and tired of partisan politics. They want to see the Senate work together and nowhere is that more important than in the selection of Federal judges.

So I am pleased to speak about these three distinguished lawyers who have been confirmed by the Senate and will be sworn in soon. I am also looking forward to the addition of Judge Brooks Smith to the Court of Appeals of the Third Circuit, which is very much in need of his services.

I thank the Chair. In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

Mr. REID. Mr. President, it is my understanding that we are on the generic drug bill. Is that right?

The PRESIDING OFFICER. The Senator is correct.

#### CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Senator Dorgan's amendment No. 4299.

Byron L. Dorgan, Kent Conrad, Tim Johnson, James M. Jeffords, Ron Wyden, Paul Wellstone, Max Baucus, Ernest F. Hollings, Hillary Rodham Clinton, Zell Miller, Maria Cantwell, Jack Reed, Max Cleland, Patrick J. Leahy, Richard J. Durbin, Christopher J. Dodd, Harry Reid.

#### CLOTURE MOTION

Mr. REID. Mr. President, I send another cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 491, S. 812, the Greater Access to Affordable Pharmaceuticals Act of 2001.

Harry Reid, Jon S. Corzine, Byron L. Dorgan, Ron Wyden, Maria Cantwell, Paul S. Sarbanes, Debbie Stabenow, Richard J. Durbin, Tom Daschle, Daniel K. Akaka, Jack Reed, Kent Conrad, Zell Miller, Charles E. Schumer, Ernest F. Hollings, Hillary Rodham Clinton.

#### VOTE EXPLANATION

Mr. NELSON of Florida. Mr. President, I support the nomination of Julia Smith Gibbons and would have voted aye to confirm her nomination to the 6th Circuit Court of Appeals.

Mr. THOMPSON. Mr. President, I am very pleased to be here today as the Senate takes up for consideration the nomination of Judge Julia Smith Gibbons to be a U.S. Circuit Judge for the Sixth Circuit. I am grateful to my colleagues for their unanimous vote on Friday in support of cloture on this nomination to allow it to come to a vote today.

I support this nomination, and I am confident my colleagues will do so as well when they learn of Judge Gibbons's background and qualifications. Judge Gibbons will be a welcome addition to the Sixth Circuit. Before I address Judge Gibbons's qualifications, I want to let my colleagues know of the problems confronting the Sixth Circuit.

Today, 29 of the 179 U.S. Circuit Court judgeships remain unfilled. Eight of those 29 vacancies are in the Sixth Circuit. Let me put that into perspective: 28 percent of all of the vacant circuit judgeships in the country occur in just one of the 13 Circuits.

These 8 vacancies constitute one-half of the 16 judgeships allocated to the Sixth Circuit, which is twice the number of vacancies in any other circuit. Meanwhile, the court's caseload continues to rise.

Not surprisingly, the Sixth Circuit is also the slowest appellate court in the Federal system. According to the Chief Judge of the Sixth Circuit, the average time from filing to decision is 2 years, some 6 months slower than the next slowest circuit.

We must also recognize that the vacancy rate does not only affect the Sixth Circuit and litigants before that court. In order to fill its annual need for over 160 three-judge panels to hear cases, the Sixth Circuit must bring in visiting judges from other circuits or from district courts. Last fiscal year, visiting judge handled almost 20 percent of the Sixth Circuit's workload, and the Court relied on visiting judges twice as often as any other circuit.

While some of these visiting judges are senior judges, many are active circuit and district judges. These judges maintain a full docket themselves, in addition to pitching in to assist the Sixth Circuit. As district judges spend more time handling appellate cases, they must put off acting on their own dockets. The ripple effect caused by the vacancy rate on the Sixth Circuit is therefore much broader than we might suppose. According to a recent witness before the Judiciary Committee, the demands being made on district judges within the Sixth Circuit to fill seats on three-judge panels are so burdensome, that many district judges are now refusing what had been considered a prestigious assignment.

The vacancy rate on the Sixth Circuit is placing a significant burden on the entire Federal judiciary, which would be overburdened even if every vacancy were filled.

Some of the adverse impacts of the vacancy rate on the Sixth Circuit are not so readily discernible or can be quantified. For instance, visiting judges from outside the circuit or from the district courts may not be as familiar with Sixth Circuit law as the judges of the Sixth Circuit themselves. The court's reliance on such a large contingent of visiting judges increases the risk of intra-circuit conflict among different panels of the court, making en

banc review by the full Sixth Circuit more frequent. And en banc review places greater burdens on the court by requiring that all active judges, rather than just a portion of them, give the case their attention.

I am not seeking to lay blame. I am just pointing out that we must overcome the differences that have led us to the quagmire in which we find ourselves. And I believe it is fair for me to do so. During President Clinton's administration, I did all I could to get the President's nominees to the district courts in Tennessee confirmed quickly. I also shepherded through the Senate the nomination of the last judge confirmed to the Sixth Circuit, Ronald Gilman.

I hope that the fact that the Senate is moving to take up the nomination of Judge Gibbons bodes well for our willingness to take up other nominations to the Sixth Circuit.

Let me turn now to the specific nomination before us. Despite her relative youth for such a position, Judge Julia Smith Gibbons been a judge for over 20 years. I am confident that the Senate will not consider any more highly qualified nominee this year.

Judge Gibbons was born and raised in Pulaski, TN, which is a small town in south-central Tennessee less than 20 miles from Lawrenceburg, where I grew up. She attended Vanderbilt University in Nashville, from which she received her B.A. magna cum laude in 1972 and where she was elected to membership in Phi Beta Kappa, the national honor society.

Judge Gibbons then left Tennessee to attend law school in our neighbor to the east at the University of Virginia Law School, where she was a member of the editorial board of the law review and was elected to the Order of the Coif, the national legal honor society.

Upon graduating from law school, she returned to Tennessee to clerk for Judge William Miller of the Sixth Circuit, the court to which Judge Gibbons has been nominated. In 1976, Judge Gibbons became an associate with a Memphis law firm.

After 3 years practicing law, Judge Gibbons joined the administration of Governor Lamar Alexander as the Governor's legal advisor in 1979. In 1981, Governor Alexander appointed Judge Gibbons to the Tennessee Circuit Court for the Fifteenth Judicial Circuit, which covers Memphis and Shelby County, and she was elected to a full term in 1982.

In 1983, Judge Gibbons was appointed United States District Judge for the Western District of Tennessee by President Reagan, the first woman to hold such a position in Tennessee. At the time, she was the youngest Federal judge in the Nation. From 1994 to 2000, she served as Chief Judge of the court.

She is very highly regarded by the bar as an exceptional trial judge. While she was being considered for this appointment and since her nomination, I have heard from many lawyers who

have practiced before her extolling her virtues as a trial judge.

Her reputation is national and has been recognized by the Chief Justice, who has appointed her to the Judicial Panel on Multidistrict Litigation, the Judicial Resources Committee of the Judicial Conference, and the Judicial Officer Resources Working Group.

Despite her heavy judicial workload, Judge Gibbons has remained active in her church and community, serving as an elder of the Idlewild Presbyterian Church and as a former president of the Memphis Rotary Club.

In sum, I am confident that Judge Gibbons will be an outstanding member of the Sixth Circuit, as she has been an outstanding trial judge.

Before I yield, let me thank Chairman LEAHY and his staff, and Senator HATCH and his staff for their cooperation and assistance in moving this nomination forward. I hope our action today on Judge Gibbons bodes well for getting the remaining Sixth Circuit vacancies filled expeditiously.

I urge my colleagues to join me in voting to support the nomination of Judge Julia Smith Gibbons.

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### TRIBUTE TO ROY ESTESS

Mr. LOTT. Mr. President, I rise today to congratulate my dear friend Roy Estess on his well deserved retirement, to thank him for his many years of dedicated service to our nation, and to wish him the very best as he pursues other interests and enjoys what I hope will be many fine years of health and happiness with his family.

Roy S. Estess, a native of Tylertown, MS, is retiring as director of NASA's John C. Stennis Space Center in south Mississippi. As director of Stennis Space Center for more than 13 years, Roy has been responsible for accomplishing the center's current NASA missions, rocket propulsion testing and remote sensing applications. Other responsibilities have included managing the Space Shuttle Main Engine test program; planning and accomplishing advanced propulsion test activities for NASA, some Department of Defense projects, and certain industry propulsion development and launch vehicle development programs; conducting research and technology development in earth and environmental sciences; commercializing remote sensing technology in cooperation with industry and government; developing technology for use in propulsion test and launch operations; and managing the overall center. Roy's vision and leader-

ship have directly lead to Stennis Space Center becoming a unique Federal city that is home to more than 30 Federal, State, academic and private organizations.

Roy Estess graduated from Mississippi State University with a degree in aerospace engineering. He also has accomplished various graduate level studies, including completion of the advanced management program at the Harvard Graduate Business School. He is a registered professional engineer in the State of Mississippi and is a member and past chairman of the advisory committee to the College of Engineering at Mississippi State University. Roy is also a member of several professional societies, some of which include Tau Beta Pi; the American Institute of Aeronautics and Astronautics; the Mississippi Academy of Sciences; and the National Space Club.

Roy has held various engineering and management positions during his 42 years of service in the United States government. He began his career as a civilian employee in the United States Air Force at Brookley Field in Alabama, and later at Robbins Air Force Base in Georgia. Roy came to the NASA Stennis Space Center in 1966 as a propulsion test engineer, working on perhaps the greatest technological achievement of all time, the Apollo missions to the moon. Roy worked on testing the second stage of the Saturn V moon vehicle during those exciting times. Working his way up through the ranks, he later served as head of the Applications Engineering Office, deputy of the Earth Resources Laboratory and director of the Regional Applications Program. From 1980 through 1988, Roy served as deputy director of Stennis Space Center and was named director in January, 1989. From 1992 to 1993, he was temporarily assigned to NASA Headquarters in Washington, D.C. as a special assistant to two consecutive NASA Administrators. From February, 2001 to April, 2002, Roy was temporarily assigned as acting director of the Johnson Space Center in Houston, TX.

Roy Estess has been named the recipient of numerous awards and honors, some of which include: the Presidential Distinguished Service, twice, and Meritorious Senior Executive Awards; NASA's Distinguished Exceptional Service, Equal Opportunity and Outstanding Leadership Medals; the National Distinguished Executive Service Award for Public Service; and the Alumni Fellow of Mississippi State University; as well as Citizen of the Year in his home town.

Roy has served Mississippi and the nation in numerous ways outside of his professional career. In 1969, when south Mississippi was hit by the devastating hurricane Camille, Roy served on the Gulf coast disaster recovery team, making extraordinary efforts to help save lives and property in our state. An Eagle Scout himself, Roy has long been an active supporter of the Boy Scouts of America, including serving as Scout

Master of Troop 87 of Picayune from 1966 to 1978. Roy has also served as a Deacon at his church, the First Baptist Church in Picayune.

Roy and his wife, Zann, reside in Pearl River County, MS. They have two children, Andy and Mauri, and two grandchildren, Conner and Drew.

I know my colleagues will join me in appreciation of Roy Estess for his extraordinary career of service to the nation and his community and in wishing him and his family the very best in all of their plans for the future. I am proud to call Roy Estess my friend. God bless you, Roy.

#### 21ST CENTURY MEDICARE ACT

Mr. HATCH. Mr. President, our health care system has increased the lifespan and quality of life of our citizens. Our population is aging; people with chronic conditions are living longer. The number of Medicare beneficiaries is increasing and will continue to increase as baby boomers retire.

As I have listened to the debate over the last two weeks, I think we can all agree on one thing, the seniors in this Nation deserve the best possible health care, of which prescription drug coverage is a vital component. All of us want to provide Medicare beneficiaries with prescription drug coverage this year. Unfortunately we do not agree on how this coverage should be provided.

I support the Tripartisan bill for several simple reasons. The Tripartisan bill operates on the fundamental principles of efficiency, quality, and choice. It balances all of the issues and provides a permanent solution—all of which result in cost savings and affordability. Balance is a key point here.

We do not offer a plan that cannot be sustained, resulting in bigger problems down the road. We do not offer a plan that ends abruptly. We do not offer a plan offering everything to everyone, knowing full well that it cannot work, as the Graham-Kennedy bill does. We provide Medicare beneficiaries with four key elements: First; Choice. Giving seniors the right to choose a plan and the right to choose a particular medication is the greatest benefit we can offer Medicare beneficiaries. Under the Graham-Miller-Kennedy bill, seniors can only get a government run prescription drug plan. The Graham-Miller-Kennedy bill forces seniors and their physicians into government run formularies. This is not what we want for our seniors and their doctors; Second; Quality. I do not believe that the Graham-Miller-Kennedy bill has any incentive to improve quality—over and over, we have seen how government run programs have failed our health care system. Our Tripartisan bill makes a concerted effort to improve and modernize Medicare, by offering seniors choice not only in prescription drug coverage but for overall medical coverage as well; Third; Efficiency and Cost containment. The Tripartisan bill fosters competition, based on quality and cost. The Graham-Miller-Kennedy bill does not. The Graham-Miller-Ken-

nedy bill cannot deliver drugs efficiently by making the government the sole regulator of Medicare drug coverage. The Tripartisan bill guarantees that at least two plans will compete in each region, giving seniors the right and choice to pick the plans that best suit their needs; and Fourth; Balance. The Tripartisan bill balances the needs of seniors with benefits. We improve coverage for the sickest, poorest seniors by helping needy seniors meet their health care costs through generous subsidies. We use an assets test to determine who needs assistance. What is so wrong with this? All we are doing is applying asset testing criteria for prescription drug coverage. I do want to make a correction to my statement from 7/22/02, The Family Opportunity Act does not have an assets test as I indicated. Rather it has an income and disability test.

In conclusion, I believe the model of the Tripartisan bill is the only workable, long lasting, and fair plan for our seniors and taxpayers. The Tripartisan bill model is the only way to achieve a long-term solution to provide prescription drug coverage to Medicare beneficiaries and, at the same time, give seniors, their families, and doctors choice. It is not a quick fix to get immediate support for something that is not going to last, like the Graham-Miller-Kennedy bill. I am hopeful that more of my colleagues will recognize this, and help us reach an acceptable agreement.

#### THE FEDERAL EMPLOYEES HEALTH INSURANCE PREMIUM CONVERSION ACT

Mr. BURNS. Mr. President, today I am pleased to join my colleagues in the Senate in cosponsoring S. 1022, the Federal Employees Health Insurance Premium Conversion Act. This legislation will enable Federal and military retirees to take advantage of premium conversion, which would allow individual retirees to pay their health insurance premiums with pre-tax dollars. In 2000, this tax benefit was extended to current Federal employees under a Presidential directive, and it is a benefit available to many private sector employees, and State and local government employees. It only makes sense to bring equity to the Federal Employees Health Benefits Program.

Furthermore, this legislation will allow uniformed services retiree beneficiaries, their family members and survivors to pay the TRICARE Prime enrollment fees and TRICARE Standard supplemental insurance premiums with pre-tax dollars.

I am happy to join my colleagues by supporting this critical legislation and to show my continued support of these Federal civilian and military retirees for their dedicated service.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes

legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 24, 1994 in New York, NY. Two gay men were assaulted by four men who made anti-gay remarks. The assailants, John Gorman and Kevin Shout, both 22, Michael Higgins, 21, and James Shout 27, were charged with assault and aggravated harassment in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### ADDITIONAL STATEMENTS

##### MISCARRIAGE OF JUSTICE IN EGYPT

• Mr. McCONNELL. Mr. President, the news from Egypt this morning is both disappointing and disheartening. Egyptian democracy activist and academic Saad Eddin Ibrahim was sentenced to 7 years in jail following a retrial for charges, according to the BBC, "of tarnishing the country's image abroad and other offenses."

Many believe that the case against Mr. Ibrahim, who is a dual Egyptian-American citizen, is politically motivated and a not-so-veiled effort to stifle political debate in that country. Unfortunately, today's verdict only underscores that the rule of law and democratic institutions continue to be weak and non-functioning in Egypt.

It is my hope and expectation that Secretary Powell will clearly, publicly and forcefully register the concerns of the United States with Mr. Ibrahim's case to senior Egyptian leaders. I would offer that it is not Mr. Ibrahim but the Egyptian government—and its weak judiciary, irresponsible and anti-Semitic media, and questionable ties with North Korean missile technicians—that consistently tarnishes the country's image abroad.

To put it simply, the United States must expect more from its ally in the Middle East.●

#### MADE IN THE U.S.A.

• Mr. BUNNING. Mr. President, I proudly rise today to celebrate a truly remarkable milestone in the American automobile industry. Today, Toyota Motor North America will produce its 10 millionth North American-built vehicle. This notable achievement will take place at the Toyota production facility located in Georgetown KY.

I am extremely pleased that the more than 8,000 employees at the Georgetown facility will have the unique and historical opportunity to produce the 10 millionth Toyota to say Made in America. On a personal note, I myself bought a Camry last November, born and bred at the Georgetown facility in the Commonwealth of Kentucky.

Today, Toyota's dedicated team members annually build over 900,000 Avalons, Camrys, Corollas, Sequoias, Seinnas, Tacomas, and Tundras in the United States; in fiscal year 2001, Toyota sold nearly 2 million vehicles in North America. This means that nearly all of the cars sold in America are made here as well. Nothing gives me more pride than to see a product stamped with made in the U.S.A. especially when that means made in Kentucky.

Toyota Motor Manufacturing, Kentucky began production in Georgetown in 1988. Today, the Georgetown production facility is Toyota's largest production plant in all of North America due largely to their selfless and committed workforce. With two vehicle production lines and a powertrain engine and axle facility, more than 8,000 team members build around 500,000 vehicles and nearly 400,000 engines each and every year. Kentucky's skilled production team has been the key to the facility's extraordinary success, and I can personally vouch for the quality of Kentucky craftsmanship.

To celebrate their many accomplishments, Toyota is donating 20 Sienna minivans in communities where facilities are located. In Georgetown, minivans will be donated to the Salvation Army and Senior Citizens of Georgetown/Scott County. Also, Toyota Motor Manufacturing North America has announced a \$1 million gift to the children of Toyota's manufacturing team members through a college scholarship fund.

I would like to congratulate everyone involved with Toyota for reaching such a prestigious mark in the auto industry. Specifically, I would like to thank the employees in Georgetown for all that they do for Toyota and the local business community. These hard-working men and women deserve praise for their dedication and commitment to excellence. They represent the spirit of capitalism and embody the American working man and woman.●

#### TRIBUTE TO LINDA JACKSON

● Mr. BURNS. Mr. President, it is my privilege to honor a very special lady for her years of work on behalf of the citizens of this country. Linda Jackson was an employee of the U.S. Government for 39 years. Since she was 18 years old, Linda has been offering a helping hand to Americans. She started her career in civil service with the U.S. Navy. She then moved on to the Air Force, working in Japan during the Vietnam war. After her return stateside, Linda worked for a time for the

U.S. Postal Service. For the last 29 years, she has been an employee of the Social Security Administration. I have personal knowledge of Linda's dedication and commitment not only to her profession but more importantly to the citizens she worked for. When Linda retired on June 3, 2002, this Nation lost a very dedicated and caring public servant. Thank you, Linda Jackson, for your service to our country.●

#### MESSAGE FROM THE HOUSE

At 4:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 132. Concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives.

The message also announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House:

From the Committee on Financial Services, for consideration of the House bill and the Senate Amendment thereto, and modifications committed to conference: Mr. OXLEY, Mr. BAKER, Mr. NEY, Mrs. KELLY, Mr. SHAYS, Mr. FOSSELLA, Mr. FERGUSON, Mr. LAFALCE, Mr. KANJORSKI, Mr. BENTSEN, Mr. MALONEY of Connecticut, and Ms. HOOLEY of Oregon.

From the Committee on the Judiciary, for consideration of section 15 of the House bill and sections 10 and 11 of the Senate amendment thereto, and modifications committed to conference: Mr. SENSENBRENNER, Mr. GOODLATTE, and Mr. CONYERS.

The message also announced that the Speaker appoints the following members as additional conferees in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4546) to authorize appropriations for fiscal year 2003 for military activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

As additional conferees from the Committee on Small Business, for consideration of sections 243, 824, and 829 of the Senate amendment and modi-

fications committed to conference: Mr. MANZULLO, Mrs. KELLY, and Ms. VELAZQUEZ.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-8161. A communication from the Director, Office of Integrated Analysis and Forecasting, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled "Performance Profiles of Major Energy Producers 2000"; to the Committee on Energy and Natural Resources.

EC-8162. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the OMB Cost Estimate for Pay-As-You-Go for Report Number 581; to the Committee on the Budget.

EC-8163. A communication from the Chief, Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Manufacturing Substitution Drawback: Duty Apportionment" (RIN1512-AD02) received on July 18, 2002; to the Committee on the Judiciary.

EC-8164. A communication from the Acting Assistant Attorney General for Administration, Justice Management Division, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Exemption of Department of Justice Privacy Act System of Records: Controlled Substances Act Nonpublic Records" (JMD-002) received on July 23, 2002; to the Committee on the Judiciary.

EC-8165. A communication from the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Powers of the Attorney General to Authorize State of Local Law Enforcement Officers to Exercise Federal Immigration Enforcement Authority During a Mass Influx of Aliens" (RIN1115-AF20) received on July 24, 2002; to the Committee on the Judiciary.

EC-8166. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Increased Allowances for the Educational Assistance Test Program" (RIN2900-AL02) received on July 23, 2002; to the Committee on Veterans Affairs.

EC-8167. A communication from the Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report regarding Streamlining Seat Certification; to the Committee on Commerce, Science, and Transportation.

EC-8168. A communication from the Secretary of the Commission, Bureau of Consumer Protection, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Part 305—Rule Concerning Disclosure Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")" received on July 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8169. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of

Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska—Amendment and Corrections to the Emergency Interim Rule Implementing Steller Sea Lion Protection Measures and 2002 Harvest Specifications for the Alaskan Groundfish Fisheries" (RIN0648-AP69) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8170. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska—Final Rule to Implement Amendment 54 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 54 to the FMP For Groundfish of the Gulf of Alaska and An Amendment to the Pacific Halibut Commercial Fishery Regulations for Waters In and Off Alaska" (RIN0548-AK70) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8171. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Bifenthrin; Pesticide Tolerances for Emergency Exemptions" (FRL7187-8) received on July 24, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8172. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Research and Promotion Branch, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Mushroom Promotion, Research and Consumer Information Order: Reallocation of Mushroom Council Membership" (Doc. No. FV-02-706-IFR) received on July 23, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8173. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Raisins Produced from Grapes Grown in California; Final Free and Reserve Percentages for 2001-02 Crop Natural (sun-dried) Seedless and Other Seedless Raisins" (Doc. No. FV02-989-4FIR) received on July 23, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8174. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "1-Methylcyclopropene; Exemption from the Requirement of a Tolerance" (FRL7187-4) received on July 24, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8175. A communication from the Assistant Secretary, Office of Indian Education Programs, Department of Indian Affairs, transmitting, pursuant to law, the report of a rule entitled "Indian School Equalization Program" (RIN1076-AE14) received on July 23, 2002; to the Committee on Indian Affairs.

EC-8176. A communication from the Assistant General Counsel for Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Loan Guarantee for Indian Housing; Direct Guarantee Processing" (RIN2577-AB78) received on July 23, 2002; to the Committee on Indian Affairs.

EC-8177. A communication from the Principal Deputy Director, Office of Hearing and Appeals, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Indian Affairs Hearings and Ap-

peals" (RIN1090-AA70) received on July 23, 2002; to the Committee on Indian Affairs.

EC-8178. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Fair Housing and Equal Opportunity, received on July 16, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-8179. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report on the operation of the Exchange Stabilization Fund (ESF) for Fiscal Year 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC-8180. A communication from the Deputy Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Rescission of Exemption from Bank Secrecy Act Regulations for Sale of Variable Annuities" (RIN1506-AA30) received on July 18, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-8181. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" (Doc. No. FEMA-7783) received on July 18, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-8182. A communication from the Deputy Secretary, Division of Investment Management, Office of Regulatory Policy, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Section 270.17a-8 Mergers of Affiliated Companies" (RIN3235-AH81) received on July 23, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-8183. A communication from the Director, Federal Emergency Management Agency, transmitting, pursuant to law, a report concerning funding for the State of New York as a result of the record/near record snow has exceeded \$5,000,000; to the Committee on Environment and Public Works.

EC-8184. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Planning and Research Program Administration" (RIN2125-AE84) received on July 18, 2002; to the Committee on Environment and Public Works.

EC-8185. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Oregon Medford Carbon Monoxide Nonattainment Area" (FRL7240-9) received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8186. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Minnesota Designation Areas for Air Quality Planning Purposes; Minnesota" (FRL7251-5) received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8187. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Clean Air Act Finding of Attainment; Portneuf Valley PM-10 Nonattainment Area; Ohio" (FRL7251-3) received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8188. A communication from the Principal Deputy Associate Administrator of the

Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Finding of Failure to Attain; California-San Joaquin Valley Nonattainment Area; PM-10" (FRL7250-5) received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8189. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "New York: Incorporation by Reference of State Hazardous Waste Management Program" (FRL7232-3) received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8190. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled "Letter Responding to American Wood Preservers Institute's (AWPI) Request for Clarification on the Scope and Applicability of the Federal RCRA Regulations at Wood Preserving Facilities" received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8191. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "National Coastal Wetlands Conservation Grant Program" (RIN1018-AF51) received on July 24, 2002; to the Committee on Environment and Public Works.

EC-8192. A communication from the Director, Naval Reactors, transmitting, pursuant to law, a report on radiological waste disposal and environmental monitoring, worker radiation exposure, and occupational safety and health, as well as a report providing and overview of the Program; to the Committee on Armed Services.

EC-8193. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Codification and Modification of Berry Amendment" (DFARS Case 2002-D002) received on July 23, 2002; to the Committee on Armed Services.

EC-8194. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Changes to Profit Policy" (DFARS Case 2000-D018) received on July 23, 2002; to the Committee on Armed Services.

EC-8195. A communication from the Deputy Chief of Naval Operations, Fleet Readiness and Logistics, Department of the Navy, transmitting, pursuant to law, a report to convert to performance by the private sector the Mail and Travel Services functions at Space and Naval Warfare Systems Center San Diego, CA; to the Committee on Armed Services.

EC-8196. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Acquisition of Commercial Items" (DFARS Case 95-D712) received on July 23, 2002; to the Committee on Armed Services.

EC-8197. A communication from the Deputy Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-8198. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of Defense (Reserve Affairs), received on July 23, 2002; to the Committee on Armed Services.

EC-8199. A communication from the Under Secretary of Defense, Acquisition and Technology, transmitting, pursuant to law, a report setting forth the proposed amount of

staff-years of technical effort (STEs) to be funded by the Department of Defense for each FFRDC for Fiscal Year 2003; to the Committee on Armed Services.

EC-8200. A communication from the Director of Defense Research and Engineering, Department of Defense, transmitting, pursuant to law, the Annual Report of the Strategic Environmental Research and Development Program for Fiscal Year 2001; to the Committee on Armed Services.

EC-8201. A communication from the Assistant to the Secretary of Defense, Nuclear and Chemical and Biological Defense Programs, transmitting, pursuant to law, the Report on the Technology Development Efforts, Concept-of-Operations, and Acquisition Plans to Use Unmanned Aerial Vehicles in Chemical and Biological Defense; to the Committee on Armed Services.

EC-8202. A communication from the Assistant Secretary of Defense, Force Management Policy, transmitting, pursuant to law, the Report of the Ninth Quadrennial Review of Military Compensation; to the Committee on Armed Services.

EC-8203. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on information on executive branch spending and programmatic initiatives for Fiscal Year 2001 through Fiscal Year 2003; to the Committee on Armed Services.

EC-8204. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of Assistant Secretary, Tax Policy, received on July 18, 2002; to the Committee on Finance.

EC-8205. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Under Secretary, Designated Assistant Secretary, International Affairs, received on July 18, 2002; to the Committee on Finance.

EC-8206. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary, Enforcement, received on July 18, 2002; to the Committee on Finance.

EC-8207. A communication from the Chief, Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Merchandise Processing Fee Eligible to be Claimed as Unused Merchandise Drawback" (RIN1515-AC67) received on July 23, 2002; to the Committee on Finance.

EC-8208. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Taxable Years of Partner and Partnership; Foreign Partners" (RIN1545-AY66) received on July 24, 2002; to the Committee on Finance.

EC-8209. A communication from the Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, the Aquatic Resources Trust Fund Annual Report for 2001 and the Oil Spill Liability Trust Fund Annual Report for 2001; to the Committee on Finance.

EC-8210. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Guidance Under Subpart F Relating to Partnerships" (RIN1545-AY45) received on July 23, 2002; to the Committee on Finance.

EC-8211. A communication from the Chief, Regulations Unit, Internal Revenue Service,

Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "TD 9005: Refund of Mistaken Contributions and Withdrawal Liability Payments" (RIN1545-BA87) received on July 23, 2002; to the Committee on Finance.

EC-8212. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Rev. Rul. 69-259, Modification of" (Rev. Rul. 2002-50) received on July 23, 2002; to the Committee on Finance.

EC-8213. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Notice to Interest Parties" (REG-129608) received on July 23, 2002; to the Committee on Finance.

EC-8214. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Compromise of Tax Liabilities" (RIN1545-AW87) received on July 23, 2002; to the Committee on Finance.

EC-8215. A communication from the Chief, Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Access to Customs Security Areas at Airports" (RIN1515-AD04) received on July 24, 2002; to the Committee on Finance.

EC-8216. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement with Canada; to the Committee on Foreign Relations.

EC-8217. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Greece, Belgium, France, Israel, South Korea, the Netherlands and the United Kingdom; to the Committee on Foreign Relations.

EC-8218. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8219. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8220. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India and Pakistan; to the Committee on Foreign Relations.

EC-8221. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-8222. A communication from the Assistant Secretary of Legislative Affairs, Depart-

ment of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8223. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more to The Government of Germany; to the Committee on Foreign Relations.

EC-8224. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8225. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8226. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8227. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8228. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8229. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8230. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8231. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8232. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Canada; to the Committee on Foreign Relations.

EC-8233. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8234. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the

Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8235. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8236. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8237. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8238. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8239. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8240. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8241. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8242. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement with Italy that also involves the export of defense articles and defense services in the amount of \$50,000,000 or more to Italy and Greece; to the Committee on Foreign Relations.

EC-8243. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Australia and Poland; to the Committee on Foreign Relations.

EC-8244. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8245. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services

sold commercially under a contract in the amount of \$50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8246. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8247. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8248. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8249. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8250. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license with Japan; to the Committee on Foreign Relations.

EC-8251. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8252. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8253. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8254. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of text and background statements of international agreements other than treaties; to the Committee on Foreign Relations.

EC-8255. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8256. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-8257. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the

Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8258. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense services or defense articles sold commercially under a contract in the amount of \$50,000,000 or more to South Korea; to the Committee on Foreign Relations.

EC-8259. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more with United Kingdom; to the Committee on Foreign Relations.

EC-8260. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement (MLA) with Japan; to the Committee on Foreign Relations.

EC-8261. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of technical data and defense services to India; to the Committee on Foreign Relations.

EC-8262. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8263. A communication from the Chairman, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, received on July 16, 2002; to the Committee on Governmental Affairs.

EC-8264. A communication from the Secretary, Chief Administrative Officer, Postal Rate Commission, transmitting, pursuant to law, the report of a nomination for the position of Commissioner, received on July 16, 2002; to the Committee on Governmental Affairs.

EC-8265. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Policy Development and Research, received on July 18, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-8266. A communication from the Chairman, Federal Accounting Standards Advisory Board, transmitting, pursuant to law, a report entitled "Eliminating the Category National Defense Property, Plant, and Equipment"; to the Committee on Governmental Affairs.

EC-8267. A communication from the Director, Workforce Compensation and Performance Service, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes" (RIN3206-AJ40; RIN3206-AJ41) received on July 23, 2002; to the Committee on Governmental Affairs.

EC-8268. A communication from the District of Columbia Auditor, transmitting, a report entitled "Audit of Advisory Neighborhood Commission 7C for Fiscal Year 1999, 2000, 2001, and 2002 through December 31, 2001

(10/01/98 through 12/31/01)"; to the Committee on Governmental Affairs.

EC-8269. A communication from the District of Columbia Auditor, transmitting, a report entitled "Audit of Advisory Neighborhood Commission 6A for the Period July 1, 1998 through September 30, 2001"; to the Committee on Governmental Affairs.

EC-8270. A communication from the Assistant Secretary, Financial Markets, Department of the Treasury, transmitting, pursuant to law, a report concerning the public debt outstanding would exceed the statutory limit of \$5.95 trillion no later than May 16 and, as a result, a "debt issuance suspension period" would begin no later than May 16 and end on June 28, 2002; to the Committee on Governmental Affairs.

EC-8271. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-438, "Lead-Based Paint Abatement and Control Temporary Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8272. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-439, "Department of Human Services Mental Retardation and Developmental Disabilities Administration Funding Authorization Temporary Act of 2002"; to the Committee on Governmental Affairs.

EC-8273. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-437, "Abandoned and Vacant Properties Community Development Disposition, and Disapproval of Disposition of Certain Scattered Vacant and Abandoned Properties Temporary Act of 2002"; to the Committee on Governmental Affairs.

EC-8274. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-431, "Business Improvement Districts Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8275. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-432, "Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8276. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-436, "Disability Compensation Program Transfer Temporary Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8277. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-435, "Square 456 Payment in Lieu of Taxes Extension Temporary Act of 2002"; to the Committee on Governmental Affairs.

EC-8278. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-434, "Contract No. DCFRA 00-C-030B (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Temporary Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8279. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-428, "Government Reports Electronic Publication Requirement Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8280. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report

on D.C. Act 14-429, "Free Clinic Assistance Program Extension Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8281. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-430, "Education and Examination Exemption for Respiratory Care Practitioners Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC-8282. A communication from the Acting General Counsel, National Endowment for the Arts, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of Chairman, received on July 18, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-8283. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "PBGC Benefit Payments" (RIN1212-AA82) received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-8284. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the Community Services Block Grant Discretionary Activities: Community Economic Development Program (CEDP) Projects Funded During Fiscal Year 1997; to the Committee on Health, Education, Labor, and Pensions.

EC-8285. A communication from the Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, the report of a rule entitled "Federal Sector Equal Employment Opportunity" (RIN3046-AA57) received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-8286. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits" received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-8287. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "State Certification of Mammography Facilities" (RIN0910-AB98) received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1961: A bill to improve financial and environmental sustainability of the water programs of the United States. (Rept. No. 107-228).

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. HARKIN:

S. 2812. A bill to fully enforce guidance on single sum distributions from cash balance plans, and for other purposes; to the Committee on Finance.

By Mr. SMITH of New Hampshire (for himself, Mr. CRAPO, and Mr. INHOFE):  
S. 2813. A bill to improve the financial and environmental sustainability of the water programs of the United States; to the Committee on Environment and Public Works.

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

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

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

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

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. MCCAIN, Mr. DEWINE, Ms. LANDRIEU, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HATCH, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. TORRIGELLI, Mr. DURBIN, Mr. MURKOWSKI, and Mr. KERRY):

S. 2816. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. HOLLINGS, Mr. BOND, and Ms. MIKULSKI):

S. 2817. A bill to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GREGG:

S. 2818. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure that there is competition in the pharmaceutical industry and increased access to affordable drugs; to the Committee on Health, Education, Labor, and Pensions.

#### ADDITIONAL COSPONSORS

S. 486

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 674

At the request of Ms. COLLINS, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 674, a bill to amend the Internal Revenue Code of 1986 to provide new tax incentives to make health insurance more affordable for small businesses, and for other purposes.

S. 847

At the request of Mr. DAYTON, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 1226

At the request of Mr. CAMPBELL, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1226, a bill to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1394

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

S. 1523

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

S. 1605

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

S. 1679

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

S. 1785

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

S. 2027

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

S. 2268

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

S. 2505

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

S. 2634

At the request of Mrs. CLINTON, the name of the Senator from Delaware

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

S. 2712

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

S. 2762

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

S. RES. 242

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

AMENDMENT NO. 4326

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

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

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

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

Earlier this year, I joined with Chairmen JEFFORDS and GRAHAM, as well as Senator CRAPO, to introduce S. 1961, the Water Investment Act. This was a

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

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

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

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

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

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

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

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

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

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

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

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

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

understand how to address the problems of communities with unmet water and wastewater infrastructure needs.

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

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

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

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

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

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

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

to the Committee on Agriculture, Nutrition, and Forestry.

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

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

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

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

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

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

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

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

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

S. 2814

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

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

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

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

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

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

"(10) In the case of other oilseeds:

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

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

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

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

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

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

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

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

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

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

"(10) In the case of other oilseeds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. 2815. A bill to amend the Clean Air Act to reduce air pollution through ex-

pansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade programs, and for other purposes; to the Committee on Environment and Public Works.

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

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

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

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

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

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

#### SUMMARY OF CLEAR SKIES ACT OF 2002

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Nitrogen Oxides Emissions Reductions:** The Clear Skies Act establishes Part C, which retains in Sections 431–432 the requirements of the existing Acid Rain Program for nitrogen oxides and in Sections 461–465 the requirements of the existing NO<sub>x</sub> State Implementation (SIP) call under Section 110 of the Clean Air Act through December 31, 2007; and contains in Sections 451–454 the new, annual caps on total allowances and new, allocation procedures starting January 1, 2008.

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

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

Under Section 453, annual NO<sub>x</sub> emissions for affected units in Zone 1 are capped at 1.562 million tons starting in 2008 and 1.162 million tons starting in 2010. Zone 2 annual emissions are capped at 538,000 tons. Each

year, the percentages of allowances allocated and auctioned each year are the same as under the new sulfur trading program.

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

Sections 461–456 contains provisions that codify the emission reduction requirements of the NO<sub>x</sub> SIP Call that covers the eastern U.S. The SIPs are required to be consistent with the NO<sub>x</sub> emission budgets established under the NO<sub>x</sub> SIP Call. SIPs must be submitted for certain full States and for certain portions of some States as determined proposed by the Administrator in the rule-making that commenced February 22, 2002.

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

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

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

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

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

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

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

These statutory performance standards include emission limits for four pollutants: nitrogen oxides (NO<sub>x</sub>); sulfur dioxide (SO<sub>2</sub>); mercury (Hg); and particulate matter (PM). The Hg emission limit applies only to coal. In addition, a PM emission limit is established for existing oil-fired boilers to ensure reductions of nickel from such units. All units subject to a performance standard must monitor emissions using CEMS and use averaging times similar to current NSPS.

Boilers and IGCCs are subject to a SO<sub>2</sub> emission limit of 2.0 lb/MWh; a NO<sub>x</sub> emission limit of 1.0 lb/MWh; and a PM emission limit of 0.20 lb/MWh. Coal-fired boilers and IGCCs are subject to a Hg emission limit of 0.015 lb/GWh; however, alternative standards would apply in some circumstances. Coal-fired combustion turbines are subject to the same NO<sub>x</sub>, SO<sub>2</sub>, PM, and Hg emission limits as

boilers and IGCCs. Oil-fired combustion turbines are subject to NO<sub>x</sub> emission limits ranging from 0.289 lb/MWh to 1.01 lb/MWh, an SO<sub>2</sub> emission limit of 2.0 lb/MWh, and a PM emission limit of 0.20 lb/MWh. Gas-fired combustion turbines are subject to NO<sub>x</sub> emission limits ranging from 0.084 lb/MWh to 0.56 lb/MWh. Existing oil-fired boilers are subject to a PM emission limit of 0.30 lb/MWh.

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

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

Affected units constructed after enactment of the Clear Skies Act must meet the performance standards for NO<sub>x</sub>, SO<sub>2</sub>, PM, and CO specified in Section 481, but a case-by-case review of the appropriate control technology such as BACT or LAER is no longer required. Similarly, modifications at existing affected units must either comply with the performance standards for NO<sub>x</sub>, SO<sub>2</sub>, PM, and CO established in section 481 or comply with BACT. However, to qualify for this exemption from NSR, an existing sources must either commit within three years to meet the existing NSPS limit for PM of 0.03 lb/MMBtu in the future, or have begun to properly operate any existing control technology to reduce PM emissions or otherwise minimize PM emissions according to best operational practices. To qualify for the exemption, an existing source must also use good combustion practices to minimize emissions of carbon monoxide. Permits issued in the past to comply with the requirements of Parts C and D, however, will remain in effect.

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

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

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

S. 2815

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:  
Sec. 1. Short title, table of contents.  
Sec. 2. Emission Reduction Programs.

“TITLE IV—EMISSION REDUCTION PROGRAMS

“PART A—GENERAL PROVISIONS

“Sec. 401. (Reserved)

“Sec. 402. Definitions.  
 “Sec. 403. Allowance system.  
 “Sec. 404. Permits and compliance plans.  
 “Sec. 405. Monitoring, reporting, and record-keeping requirements.  
 “Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.  
 “Sec. 407. Election of additional units.  
 “Sec. 408. Clean coal technology regulatory incentives.  
 “Sec. 409. Auctions.  
 “Sec. 410. Evaluation of limitations on total sulfur dioxide, nitrogen oxides, and mercury emissions that start in 2018.

“PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

“Subpart 1—Acid Rain Program

“Sec. 411. Definitions.  
 “Sec. 412. Allowance allocations.  
 “Sec. 413. Phase I sulfur dioxide requirements.  
 “Sec. 414. Phase II sulfur dioxide requirements.  
 “Sec. 415. Allowances for states with emission rates at or below .8 lbs/mmbtu.  
 “Sec. 416. Election for additional sources.  
 “Sec. 417. Auctions, Reserve.  
 “Sec. 418. Industrial sulfur dioxide emissions.  
 “Sec. 419. Termination.

“Subpart 2—Sulfur Dioxide Allowance Program

“Sec. 421. Definitions.  
 “Sec. 422. Applicability.  
 “Sec. 423. Limitations on total emissions.  
 “Sec. 424. Allocations.  
 “Sec. 425. Disposition of sulfur dioxide allowances allocated under subpart 1.  
 “Sec. 426. Incentives for sulfur dioxide emission control technology.

“Subpart 3—Western Regional Air Partnership

“Sec. 431. Definitions.  
 “Sec. 432. Applicability.  
 “Sec. 433. Limitations on total emissions.  
 “Sec. 434. Allocations.

“PART C—NITROGEN OXIDES EMISSIONS REDUCTIONS

“Subpart 1—Acid Rain Program

“Sec. 441. Nitrogen Oxides Emission Reduction Program.  
 “Sec. 442. Termination.

“Subpart 2—Nitrogen Oxides Allowance Program

“Sec. 451. Definitions.  
 “Sec. 452. Applicability.  
 “Sec. 453. Limitations on total emissions.  
 “Sec. 454. Allocations.

“Subpart 3—Ozone Season NO<sub>x</sub> Budget Program

“Sec. 461. Definitions.  
 “Sec. 462. General Provisions.  
 “Sec. 463. Applicable Implementation Plan.  
 “Sec. 464. Termination of Federal Administration of NO<sub>x</sub> Trading Program.  
 “Sec. 465. Carryforward of Pre-2008 Nitrogen Oxides Allowances.

“PART D—MERCURY EMISSION REDUCTIONS

“Sec. 471. Definitions.  
 “Sec. 472. Applicability.  
 “Sec. 473. Limitations on total emissions.  
 “Sec. 474. Allocations.

“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.

“Sec. 482. Research, environmental monitoring, and assessment.  
 “Sec. 483. Major source preconstruction review and best availability retrofit control technology requirements.”

Sec. 3. Other amendments.

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**

**SEC. 401. (Reserved)**

**SEC. 402. DEFINITIONS.**

As used in this title—

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

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

(3) The term “affected unit” means—  
 (A) Under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, it applicable, under a specified part or subpart or  
 (B) Under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

(4) The term “allowance” means—  
 (A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or  
 (B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

(5)(A) The term “baseline heat input” means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period 1997 through 2001.  
 (B) Notwithstanding subparagraph (A),  
 (i) if a unit commenced operation during 2000, then “baseline heat input” means the average annual heat input used by the unit during 2000–2001; and  
 (ii) if a unit commenced or commences operation during 2001–2004, then “baseline heat input” means the manufacturer’s design heat input capacity for the unit multiplied by eighty percent for coal-fired units, fifty percent for combined cycle combustion turbines, and five percent for simple cycle combustion turbines.

(C) A unit’s heat input for a year shall be the heat input—  
 (i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;  
 (ii) reported to the Energy Information Administration for the unit, if the unit was not required to report heat input under section 405;

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

(D) By July 1, 2003, the Administrator shall promulgate regulations, without notice and opportunity for comment, specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. By January 1, 2004, the owner or

operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

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

(7) The term “coal” means any solid fuel classified as anthracite, bituminous, sub-bituminous, 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 amount of any other fuel in any year.

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

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

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

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

(13) The term “compliance plan means either—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(31) The term “State” means—

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

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

(32) The term “unit” means—

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

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

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

(34) The term “year” means calendar year.

#### SEC. 403. ALLOWANCE SYSTEM.

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

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

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

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

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

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

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

(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by January 1, 2008, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating

regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit’s or facility’s permit requirements pursuant to section 404, without any further permit review and revision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) **APPLICABILITY OF THE ANTITRUST LAWS.**—

(1) Nothing in this section affects—

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

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

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

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

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

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

#### SEC. 404. PERMITS AND COMPLIANCE PLANS.

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

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

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

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

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

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

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

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

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

(c) **PERMITS.**—The owner or operator of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472

for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) By the later of January 1, 2009 or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep

records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

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

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

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

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

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

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

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

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

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

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

(3) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allow-

ances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### SEC. 407. ELECTION FOR ADDITIONAL UNITS.

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

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

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

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

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

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

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

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

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

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

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

(B) the lesser of—

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

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

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

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

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

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

#### SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

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

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

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

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

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

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

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

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

#### SEC. 409 AUCTIONS.

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

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

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

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

(3) In order to bid for allowances included in the auction, a person shall submit, and the Administrator must receive by the date three business days before the auction, one or more offers to purchase a specified amount of such allowances at a specified price on a sealed bid schedule to be provided by the Administrator. The bidder shall state in the bid schedule that the bidder is willing to purchase at the specified price fewer allowances than the specified amount and shall identify the account in the Allowance Tracking System under section 403(c) in

which the allowances purchased are to be placed. Each bid must include a certified check or, using a form to be provided by the Administrator, a letter of credit for the specified amount of allowances multiplied by the bid price payable to the U.S. EPA. The bid schedule, and check or letter of credit, shall be sent to the address specified on the bid schedule.

(4) The Administrator shall auction the allowances by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) human population exposure to mercury;

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

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

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

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

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

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

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

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

(ii) are independent of the agency;

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

(iv) disclose to the agency their sources of personal and institutional funding from the private or 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) respond, in writing, to all significant peer review and public comments; and

(3) certify that

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

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

#### PART B. SULFUR DIOXIDE EMISSION REDUCTIONS

##### Subpart 1. Acid Rain Program.

#### SEC. 411. DEFINITIONS.

For purposes of this subpart—

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

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

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

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

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

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

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu’s consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-utility units, the baseline in the NAPAP Emissions Inventory,

Version 2. The Administrator, in the Administrator’s sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

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

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

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

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

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

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

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

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

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

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

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

(12) The term “new” independent power production facility” means a facility that—  
(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

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

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

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

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

(A) for the life of the unit;

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

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

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

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

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

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

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

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

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

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

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

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

(i) was in commercial operations during 1985, but

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

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

#### SEC. 412. ALLOWANCE ALLOCATION.

(a)(1) Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual missions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not 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 unit at an affected source annually, as provided in paragraphs (2) and (3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

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

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

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

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

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

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

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

(d) In order to insure electric reliability, regulations establishing a system for issuing, recording, and tracking allowances

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

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

#### SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.**—(1) The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if

the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

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

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

(2) Such extension proposal shall—

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

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

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

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

(E) specify the emission limitation and number of allowances expected to be nec-

essary 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 non-performance 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
		1	70,770
	Wansley	2	65,430
		1	7,210
	Yates	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
		4	5,910
	Grand Tower	2	18,410
	Hennepin	1	12,590
	Joppa Steam	2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailey	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

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

State	Plant name	Generator	Phase I allowances
	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
		1	10,330
	C.P. Crane	2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270

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

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

## (f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) DETERMINATION OF AVOIDED EMISSIONS.—

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

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

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

(III) demonstrates that the requirements of subparagraph (B) have been met. Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority

shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

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

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

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

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

(G) PROHIBITIONS.—

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

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

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

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

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

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

(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR 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 non-attainment 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 emis-

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

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

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

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

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

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

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

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

(e) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's

baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

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

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

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

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

Table B

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

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

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

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

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

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

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

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

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

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

(h) OIL AND GAS-FIRED UNITS LESS THAN 10 PERCENT OIL CONSUMED.—(1) After January 1,

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

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

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

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

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

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

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1), (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between cal-

endar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

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

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

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

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

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

**SEC. 416. ELECTION FOR ADDITIONAL SOURCES.**

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

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

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

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

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

(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c), in accordance with sec-

tion 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

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

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

**SEC. 417 AUCTIONS, RESERVE.**

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

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

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

which would (but for this subsection) be issued for each affected unit at an affected

source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

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

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

TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

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

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

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

(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this

subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

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

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

(e) The Administrator shall implement this section under 40 CFR part 73 (2001),

amended as appropriate by the Administrator.

**SEC. 418. INDUSTRIAL SO<sub>2</sub> EMISSIONS.**

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

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

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

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

**SEC. 419. TERMINATION.**

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

Subpart 2. Sulfur Dioxide Allowance Program

**SEC. 421 DEFINITIONS.**

For purposes of this subpart—

(1) The term "affected EGU" means:

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

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

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

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

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

(4) The term "general account" means an account in the Allowance Tracking System

under section 403(c) established by the Administrator for any person under 40 CFR §73.31(c) (2001), amended as appropriate by the Administrator.

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

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

**SEC. 422. APPLICABILITY.**

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

**SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.**

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

TABLE A.—TOTAL SO<sub>2</sub> ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

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

**SEC. 424. EGU ALLOCATIONS.**

(a) By January 1, 2007, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010

through 2060. The regulations shall provide that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The Administrator shall:

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

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

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

(2) Notwithstanding any other provision of law to the contrary, the determination of the amount of sulfur dioxide allowances

under subparagraph (1)(A) and the recording of sulfur dioxide allowances under subparagraph (1)(B) shall not be subject to judicial review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) ALLOCATIONS.—By July 1, 2010, for the units for which applications are approved under paragraph (c), the Administrator shall allocate sulfur 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 three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

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

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

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

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

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

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

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

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

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

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

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

(4) The term “covered year” means:

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

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

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

(5) The Term “oil-fired” with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than ten

percent of the unit’s total heat input, and combusting no coal or coal-derived fuel, an any year during the period from the eighth through the fourth year before the first covered year.

**SEC. 432. APPLICABILITY.**

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

**SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.**

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

**SEC. 434. EGU ALLOCATIONS.**

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

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

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

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

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

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

(1) The Administrator shall:

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

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

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

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

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

PART C—NITROGEN OXIDES EMISSION REDUCTIONS

Subpart 1—Acid Rain Program

**SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.**

(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the SO<sub>2</sub> 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<sub>x</sub> burner technology. The Administrator shall implement this paragraph under 40 CFR §76.5 (2001). The maximum allowable emission rates are as follows:

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

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

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

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology;

(D) all other types of utility boilers.

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

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

(1) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO<sub>x</sub> burner technology; or

(2) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

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

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

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

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

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

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

Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO<sub>x</sub> burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO<sub>x</sub> control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 CFR part 76 (2001), amended as appropriate by the Administrator.

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

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

**SEC. 442. TERMINATION.**

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

Subpart 2. Nitrogen Oxides Allowance Program.

**SEC. 451. DEFINITIONS.**

For purposes of this subpart—

(1) The term “affected EGU” means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator

with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

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

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

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

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

**SEC. 452. APPLICABILITY.**

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

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

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

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

**SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.**

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

TABLE A.—TOTAL NO<sub>x</sub> ALLOWANCE ALLOCATED OR AUCTIONED FOR EGUS IN ZONE 1

Year	NO <sub>x</sub> allowances allocated	NO <sub>x</sub> allowances auctioned
2008	1,546,380	15,620

TABLE A.—TOTAL NO<sub>x</sub> ALLOWANCE ALLOCATED OR AUCTIONED FOR EGUS IN ZONE 1—Continued

Year	NO <sub>x</sub> allowances allocated	NO <sub>x</sub> allowances auctioned
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) 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<sub>x</sub> ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

Year	NO <sub>x</sub> allowance allocated	NO <sub>x</sub> allowance auctioned
2008	532,620	5,380
2009	527,240	10,760
2010	521,860	16,140
2011	516,480	21,520
2012	511,100	26,900
2013	505,720	32,280
2014	500,340	37,660
2015	494,960	43,040
2016	489,580	48,420
2017	484,200	53,800
2018	478,820	59,180
2019	473,440	64,560
2020	468,060	69,940
2021	462,680	75,320
2022	457,300	80,700
2023	451,920	86,080
2024	446,540	91,460
2025	441,160	96,840
2026	435,780	102,220
2027	430,400	107,600
2028	416,950	121,050
2029	403,500	134,500
2030	390,050	147,950
2031	376,600	161,400
2032	363,150	174,850
2033	349,700	188,300
2034	336,250	201,750
2035	322,800	215,200
2036	309,350	228,650
2037	295,900	242,100
2038	282,450	255,550
2039	269,000	269,000
2040	255,550	282,450
2041	242,100	295,900
2042	228,650	309,350
2043	215,200	322,800
2044	201,750	336,250
2045	188,300	349,700

TABLE B.—TOTAL NO<sub>x</sub> ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2—Continued

Year	NO <sub>x</sub> allowance allocated	NO <sub>x</sub> allowance auctioned
2046	174,850	363,150
2047	161,400	376,600
2048	147,950	390,050
2049	134,500	403,500
2050	121,050	416,950
2051	107,600	430,400
2052	94,150	443,850
2053	80,700	457,300
2054	67,250	470,750
2055	53,800	484,200
2056	40,350	497,650
2057	26,900	511,100
2058	13,450	524,550
2059	0	538,000

**SEC. 454. EGU ALLOCATIONS.**

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

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

(i) The Administrator shall:

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

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

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

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

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

(B) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (a)(1), and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allow-

ances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for an affected EGU in the Zone 1 States to emit nitrogen oxides during such year in excess of 0.14 lb/mmBtu.

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

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

(i) The Administrator shall:

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

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

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

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

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

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

Subpart 3. Ozone Season NO<sub>x</sub> 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, Pennsyl-

vania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

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

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

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

**SEC. 462. GENERAL PROVISIONS.**

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

**SEC. 463. APPLICABLE IMPLEMENTATION PLAN.**

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

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

**SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO<sub>x</sub> TRADING PROGRAM.**

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

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

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

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

PART D—MERCURY EMISSIONS REDUCTIONS

**SEC. 471. DEFINITIONS.**

For purposes of this subpart—

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

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

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

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

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

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

(2) The term "affected EGU" means:

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

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

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

**SEC. 472. APPLICABILITY.**

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

**SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.**

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

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

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

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

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

**SEC. 474. EGU ALLOCATIONS.**

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

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

(A) The Administrator shall

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

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

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

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

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

(2) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a), and has not promulgated the regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for any affected EGU to emit mercury during such

year in excess of 30 percent of the mercury content (in ounces per mmBtu) of the coal and coal-derived fuel combusted by the unit.

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

**SECTION 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS**

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

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

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

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

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

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

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

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

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

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

**(b) EMISSION STANDARDS.—**

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

**(2) MONITORING.—**

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

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

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

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

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

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

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

(ii) comply with recordkeeping and reporting requirements; and

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

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

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

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

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

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

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

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

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

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

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

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

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

atmosphere any gases which contain nitrogen oxides in excess of:

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

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

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

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

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

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

(B) nitrogen oxides in excess of—

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

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

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

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

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

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

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

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

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

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

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

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

#### **SECTION 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.**

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

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

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

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

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

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

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

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

electricity generation and the transport of these species;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the

Secretary of Energy and the Administrator, including development of enhanced sorbents and 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) The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall:

(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

(i) improve the ability to routinely measure mercury in dry deposition processes;

(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

(iv) improve understanding of the effectiveness and cost of mercury emissions controls.

(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section.

(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota.

(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition.

(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

(2) **REPORTING REQUIREMENTS.**—Not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002, and not later than every four years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title. The report shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to:

(A) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

(B) average ambient concentrations of sulfur dioxide and nitrogen oxides trans-

formation products, related air quality parameters, and indicators of reductions in human exposure;

(C) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

(D) status and trends in visibility;

(E) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and near-coastal waters);

(F) status of mercury and its transformation products in fish;

(G) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

(H) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

(I) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

**SEC. 483. EXEMPTION FROM MAJOR SOURCE RECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.**

(a) **MAJOR SOURCE EXEMPTION.**—An affected unit may not be considered a major emitting facility or major stationary source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of part C and part D of title I. This exemption only applies to units that are either subject to the performance standards of section 481 or meet the following requirements within three years after the date of enactment of the Clear Skies Act of 2002:

(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particulate matter from the affected unit to 0.03 lb/mmBtu within eight years after the date of enactment of the Clear Skies Act of 2002, and

(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide.

(b) **CLASS I AREA PROTECTIONS.**—Notwithstanding the exemption in subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2002 is subject to those provisions under part C of title I pertaining to the review of a new or modified major stationary source's impact on a Class I area.

(c) **PRECONSTRUCTION REQUIREMENTS.**—Each State shall include in its plan under section 110, a program to provide for the regulation of the construction of an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit:

(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard.

(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved.

(3) for a modified unit, the unit must comply prior to beginning operation with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity.

(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

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

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

(2) The term “construction” includes the construction of a new affected unit and the modification of any affected unit.

(3) The term “modification” means any physical change in, or change in the method of operation of, an affected unit which increases the hourly emissions of any air pollutant at the unit's maximum capacity.”

### SEC. 3. OTHER AMENDMENTS.

(a) Title I of the Clean Air Act is amended by—

(1) removing from section 103 subparagraphs (j)(3)(E) and (j)(3)(F); and

(2) modifying section 107 by amending:

(A) subparagraph (D)(1)(A) by

(i) deleting the “or” at the end of clause (ii);

(ii) replacing the period with “, or” at the end of clause (iii);

(iii) adding clause (iv) to read as follows:

“(iv) notwithstanding clauses (i)—(iii), an area may be designated transitional for the fine particles national primary ambient air quality standard or the 8-hour ozone national primary ambient air quality standard if the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain that standard no later than December 31, 2015, and such modeling demonstration and all necessary local controls have been approved into the state implementation plan no later than December 31, 2004.”; and

(iv) adding to the flush language at the end a sentence to read as follows:

“. . . However, for purposes of the fine particles national primary ambient air quality standard and the 8-hour ozone national primary ambient air quality standard, the time period for the State to submit the designations shall be extended to no later than November 30, 2003.”

(B) clause (d)(1)(B)(i) by adding at the end a sentence to read as follows:

“. . . Provided, however, that the Administrator shall not be required to designate areas for the revised fine particles national primary ambient air quality standard and 8-hour ozone fine particles national primary ambient air quality standard prior to 6-months after the States are required to submit recommendations under section 107(d)(1)(A), but in no event shall the period for designating such areas be extended beyond November 30, 2004.”

(3) modifying section 110 by:

(A) amending clause (a)(2)(D)(i) to read as follows:

“(D) contain adequate provisions—

(i)(I) except as provided in subclause (II), prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(A) contribute significantly to nonattainment in, or interfere with maintenance by,

any other State with respect to any such national primary or secondary ambient air quality standard, or

(B) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.

(II) The Administrator, in reviewing, under subclause (I), any plan with respect to which emissions from affected units, within the meaning of section 126(d)(1), are substantial—

(A) shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant non-attainment areas in the other State or States; and

(B) may not require submission of plan provisions—

(i) subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to January 1, 2012; or

(ii) mandating an amount of emissions reductions based on the Administrator's determination that emissions reductions are available from such affected units, unless the Administrator determines that emissions from such units may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and that reductions in such emissions will improve air quality in the petitioning State's nonattainment area(s) at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, to the maximum extent that a methodology is reasonably available to make such a determination. The Administrator shall develop an appropriate peer reviewed methodology for making such determinations by December 31, 2006. In making this determination, the Administrator will use the best available peer reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other source characteristics.

(III) Nothing in subclause (II) shall be interpreted to require revisions to the provisions of 40 CFR 51.121 and 51.122 (2001), as would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).”

(B) adding a new subsection (q) to read as follows:

“(q) TRANSITIONAL AREAS.—

(1) MAINTENANCE.—

(A) By December 31, 2010, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2015.

(B) No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2015, the Administrator will consult with the State and determine what action, if any, is necessary to assure that attainment will be achieved by 2015.

(2) PREVENTION OF SIGNIFICANT DETERIORATION. Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this subchapter.

(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015. No later than June 30, 2016, EPA shall

determine whether each area designated as transitional for the 8-hour ozone standard or for the fine particles standard has attained that standard. If EPA determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within 1 year of the determination and the State shall be required to submit a state implementation plan revision satisfying the provisions of section 172 within 3 years of redesignation as nonattainment.

(4) adding to section 111 a new subparagraph (b)(1)(C) to read as follows:

“(C) No standards of performance promulgated under this section shall apply to units subject to regulations promulgated pursuant to section 481.”

(5) modifying section 112 by amending:

(A) paragraph (c)(1) to read as follows:

“(c) LIST OF SOURCE CATEGORIES.—

(1) IN GENERAL.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Provided, however, that electric utility steam generating units not subject to Resource Conservation and Recovery Act section 3005 shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units in accordance with the regime set forth in section 112(f)(2) through (4). The section 112(f)(2) determination shall be based on actual emissions by electric utility steam generating units in 2010. Any such regulations shall be promulgated within 8 years of 2010. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.”

(B) subparagraph (n)(1)(A) to read as follows:

“(n) OTHER PROVISIONS.—

(1) ELECTRIC UTILITY STEAM GENERATING UNITS.—

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990.”

(6) modifying section 126 by:

(A) revising subsection (b) by replacing “section 110(a)(2)(D)(ii) or this section” with “section 110(a)(2)(D)(i)”;

(B) revising subsection (c)(1) by replacing “this section and the prohibition of section 110(a)(2)(D)(ii)” with “the prohibition of section 110(a)(2)(D)(i)”;

(C) revising subsection (c), flush language at end, by replacing “section 110(a)(2)(D)(ii)” with “section 110(a)(2)(D)(i)” and deleting the last sentence; and

(D) adding subsection (d) to read as follows:

“(d)(1) For purposes of this subsection, the term “affected unit” means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(2) To the extent that any petition submitted under subsection (b) after the date of

enactment of the Clear Skies Act of 2002 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary—

(A) In determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the petitioning State or political subdivision.

(B) The Administrator may not determine that affected units emit or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that:

(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify; and

(ii) reductions in such emissions will improve air quality in the petitioning state's nonattainment area(s) at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination. In making this determination, the Administrator will use the best available peer reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political 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 January 31, 2009.

(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2012."

(b) Title III of the Clean Air Act is amended by modifying section 307(d)(1)(G) to read as follows:

"(G) the promulgation or revision of any regulation under title IV."

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

(1) amended by renumbering sections 401 through 403 as sections 701 through 703, respectively; and

(2) renumbered as title VII.

(d) Title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended by modifying section 821(a) to read as follows:

"(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after November 15, 1990 to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR part 75 (2001), amended as appropriate by the Administrator."

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. MCCAIN, Mr. DEWINE, Ms. LANDRIEU, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HATCH, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. TORRICELLI, Mr. DURBIN, Mr. MURKOWSKI, and Mr. KERRY):

S. 2816. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Foreign and Armed Services Tax Fairness Act of 2002, FAST Fairness, that will not only correct inequities in the current tax code our military men and women are subject to, but it will also provide incentives for our dedicated forces to continue their service to America.

On July 9, 2002, the House passed unanimously a bill, H.R. 5063, that provided limited relief to military personnel. The bill would provide a special rule for members of the armed forces in determining the exclusion of gain from the sale of a principal residence and would restore the tax-exempt status of death gratuity payments to members of the armed forces. I support the efforts of the House, but believe we can go farther.

These are the men and women that put their lives on the line for our freedom on a daily basis. We need to ensure that laws that we here in Congress pass do not negatively impact them. We should also develop sound policy that serves as an incentive for our youth to follow in the steps of the men and women that went before them to defend our country.

It is with these principles in mind that I move forward with this military tax package and incorporate additional provisions already introduced by my colleagues. I would now like to describe the provisions that I have chosen to include in this critical piece of legislation:

On July 24, 2002, Senator CARNAHAN introduced S. 2783, which would restore the tax exempt status of all death gratuity payments. This proposal is similar to the provision included in H.R. 5063.

Why is this provision so important? Under current law, death gratuity benefits are excludable from income only to the extent that they were as of September 9, 1986. In 1986, the death gratuity benefit was \$3,000. In 1991, the benefit was increased to \$6,000, but the tax code was never adjusted to exclude the additional \$3,000 from income. Because of this oversight, the U.S. government has been taxing families for the death of a family member who died in combat. This is just wrong.

I support the provisions of H.R. 5063 and S. 2783, therefore I have included them in this piece of legislation.

In 1997, Congress passed legislation revising the taxation of capital gains on the sale of a person's principal residence. The new rule is that up to

\$250,000, \$500,000 per couple, is excluded on that sale of a principal residence if the individual has lived in the house for at least two of the previous five years.

However, when enacted, Congress failed to provide a special rule for military and Foreign Service personnel who are required to move either within the U.S. or abroad. Senators MCCAIN and GRAHAM both have introduced legislation to address this oversight.

I agree that we should adjust the rule for our service men and women. We shouldn't penalize them for choosing to serve our country. My proposal would permit service personnel and members of the Foreign Service to suspend the five-year period while away on assignment, meaning those years would count toward neither the two years nor the five year periods. This is a also similar to provisions on H.R. 5063.

The Department of Defense provides payments to members of the Armed Services to offset diminution in housing values due to military base realignment or closure. For example, if a house near a base was worth \$180,000 prior to the base closure and \$100,000 after the base closure, DOD may provide the owner with a payment to offset some, but not all of the \$80,000 diminution in value. Under current law, those amounts are taxable as compensation.

There will be another round of base closures in the near future. That fate was decided in the FY2002 Defense Authorization bill. We should ensure that those men and women losing value in their homes due to a federal government decision are not adversely affected financially. The proposal would provide that payments for lost value are not includible into income. Recently, Senator CLELAND introduced a package that included this provision. I thank him for his unending pursuit to provide military personnel with the best quality of life available. And, I'm happy to include this provision in my legislation.

Under current law, military personnel in a combat zone are afforded an extended period for filing tax returns. However, this does not apply to contingency operations. This proposal would extend the same benefits to military personnel assigned to contingency operations.

It can't be easy trying to figure out our complicated tax system while you are overseas and protecting our nation's freedom. Those men and women that have been sent to uphold freedom in other countries are confronted with similar circumstances, such as in Operation Just Cause in Panama, 1989, or in Operation Restore Hope in Somalia in 1992 and 1993, or in Operation Uphold Democracy in Haiti, 1994. Contingency operations are just as demanding as combat zone deployment, although not always in the same manner. I would like to thank Senator JOHNSON for introducing S. 2785. It is important that we support all our troops when they are overseas.

Some reservists who travel one week-end per month and two weeks in the summer for reserve duty incur significant travel and lodging expenses. Under current law, these are deductible as itemized deductions but must exceed 2 percent of adjusted gross income. For lower income reservists, this deduction does not provide a benefit, because they do not itemize. For higher income reservists, the 2 percent floor limits the amount of the benefit of the deductions.

In my home state of Montana, we have approximately 3500 reservists, 800 of which travel each month across the State for their training. These 800 reservists pay out of their own pocket the expense for travel, and hotel rooms. In Montana we rank 48th in the Nation for per capita personal income. I know it can't be easy for Montanans to incur approximately \$200 in expenses each and every month. Yet, they continue selflessly to provide their services to our country at their own expense. For those reservists that travel out of State for their training, this expense is higher on average. This proposal would provide an above the line deduction for overnight travel costs and would be available for all reservists and members of the National Guard.

This issue is currently addressed in S. 540, which Senator DEWINE introduced back in March of 2001. I can't tell you just how many people have contacted our office in support of this bill. I support what this bill does and I am glad that we can include some of its provisions in my military tax package.

Recently, Senator HARKIN introduced S. 2789, which would expand the membership for Veteran's organizations. Currently, qualified veterans' organizations under section 501(c)(19) of the tax code are both tax-exempt and contributions to the organization are tax-deductible. In order to qualify under 501(c)(19), the organization must meet several tests, including 75 percent of the members must be current or former active military, and substantially all of the members must be either current or former active military or widows of former active military. The proposal would permit lineal descendants and ancestors to qualify for the "substantially all" test.

It is important that our veterans' organizations continue the good work that they do. But, as the organizations age, they are in danger of losing their tax-exempt status. I support Senator HARKIN's bill, as does the American Legion. I have included it in my tax package.

Finally, I want to ensure that women in the military can continue their dedicated service even once they have entered motherhood knowing that their children are being well taken care of. The military provides extensive childcare benefits to its employees. DOD employees at DOD-owned facilities provide childcare services while other areas contract out their childcare.

When Congress passed the Tax Reform Act of 1986, we included a provision stating that qualified military benefits are excluded from income. It is not absolutely clear whether child care provisions are covered under this provision. The proposal would clarify that any childcare benefit provided to military personnel would be excludable from income. Senator LANDRIEU has introduced S. 2807, a similar measure. I support this measure and am proud to include it in this piece of legislation.

It is my intention to mark-up this legislation soon in hopes that we can move it through the Senate quickly. It is important that we continue to show members of the armed forces our support and solidarity during this time of conflict. The War on Terrorism has brought to light the essential role the armed services play in upholding freedom throughout the world. I would like to see a military tax equity bill signed into law by the President before the end of the year.

Mr. President, I ask consent that the text of the bill be printed in the RECORD.

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

S. 2816

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

**SECTION 1. SHORT TITLE; ETC.**

(a) **SHORT TITLE.**—This Act may be cited as the "Foreign and Armed Services Tax Fairness Act of 2002".

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

- Sec. 1. Short title; etc.
- Sec. 2. Restoration of full exclusion from gross income of death gratuity payment.
- Sec. 3. Special rule for members of uniformed services and Foreign Service in determining exclusion of gain from sale of principal residence.
- Sec. 4. Qualified military base realignment and closure fringe benefit.
- Sec. 5. Extension of tax filing delay provisions to military personnel serving in contingency operations.
- Sec. 6. Deduction of certain expenses of members of the reserve component.
- Sec. 7. Modification of membership requirement for exemption from tax for veterans' organizations.
- Sec. 8. Clarification of the treatment of dependent care assistance programs sponsored by the Department of Defense for members of the Armed Forces of the United States.

**SEC. 2. RESTORATION OF FULL EXCLUSION FROM GROSS INCOME OF DEATH GRATUITY PAYMENT.**

(a) **IN GENERAL.**—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph:

"(C) **EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.**—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986."

(b) **CONFORMING AMENDMENT.**—Subparagraph (A) of section 134(b)(3) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to deaths occurring after September 10, 2001.

**SEC. 3. SPECIAL RULE FOR MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE IN DETERMINING EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.**

(a) **IN GENERAL.**—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

"(9) **MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.**—

"(A) **IN GENERAL.**—At the election of an individual with respect to a property, the running of the 5-year period described in subsection (a) with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service.

"(B) **MAXIMUM PERIOD OF SUSPENSION.**—The 5-year period described in subsection (a) shall not be extended more than 5 years by reason of subparagraph (A).

"(C) **QUALIFIED OFFICIAL EXTENDED DUTY.**—For purposes of this paragraph—

"(i) **IN GENERAL.**—The term 'qualified official extended duty' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

"(ii) **UNIFORMED SERVICES.**—The term 'uniformed services' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

"(iii) **FOREIGN SERVICE OF THE UNITED STATES.**—The term 'member of the Foreign Service' has the meaning given the term 'member of the Service' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980.

"(iv) **EXTENDED DUTY.**—The term 'extended duty' means any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

"(D) **SPECIAL RULES RELATING TO ELECTION.**—

"(i) **ELECTION LIMITED TO 1 PROPERTY AT A TIME.**—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

"(ii) **REVOCATION OF ELECTION.**—An election under subparagraph (A) may be revoked at any time."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to elections made after the date of the enactment of this Act for suspended periods under section 121(d)(9) of the Internal Revenue Code of 1986 (as added by this section) beginning after such date.

**SEC. 4. QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE BENEFIT.**

(a) **IN GENERAL.**—Section 132(a) (relating to the exclusion from gross income of certain fringe benefits) is amended by striking "or" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting " or" and by adding at the end the following new paragraph:

“(8) qualified military base realignment and closure fringe.”.

(b) **QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.**—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) **QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.**—For purposes of this section, the term ‘qualified military base realignment and closure fringe’ means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to offset the adverse effects on housing values as a result of a military base realignment or closure.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

**SEC. 5. EXTENSION OF TAX FILING DELAY PROVISIONS TO MILITARY PERSONNEL SERVING IN CONTINGENCY OPERATIONS.**

(a) **IN GENERAL.**—Section 7508(a) (relating to time for performing certain acts postponed by reason of service in combat zone) is amended—

(1) by inserting “or when deployed outside the United States away from the individual’s permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law” after “section 112”;

(2) by inserting in the first sentence “or at any time during the period of such contingency operation” after “for purposes of such section”;

(3) by inserting “or operation” after “such an area”, and

(4) by inserting “or operation” after “such area”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 7508(d) is amended by inserting “or contingency operation” after “area”.

(2) The heading for section 7508 is amended by inserting “**or contingency operation**” after “**combat zone**”.

(3) The item relating to section 7508 in the table of sections for chapter 77 is amended by inserting “or contingency operation” after “combat zone”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

**SEC. 6. DEDUCTION OF CERTAIN EXPENSES OF MEMBERS OF THE RESERVE COMPONENT.**

(a) **DEDUCTION ALLOWED.**—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

“(p) **TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.**—For purposes of subsection (a), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business during any period for which such individual is away from home in connection with such service.”.

(b) **DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.**—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

“(E) **CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF**

**THE UNITED STATES.**—The deductions allowed by section 162 which consist of expenses, in amounts not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2001.

**SEC. 7. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR VETERANS’ ORGANIZATIONS.**

(a) **IN GENERAL.**—Subparagraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking “or widowers” and inserting “, widowers, or ancestors or lineal descendants”.

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

**SEC. 8. CLARIFICATION OF THE TREATMENT OF DEPENDENT CARE ASSISTANCE PROGRAMS SPONSORED BY THE DEPARTMENT OF DEFENSE FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.**

(a) **IN GENERAL.**—Section 134(b) (defining qualified military benefit) is amended by adding at the end the following new paragraph:

“(4) **CLARIFICATION OF CERTAIN BENEFITS.**—For purposes of paragraph (1), such term includes any dependent care assistance program sponsored by the Department of Defense for members of the Armed Forces of the United States.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 3121(a)(18) is amended by striking “or 129” and inserting “, 129, or 134(b)(4)”.

(2) Section 3306(b)(13) is amended by striking “or 129” and inserting “, 129, or 134(b)(4)”.

(3) Section 3401(a)(18) is amended by striking “or 129” and inserting “, 129, or 134(b)(4)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

(d) **NO INFERENCE.**—No inference may be drawn from the amendments made by this section with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2002.

By Mr. KENNEDY (for himself,  
Mr. HOLLINGS, Mr. BOND, and  
Ms. MIKULSKI):

S. 2817. A bill to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased to introduce today the National Science Foundation Doubling Act. This important legislation has been crafted with the extensive cooperation of the Senator HOLLINGS, Chairman of the Senate Committee on Commerce, Science, and Transportation, Senator MIKULSKI and Senator BOND, the respective Chair and Ranking Member of the Senate Committee on

Appropriations Subcommittee on Veterans Affairs, Housing and Urban Development, and Independent Agencies. I commend each of them for their leadership in federal support for the sciences.

The National Science Foundation, NSF, has two key missions, and it carries both of them out well. It supports basic research and development in math, science, engineering, and technology, and it promotes math and science learning at every level, from K-12 through post-graduate education.

NSF has funded basic research leading to the creation of speech recognition software, MRI machines, and even World Wide Web browsers such as Netscape and Microsoft’s Internet Explorer. In education, NSF initiatives of the late 1980s were the forerunners of the standards-based school reform movement embraced throughout the Nation today.

We can and should build on NSF’s distinguished record in improving the lives of millions of Americans. The 20th Century was the era of the industrial age, and the 21st Century will be the era of information technology and the life sciences. With the leadership of Senator HARKIN and others, we have doubled the budget of the National Institutes of Health over the last five years. We should do the same for NSF. We should double our support for research and development in theoretical mathematics and the physical sciences, because they support advances in the health sciences and because they are also valuable in their own right.

As former Senator Glenn has pointed out so frequently, we need to do much more to interest young minds in math and science and recruit tomorrow’s scientists and engineers. Over the next 10 years, the number of jobs requiring technical skills will grow by 50 percent. Unfortunately, high school student performance on math and science exams is alarmingly low. The number of American students studying the sciences at the post-secondary level is flat. Too many women and minorities continue to shy away from the sciences.

The bill we are introducing today authorizes a doubling of the NSF budget over the next five years. It makes sense to match the growth of NIH. As we enhance research and development in the life sciences, we should also be strengthening research and development in the physical sciences.

This legislation also builds on NSF’s Systemic Initiatives by supporting a Secondary School Systemic Initiative to develop models to improve high school student math and science performance and preparation for college-level or technical work.

The bill supports model Math and Science Partnerships between institutions of higher education and local school districts to improve the knowledge and teaching techniques of current math and science teachers.

The bill supports institutions of higher education in increasing the

number of students, particularly women and minorities, who study toward and obtain degrees in science, math, engineering, and technology.

Finally, the bill reforms NSF's program on major research and facilities equipment, to help prioritize projects and guard against cost overruns and non-merit reviewed proposals.

Scientific discovery and development continues to set America apart from other Nations and is one of our enduring legacies. The National Science Foundation Doubling Act is a solid piece of legislation building on our Nation's history in the sciences and promoting a better future. It deserves to be considered quickly, and I believe favorably, by the United States Senate.

Mr. HOLLINGS. Mr. President, I join my colleagues, Senator KENNEDY, and Senator MIKULSKI and Senator BOND, in introducing this bill to authorize the National Science Foundation through FY 2007. My friends and I represent three Committees with a strong interest in NSF, and we chose a straightforward title for the name of this bill, the NSF Doubling Act, because our intentions our simple and straightforward. Congress's intent is to double NSF's budget by fiscal year 2007. NSF is the Nation's premier federal science agency that invests in basic research across all disciplines that is on the frontiers of science. In 1945, Vannevar Bush's report for President Roosevelt led to the establishment of the National Science Foundation. Since then, this nation has been on a path of solid investment in the scientific research that underlies our future economic health and well being. It's no mistake that Alan Greenspan and other important economists have noted that more than one-half of our Nation's economic growth since World War I has stemmed from technology driven by science.

By next year, we in Congress will have succeeded in our goal to double the budget of the National Institutes of Health. I applaud that effort. But as scientific disciplines have become fundamentally interdependent, advances in the health sciences necessarily depend on advances in math, computer science, and engineering. NSF is the only Federal agency specifically charged with ensuring a broad and deep base of fundamental knowledge across disciplines. This mission is critical to technological innovation, our economy, and our general health and welfare as a Nation.

I have said that our intentions are simple and straightforward. So let me set out three simple reasons why this doubling is vital to our future:

The first concerns our security. Not only does NSF fund areas, such as cyber security, that are critical to protecting our nation, but NSF is the agency that takes the lead in ensuring that this country has sufficient human capital to ensure our continued world leadership in science and technology. The Hart-Rudman Commission on National Security warned that our failure

to invest in science and to reform math and science education was the second biggest threat to our national security, only the threat of a weapon of mass destruction in an American city was a greater danger. NSF invests in math and science education from kindergarten all the way through to the post-doctoral level and beyond. This bill allows the Foundation to increase that investment, while reaffirming our commitment to women, minorities, and people with disabilities. These under-represented groups, together, make up more than half of our Nation's work force and are only increasing. Letting these groups fall by the wayside would not only threaten our economic competitiveness, but also our national security.

Second pertains to our economy. I have already talked about science and technology driving our economic growth. Let me give just one example of how NSF's investments can spur our economy. NSF is the leading agency in the National Nanotechnology Initiative. Nanotechnology, which is the science of manipulating matter at the atomic and molecular level, will cut across every scientific discipline, including materials and manufacturing, healthcare and medicine, energy and the environment, agriculture, biotechnology, information technology, and national security. Worldwide, the market for nanotechnology is expected to be \$1 trillion annually within 10 to 15 years. NSF's cross-disciplinary approach, which includes groundbreaking research into the way society and this new technology will interact, will help this nation take advantage of Nanotechnology sooner, better, and with greater confidence.

The third involves basic research. NSF is responsible for the overall health and well-being of the research enterprise in this country. One way NSF does this is through continued support for the EPSCoR program. EPSCoR supports the development of the science and technology resources of individual States like South Carolina, through partnerships that involve the State's universities, industry, government, and the Federal research and development enterprise. For example, NSF supports an Engineering Research Center focused on advanced fibers and films at Clemson University that, through partnerships and continued investment over the next 10 years, will make Clemson the national leader in advanced fibers and films technologies.

I think these arguments are solid, simple, and straightforward. We can talk about NSF's past outstanding contributions to science. We can talk about the future and the importance of science and technology to our economy. But, where the rubber meets the road, we have to stop talking and invest, with real money, in the science and engineering enterprise that will guaranty the health, economic viability, and security of our future. I, for one, appreciate the hard work that

NSF has done over the past 52 years promoting the progress of science, and I urge my Senate colleagues to support me in providing this agency the resources needed to conquer tomorrow.

Mr. BOND. Mr. President, I rise today to express my strong support for the National Science Foundation Doubling Act of 2002. As an original co-sponsor, I am pleased to join my colleagues, Senators KENNEDY, HOLLINGS, and MIKULSKI in introducing this important legislation that will strengthen the long-term economic competitiveness and health of our Nation. As an appropriator and as an authorizer of NSF, I have a special interest in NSF and the basic science research it supports. I believe this bill underscores the critical role NSF plays in the economic and intellectual growth and well-being of this Nation.

As many of my colleagues know, Senator MIKULSKI and I have led a bipartisan, bi-cameral effort to double NSF's budget and this reauthorization bill further supports our doubling effort over a five-year period. NSF is funding innovative and cutting-edge research in nanotechnology, plant biotechnology, and information technology. Doubling NSF's funding is not only important for these research programs but also in the area of education. NSF plays a valuable role in supporting math and science education and developing the Nation's supply of scientists and engineers in this country.

Unfortunately, despite our efforts on the appropriations committee, the Federal Government has not provided adequate support to NSF and the physical sciences in general. I believe the lack of adequate support for the physical sciences puts our Nation's capabilities for scientific innovation at risk and, equally important, at risk of falling behind other industrial nations.

Further, doctors throughout Missouri and the country have told me that despite the tremendous support we have provided for the life sciences, their research in the biomedical field will stagnate without adequate government support of the physical sciences that NSF supports. Many medical technologies such as magnetic resonance imaging, ultrasound, digital mammography and genomic mapping could not have occurred, and cannot improve to the next level of proficiency, without NSF-supported work in biology, physics, chemistry, mathematics, engineering, and computer sciences. Simply put: supporting NSF supports NIH.

The high-tech industry also in concerned about NSF funding because they are struggling to find qualified home-grown engineers and scientists and becoming more reliant on foreign nationals to fill their positions. Many notable researchers in the high-tech industry have told me that the significant shortages of trained American engineers and scientists have limited the growth potential of the electronics and software industries and allowed foreign

competitors to catch up to U.S. industry capabilities.

To address the development of tech talent in this country, NSF provides a wide array of support to preK–12, undergraduate, and graduate level schools. One new important tool is the Math and Science partnership program—a new joint program between NSF and the Department of Education. This program encourages partnerships among local school systems, higher education entities, and other organizations to improve student outcomes in math and science for all students.

Another important tool that I support is the tech talent program. This program was initiated at the urging of me and my Senate colleagues—Senators LIEBERMAN, FRIST, MIKULSKI, and DOMENICI. Last year, we introduced S. 1549, the Tech Talent Act to improve undergraduate education in math, science, engineering, and technology. We provided \$5 million in the Fiscal Year 2002 VA–HUD and Independent Agencies Appropriations Act to jumpstart this important initiative and another \$20 million was added in the fiscal year 2003 bill that passed the Appropriations Committee last week. NSF has already received 177 applications requesting an aggregate sum of almost \$60 million.

Lastly, I am very supportive of efforts to improve the accountability of NSF's programs and activities—especially those projects funded through the major research equipment and facilities construction account. The bill includes a number of provisions to ensure that funding decisions on large research facilities are done in a rationale and understandable manner.

Before the bill reaches the floor, I hope to work with my colleagues on addressing other issues related to the National Science Board. As the budget for NSF grows, it is important that the Board has the tools it needs to fulfill its statutory responsibilities. Specifically, we need to provide the chairman of the Board the authority to hire its own staff to support the Board's oversight and policy-making responsibilities and to ensure that it can provide the Congress and the President with independent science policy advice. These tools will also ensure that the Board is not a "rubber stamp" for the Director of NSF.

I urge my colleagues to support this bill. I understand that some of my colleagues have concerns about the bill, but I believe that overall, this is a good bill. I look forward to working with my colleagues in the Senate and the House in moving a strong bipartisan NSF reauthorization bill and in advancing our effort to double NSF's budget.

I thank the Chair.

#### NOTICES OF HEARINGS/MEETINGS

##### COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday,

July 30, 2002, at 10 a.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on a Legislative Proposal of the Department of Interior/Tribal Trust Fund Reform Task Force; to be followed immediately by a second hearing on S. 2212, A bill to establish a direct line of authority for the Office of Trust Reform Implementations and Oversight to oversee the management and reform of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and to advance tribal management of such funds and assets, pursuant to the Indian Self-Determination Act and for other purposes.

##### COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, August 1, 2002, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the Interior Secretary's Report on the Hoopa Yurok Settlement Act.

The Committee will meet again on Thursday, August 1, 2002, at 2 p.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on Problems Facing Native Youth.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

##### COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Friday, August 2, 2002, at 2 p.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on S. 958, A bill to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

#### EXECUTIVE SESSION

##### EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 884, 885, 886, 890, 891, 892, 893, 904, 905, 910, 912, 913, 914, 915, 916, 917, 918, 919, and 920; that the nominations be confirmed, the motion to reconsider be laid upon the table, any statements thereon be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

##### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Jeffrey D. Wallin, of California, to be a Member of the National Council on the Hu-

manities for a term expiring January 26, 2006.

Wilfred M. McClay, of Tennessee, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Thomas Mallon, of Connecticut, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

##### DEPARTMENT OF JUSTICE

Lawrence A. Greenfield, of Maryland, to be Director of the Bureau of Justice Statistics.

Anthony Dichio, of Massachusetts, to be United States Marshal for the District of Massachusetts for the term of four years.

Michael Lee Kline, of Washington, to be United States Marshal for the Eastern District of Washington for the term of four years.

James Thomas Roberts, Jr., of Georgia, to be United States Marshal for the Southern District of Georgia for the term of four years.

##### FARM CREDIT ADMINISTRATION

Fred L. Dailey, of Ohio, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

Grace Trujillo Daniel, of California, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

##### CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

J. Russell George, of Virginia, to be Inspector General, Corporation for National and Community Service.

##### DEPARTMENT OF JUSTICE

Marcos D. Jimenez, of Florida, to be United States Attorney for the Southern District of Florida for the term of four years.

Miriam F. Miquelon, of Illinois, to be United States Attorney for the Southern District of Illinois.

James Robert Dougan, of Michigan, to be United States Marshal for the Western District of Michigan for the term of four years.

George Breffni Walsh, of Virginia, to be United States Marshal for the District of Columbia for the term of four years.

##### FEDERAL MEDIATION AND CONCILIATION SERVICE

Peter J. Hurtgen, of Maryland, to be Federal Mediation and Conciliation Director.

##### NATIONAL COUNCIL ON DISABILITY

Robert Davila, of New York, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

##### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Earl A. Powell III, of Virginia, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

Naomi Shihab Nye, of Texas, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Michael Paek, of Maryland, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

##### PERSIAN GULF WAR POW/MIA ACCOUNTABILITY ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 452, S. 1339.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows: A bill (S. 1339) to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on the Judiciary, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics)

*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 "Persian Gulf War POW/MIA Accountability Act of 2001".

#### SEC. 2. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

(a) ASYLUM PROGRAM.—The Bring Them Home Alive Act of 2000 (Public Law 106-484; 114 Stat. 2195; 8 U.S.C. 1157 note) is amended by inserting after section 3 the following new section:

#### "SEC. 3A. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

"(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

"(b) ELIGIBILITY.—Refugee status shall be granted under subsection (a) to—

"(1) any alien who—

"(A) is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State); and

"(B) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

"(2) any parent, spouse, or child of an alien described in paragraph (1)."

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—*Except as provided in paragraph (2), an alien described in this subsection is—*

"(A) any alien who—

"(i) is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State); and

"(ii) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

"(B) any parent, spouse, or child of an alien described in subparagraph (A).

"(2) EXCEPTIONS.—*An alien described in this subsection does not include a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, or a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)).*

"(c) DEFINITIONS.—In this section:

"(1) AMERICAN PERSIAN GULF WAR POW/MIA.—

"(A) IN GENERAL.—*Except as provided in subparagraph (B), the term 'American Persian Gulf War POW/MIA' means an individual—*

"(i) who is a member of a uniformed service within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Persian Gulf War, or any successor conflict, operation, or action; or

"(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Persian Gulf War, or any successor conflict, operation, or action.

"(B) EXCLUSION.—*Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual's post of duty without authority.*

"(2) MISSING STATUS.—*The term 'missing status', with respect to the Persian Gulf War, or any successor conflict, operation, or action, means the status of an individual as a result of the Persian Gulf War, or such conflict, operation, or action, if immediately before that status began the individual—*

"(A) was performing service in Kuwait, Iraq, or another nation of the Greater Middle East Region; or

"(B) was performing service in the Greater Middle East Region in direct support of military operations in Kuwait or Iraq.

"(3) PERSIAN GULF WAR.—*The term 'Persian Gulf War' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.'*

(b) BROADCASTING INFORMATION.—Section 4(a)(2) of that Act is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) Iraq, Kuwait, or any other country of the Greater Middle East Region (as determined by the International Broadcasting Bureau in consultation with the Attorney General and the Secretary of State)."

Mr. REID. Mr. President, I ask unanimous consent that the committee amendment be agreed to; the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, all with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (S. 1339), as amended, was read the third time and passed.

#### FILING OF COMMITTEE-REPORTED LEGISLATIVE AND EXECUTIVE CALENDAR BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that during the recess or adjournment of the Senate, Senate committees may file committee-reported Legislative and Executive Calendar business on Wednesday, August 28, 2002, during the hours of 10 a.m. to 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDERS FOR TUESDAY, JULY 30, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10:30 a.m., Tuesday, July 30; that on Tuesday, following the

prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that the Senate then proceed to a period of morning business until 11:30 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half controlled by the majority leader or his designee, and the second half controlled by the Republican leader or his designee; that at 11:30 a.m. the Senate resume consideration of S. 812, with the time until 12:30 p.m. equally divided and controlled between Senators KENNEDY and MCCONNELL or their designees; that the Senate stand in recess from 12:30 p.m. to 2:15 p.m. for the regular party conferences; and that the mandatory quorum required under rule XXII be waived with respect to the two cloture motions filed.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 7:37 p.m., adjourned until Tuesday, July 30, 2002, at 10:30 a.m.

#### CONFIRMATIONS

Executive nominations confirmed by the Senate July 29, 2002:

##### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JEFFREY DE. WALLIN, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006.

WILFRED M. MCCLAY, OF TENNESSEE, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006.

THOMAS MALLON, OF CONNECTICUT, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2004.

##### FARM CREDIT ADMINISTRATION

FRED L. DAILEY, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

GRACE TRUJILLO DANIEL, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

##### CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

J. RUSSELL GEORGE, OF VIRGINIA, TO BE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

##### FEDERAL MEDIATION AND CONCILIATION SERVICE

PETER J. HURTGEN, OF MARYLAND, TO BE FEDERAL MEDIATION AND CONCILIATION DIRECTOR.

##### NATIONAL COUNCIL ON DISABILITY

ROBERT DAVILA, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

##### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

EARL A. POWELL III, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 2006.

NAOMI SHIHAB NYE, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006.

MICHAEL PACK, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2004.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

## THE JUDICIARY

JULIA SMITH GIBBONS, OF TENNESSEE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

JOY FLOWERS CONTI, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

JOHN E. JONES III, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

## DEPARTMENT OF JUSTICE

LAWRENCE A. GREENFELD, OF MARYLAND, TO BE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS.

ANTHONY DICHIO, OF MASSACHUSETTS, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MASSACHUSETTS FOR THE TERM OF FOUR YEARS.

MICHAEL LEE KLINE, OF WASHINGTON, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS.

JAMES THOMAS ROBERTS, JR., OF GEORGIA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.

MARCOS D. JIMENEZ, OF FLORIDA, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

MIRIAM F. MIQUELON, OF ILLINOIS, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF ILLINOIS.

JAMES ROBERT DOUGAN, OF MICHIGAN, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF MICHIGAN FOR THE TERM OF FOUR YEARS.

GEORGE BREFFNI WALSH, OF VIRGINIA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS.