

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 131

To amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. INHOFE

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Clear Skies Act of 2005”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Emission reduction programs.

“TITLE IV—EMISSION REDUCTION PROGRAMS

2

“PART A—GENERAL PROVISIONS

- “Sec. 401. Definitions.
- “Sec. 402. Allowance system.
- “Sec. 403. Permits and compliance plans.
- “Sec. 404. Monitoring, reporting, and recordkeeping requirements.
- “Sec. 405. Excess emissions penalty; general compliance with other provisions; enforcement.
- “Sec. 406. Election for additional units.
- “Sec. 407. Clean coal technology regulatory incentives.
- “Sec. 408. Electricity reliability.

“PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

“SUBPART 1—ACID RAIN PROGRAM

- “Sec. 411. Definitions.
- “Sec. 412. Allowance allocation.
- “Sec. 413. Phase I sulfur dioxide requirements.
- “Sec. 414. Phase II sulfur dioxide requirements.
- “Sec. 415. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu.
- “Sec. 416. Election for additional sources.
- “Sec. 417. Auctions, reserve.
- “Sec. 418. Industrial sulfur dioxide emissions.
- “Sec. 419. Termination.

“SUBPART 2—CLEAR SKIES SULFUR DIOXIDE ALLOWANCE PROGRAM

- “Sec. 421. Definitions.
- “Sec. 422. Applicability.
- “Sec. 423. Limitations on total emissions.
- “Sec. 424. Egu 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. EGU allocations.

“PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

“SUBPART 1—ACID RAIN PROGRAM

- “Sec. 441. Nitrogen oxides emission reduction program.
- “Sec. 442. Termination.

“SUBPART 2—CLEAR SKIES NITROGEN OXIDES ALLOWANCE PROGRAM

- “Sec. 451. Definitions.
- “Sec. 452. Applicability.
- “Sec. 453. Limitations on total emissions.
- “Sec. 454. EGU allocations.
- “Sec. 455. Nitrogen oxides early action reduction credits.

“SUBPART 3—OZONE SEASON NO_x BUDGET PROGRAM

- “Sec. 461. Definitions.
- “Sec. 462. General provisions.
- “Sec. 463. Applicable implementation plan.
- “Sec. 464. Termination of Federal administration of NO_x trading program for EGUs.
- “Sec. 465. Carryforward of pre-2008 nitrogen oxides allowances.
- “Sec. 466. Non-ozone season voluntary action credits.

“PART D—MERCURY EMISSIONS REDUCTIONS

- “Sec. 471. Definitions.
- “Sec. 472. Applicability.
- “Sec. 473. Limitations on total emissions.
- “Sec. 474. EGU allocations.
- “Sec. 475. Mercury early action reduction credits.

“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 requirements and best available retrofit control technology requirements; applicability to affected units.

Sec. 3. Other amendments.

1 SEC. 2. EMISSION REDUCTION PROGRAMS.

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

**5 “TITLE IV—EMISSION
6 REDUCTION PROGRAMS**

7 “PART A—GENERAL PROVISIONS

8 “SEC. 401. DEFINITIONS.

9 “In this title:

10 “(1) AFFECTED EGU.—The term ‘affected
11 EGU’ shall have the meaning set forth in section
12 421, 430, 451, or 471, as appropriate.

1 “(2) AFFECTED FACILITY.—The term ‘affected
2 facility’ or ‘affected source’ means a facility or
3 source that includes one or more affected units.

4 “(3) AFFECTED UNIT.—The term ‘affected
5 unit’ means—

6 “(A) under this part, a unit that is subject
7 to emission reduction requirements or limita-
8 tions under part B, C, or D or, if applicable,
9 under a specified part or subpart; or

10 “(B) under subpart 1 of part B or subpart
11 1 of part C, a unit that is subject to emission
12 reduction requirements or limitations under
13 that subpart.

14 “(4) ALLOWANCE.—The term ‘allowance’
15 means—

16 “(A) an authorization, by the Adminis-
17 trator under this title, to emit one ton of sulfur
18 dioxide, one ton of nitrogen oxides, or one
19 ounce of mercury; or

20 “(B) under subpart 1 of part B, an au-
21 thorization by the Administrator under this
22 title, to emit one ton of sulfur dioxide.

23 “(5) BASELINE HEAT INPUT.—

24 “(A) IN GENERAL.—The term ‘baseline
25 heat input’ means, except under subpart 1 of

1 part B and section 406, the average annual
2 heat input used by a unit during the three
3 years in which the unit had the highest heat
4 input for the period 1998 through 2002.

5 “(B) COMMENCEMENT OF OPERATION AFTER
6 JANUARY 1, 2001.—Notwithstanding subparagraph
7 (A), if a unit commenced or commences operation on
8 or after January 1, 2001, then ‘baseline heat input’
9 means the manufacturer’s design heat input capacity
10 for the unit multiplied by 80 percent for coal-fired
11 units, 50 percent for boilers that are not coal-fired,
12 80 percent for combustion turbine cogeneration
13 units elected under section 406, 50 percent for com-
14 bustion turbines other than simple cycle turbines,
15 and 5 percent for simple cycle combustion turbines.

16 “(C) HEAT INPUT DETERMINATION.—A unit’s
17 heat input for a year shall be the heat input—

18 “(i) required to be reported under section
19 404 for the unit, if the unit was required to re-
20 port heat input during the year under that sec-
21 tion;

22 “(ii) reported to the Energy Information
23 Administration for the unit, if the unit was not
24 required to report heat input under section 404;

1 “(iii) based on data for the unit reported
2 to the State where the unit is located as re-
3 quired by State law, if the unit was not re-
4 quired to report heat input during the year
5 under section 404 and did not report to the En-
6 ergy Information Administration; or

7 “(iv) based on fuel use and fuel heat con-
8 tent data for the unit from fuel purchase or use
9 records, if the unit was not required to report
10 heat input during the year under section 404
11 and did not report to the Energy Information
12 Administration and the State.

13 “(D) REGULATIONS.—Not later than three
14 months after the enactment of the Clear Skies Act
15 of 2005, the Administrator shall promulgate regula-
16 tions, without notice and opportunity for comment,
17 specifying the format in which the information under
18 subparagraph (B) and clauses (ii), (iii), and (iv) of
19 subparagraph (C) shall be submitted. Not later than
20 nine months after the enactment of the Clear Skies
21 Act of 2005, the owner or operator of any unit
22 under subparagraph (B) or clauses (ii), (iii), or (iv)
23 of subparagraph (C) to which allowances may be al-
24 located under section 424, 434, 454, or 474 shall
25 submit to the Administrator such information. The

1 Administrator is not required to allocate allowances
2 under such sections to a unit for which the owner
3 or operator fails to submit information in accordance
4 with the regulations promulgated under this sub-
5 paragraph.

6 “(6) COAL.—The term ‘coal’ means any solid
7 fuel classified as anthracite, bituminous, subbitu-
8 minous, or lignite.

9 “(7) COAL-DERIVED FUEL.—The term ‘coal-de-
10 rived fuel’ means any fuel (whether in a solid, liquid,
11 or gaseous state) produced by the mechanical, ther-
12 mal, or chemical processing of coal.

13 “(8) COAL-FIRED.—The term ‘coal-fired’ with
14 regard to a unit means, except under subpart 1 of
15 part B, subpart 1 of part C, and sections 424 and
16 434, combusting coal or any coal-derived fuel alone
17 or in combination with any amount of any other fuel
18 in any year.

19 “(9) COGENERATION UNIT.—The term ‘cogen-
20 eration unit’ means, except under subpart 1 of part
21 B and subpart 1 of part C, a unit that produces
22 through the sequential use of energy—

23 “(A) electricity; and

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

4 “(10) COMBUSTION TURBINE.—

5 “(A) IN GENERAL.—The term ‘combustion
6 turbine’ means any combustion turbine that is
7 not self-propelled.

8 “(B) INCLUSION.—The term ‘combustion
9 turbine’ includes a simple cycle combustion tur-
10 bine, a combined cycle combustion turbine and
11 any duct burner or heat recovery device used to
12 extract heat from the combustion turbine ex-
13 haust, and a regenerative combustion turbine.

14 “(C) EXCLUSIONS.—The term ‘combustion
15 turbine’ does not include a combined turbine in
16 an integrated gasification combined cycle plant.

17 “(11) COMMENCE COMMERCIAL OPERATION.—
18 The term ‘commence commercial operation’ with re-
19 gard to a unit means the start up of the unit’s com-
20 bustion chamber and the commencement of the gen-
21 eration of electricity for sale.

22 “(12) COMPLIANCE PLAN.—The term ‘compli-
23 ance plan’ means either—

1 “(A) a statement that the facility will com-
2 ply with all applicable requirements under this
3 title; or

4 “(B) under subpart 1 of part B or subpart
5 1 of part C, where applicable, a schedule and
6 description of the method or methods for com-
7 pliance and certification by the owner or oper-
8 ator that the facility is in compliance with the
9 requirements of that subpart.

10 “(13) CONTINUOUS EMISSION MONITORING SYS-
11 TEM.—The term ‘continuous emission monitoring
12 system’ (CEMS) means the equipment as required
13 by section 404, used to sample, analyze, measure,
14 and provide on a continuous basis a permanent
15 record of emissions and flow (expressed in pounds
16 per million British thermal units (lbs/mmBtu),
17 pounds per hour (lbs/hr) or such other form as the
18 Administrator may prescribe by regulations under
19 section 404.

20 “(14) DESIGNATED REPRESENTATIVE.—The
21 term ‘designated representative’ means a responsible
22 person or official authorized by the owner or oper-
23 ator of a unit and the facility that includes the unit
24 to represent the owner or operator in matters per-
25 taining to the holding, transfer, or disposition of al-

1 lowances, and the submission of and compliance with
2 permits, permit applications, and compliance plans.

3 “(15) DUCT BURNER.—The term ‘duct burner’
4 means a combustion device that uses the exhaust
5 from a combustion turbine to burn fuel for heat re-
6 covery.

7 “(16) FACILITY.—The term ‘facility’ means all
8 buildings, structures, or installations located on 1 or
9 more contiguous or adjacent properties under com-
10 mon control of the same person or persons.

11 “(17) FOSSIL FUEL.—The term ‘fossil fuel’
12 means natural gas, petroleum, coal, or any form of
13 solid, liquid, or gaseous fuel derived from such mate-
14 rial.

15 “(18) FOSSIL FUEL-FIRED.—The term ‘fossil
16 fuel-fired’, with regard to a unit, means the combus-
17 tion of fuel that is composed of at least 10 percent
18 fossil fuel.

19 “(19) FUEL OIL.—The term ‘fuel oil’ means a
20 petroleum-based fuel, including diesel fuel or petro-
21 leum derivatives.

22 “(20) GAS-FIRED.—The term ‘gas-fired’, with
23 regard to a unit, means, except under subpart 1 of
24 part B and subpart 1 of part C, combusting only
25 natural gas or fuel oil, with natural gas comprising

1 at least 90 percent, and fuel oil comprising no more
2 than 10 percent, of the unit's total heat input in any
3 year.

4 “(21) GASIFY.—The term ‘gasify’ means to
5 convert carbon-containing material into a gas con-
6 sisting primarily of carbon monoxide and hydrogen.

7 “(22) GENERATOR.—The term ‘generator’
8 means a device that produces electricity and, under
9 subpart 1 of part B and subpart 1 of part C, that
10 is reported as a generating unit pursuant to Depart-
11 ment of Energy Form 860.

12 “(23) HEAT INPUT.—

13 “(A) IN GENERAL.—The term ‘heat input’,
14 with regard to a specific period of time, means
15 the product (in mmBtu/time) obtained by
16 multiplying—

17 “(i) the gross calorific value of the
18 fuel (in mmBtu/lb); and

19 “(ii) the fuel feed rate into a unit (in
20 lb of fuel/time).

21 “(B) EXCLUSIONS.—The term ‘heat input’
22 does not include the heat derived from
23 preheated combustion air, recirculated flue
24 gases, or exhaust.

1 “(24) INTEGRATED GASIFICATION COMBINED
2 CYCLE PLANT.—The term ‘integrated gasification
3 combined cycle plant’ means any combination of
4 equipment used to gasify fossil fuels (with or with-
5 out other material) and then burn the gas in a com-
6 bined cycle combustion turbine.

7 “(25) OIL-FIRED.—The term ‘oil-fired’, with re-
8 gard to a unit, means, except under sections 424
9 and 434, combusting fuel oil for more than 10 per-
10 cent the unit’s total heat input, and combusting no
11 coal or coal-derived fuel, in any year.

12 “(26) OWNER OR OPERATOR.—The term ‘owner
13 or operator’ with regard to a unit or facility means,
14 except for subpart 1 of part B and subpart 1 of part
15 C, any person who owns, leases, operates, controls,
16 or supervises the unit or the facility.

17 “(27) PERMITTING AUTHORITY.—The term
18 ‘permitting authority’ means the Administrator, or
19 the State or local air pollution control agency, with
20 an approved permitting program under title V of the
21 Act.

22 “(28) POTENTIAL ELECTRICAL OUTPUT.—The
23 term ‘potential electrical output’ with regard to a
24 generator means the nameplate capacity of the gen-
25 erator multiplied by 8,760 hours.

1 “(29) SIMPLE CYCLE COMBUSTION TURBINE.—

2 The term ‘simple cycle combustion turbine’ means a
3 combustion turbine that does not extract heat from
4 the combustion turbine exhaust gases.

5 “(30) STATE.—The term ‘State’ means—

6 “(A) 1 of the 48 contiguous States, Alas-
7 ka, Hawaii, the District of Columbia, the Com-
8 monwealth of Puerto Rico, the Virgin Islands,
9 Guam, American Samoa, or the Commonwealth
10 of the Northern Mariana Islands; or

11 “(B) under subpart 1 of part B and sub-
12 part 1 of part C, 1 of the 48 contiguous States
13 or the District of Columbia.

14 “(31) UNIT.—The term ‘unit’ means—

15 “(A) a fossil fuel-fired boiler, combustion
16 turbine, or integrated gasification combined
17 cycle plant;

18 “(B) under subpart 1 of part B and sub-
19 part 1 of part C, a fossil fuel-fired combustion
20 device; and

21 “(C) a stationary combustion device that—

22 “(i) emits nitrogen oxides, sulfur diox-
23 ide, mercury, or any combination of those
24 substances; and

25 “(ii) is elected under section 406.

1 “(32) UTILITY UNIT.—The term ‘utility unit’
2 shall have the meaning set forth in section 411.

3 “(33) YEAR.—The term ‘year’ means a cal-
4 endar year.

5 **“SEC. 402. ALLOWANCE SYSTEM.**

6 “(a) ALLOCATIONS.—

7 “(1) IN GENERAL.—For the emission limitation
8 programs under this title, the Administrator shall al-
9 locate annual allowances for an affected unit, to be
10 held or distributed by the designated representative
11 of the owner or operator in accordance with this title
12 as follows—

13 “(A) sulfur dioxide allowances in an
14 amount equal to the annual tonnage emission
15 limitation calculated under section 413, 414,
16 415, or 416, except as otherwise specifically
17 provided elsewhere in subpart 1 of part B, or
18 in an amount calculated under section 424 or
19 434;

20 “(B) nitrogen oxides allowances in an
21 amount calculated under section 454; and

22 “(C) mercury allowances in an amount cal-
23 culated under section 474.

24 “(2) NO JUDICIAL REVIEW.—Notwithstanding
25 any other provision of law to the contrary, the cal-

1 culation of the allocation for any unit or facility, and
2 the determination of any values used in such calcula-
3 tion, under sections 424, 434, 454, and 474 shall
4 not be subject to judicial review.

5 “(3) ALLOCATION WITHOUT COST.—Allowances
6 shall be allocated by the Administrator without cost
7 to the recipient, and shall be sold in direct sales by
8 the Administrator, in accordance with this title.

9 “(b) ALLOWANCE TRANSFER SYSTEM.—Allowances
10 allocated or sold by the Administrator under this title may
11 be transferred among designated representatives of the
12 owners or operators of affected facilities under this title
13 and any other person, as provided by the allowance system
14 regulations promulgated by the Administrator. With re-
15 gard to sulfur dioxide allowances, the Administrator shall
16 implement this subsection under 40 CFR part 73 (2002),
17 amended as appropriate by the Administrator. With re-
18 gard to nitrogen oxides allowances and mercury allow-
19 ances, the Administrator shall implement this subsection
20 by promulgating regulations not later than twenty-four
21 months after the date of enactment of the Clear Skies Act
22 of 2005. The regulations under this subsection shall estab-
23 lish the allowance system prescribed under this section,
24 including, but not limited to, requirements for the alloca-
25 tion, transfer, and use of allowances under this title. Such

1 regulations shall prohibit the use of any allowance prior
2 to the calendar year for which the allowance was allocated
3 and shall provide, consistent with the purposes of this
4 title, for the identification of unused allowances, and for
5 such unused allowances to be carried forward and added
6 to allowances allocated in subsequent years. Such regula-
7 tions shall provide, or shall be amended to provide, that
8 transfers of allowances shall not be effective until certifi-
9 cation of the transfer, signed by a responsible official of
10 the transferor, is received and recorded by the Adminis-
11 trator.

12 “(c) ALLOWANCE TRACKING SYSTEM.—The Admin-
13 istrator shall promulgate regulations establishing a system
14 for issuing, recording, and tracking allowances, which
15 shall specify all necessary procedures and requirements for
16 an orderly and competitive functioning of the allowance
17 system. Such system shall provide, by twenty-four months
18 prior to the compliance year, for one or more facility-wide
19 accounts for holding sulfur dioxide allowances, nitrogen
20 oxides allowances, and, if applicable, mercury allowances
21 for all affected units at an affected facility. With regard
22 to sulfur dioxide allowances, the Administrator shall im-
23 plement this subsection under 40 CFR part 73 (2002),
24 amended as appropriate by the Administrator. With re-
25 gard to nitrogen oxides allowances and mercury allow-

1 ances, the Administrator shall implement this subsection
2 by promulgating regulations not later than twenty-four
3 months after the date of enactment of the Clear Skies Act
4 of 2005. All allowance allocations and transfers shall,
5 upon recording by the Administrator, be deemed a part
6 of each unit's or facility's permit requirements pursuant
7 to section 403, without any further permit review and revi-
8 sion.

9 “(d) NATURE OF ALLOWANCES.—A sulfur dioxide al-
10 lowance, nitrogen oxides allowance, or mercury allowance
11 allocated or sold by the Administrator under this title is
12 a limited authorization to emit one ton of sulfur dioxide,
13 one ton of nitrogen oxides, or one ounce of mercury, as
14 the case may be, in accordance with the provisions of this
15 title. Such allowance does not constitute a property right.
16 Nothing in this title or in any other provision of law shall
17 be construed to limit the authority of the United States
18 to terminate or limit such authorization. Nothing in this
19 section relating to allowances shall be construed as affect-
20 ing the application of, or compliance with, any other provi-
21 sion of this Act to an affected unit or facility, including
22 the provisions related to applicable National Ambient Air
23 Quality Standards and State implementation plans. Noth-
24 ing in this section shall be construed as requiring a change
25 of any kind in any State law regulating electric utility

1 rates and charges or affecting any State law regarding
2 such State regulation or as limiting State regulation (in-
3 cluding any prudency review) under such a State law.
4 Nothing in this section shall be construed as modifying
5 the Federal Power Act or as affecting the authority of the
6 Federal Energy Regulatory Commission under that Act.
7 Nothing in this title shall be construed to interfere with
8 or impair any program for competitive bidding for power
9 supply in a State in which such program is established.
10 Allowances, once allocated or sold to a person by the Ad-
11 ministrator, may be received, held, and temporarily or per-
12 manently transferred in accordance with this title and the
13 regulations of the Administrator without regard to wheth-
14 er or not a permit is in effect under title V of the Clean
15 Air Act or section 403 of the Clear Skies Act of 2005
16 with respect to the unit for which such allowance was
17 originally allocated and recorded.

18 “(e) PROHIBITIONS.—

19 “(1) IN GENERAL.—It shall be unlawful for any
20 person to hold, use, or transfer any allowance allo-
21 cated or sold by the Administrator under this title,
22 except in accordance with regulations promulgated
23 by the Administrator.

24 “(2) EMISSIONS.—It shall be unlawful for any
25 affected unit or for the affected units at a facility

1 to emit sulfur dioxide, nitrogen oxides, and mercury,
2 as the case may be, during a year in excess of the
3 number of allowances held for that unit or facility
4 for that year by the owner or operator as provided
5 in sections 412(c), 422, 432, 452, and 472.

6 “(3) PURCHASE OF ALLOWANCES.—The owner
7 or operator of a facility may purchase allowances di-
8 rectly from the Administrator to be used only to
9 meet the requirements of sections 422, 432, 452,
10 and 472, as the case may be, for the year in which
11 the purchase is made or the prior year. Not later
12 than thirty-six months after the date of enactment
13 of the Clear Skies Act of 2005, the Administrator
14 shall promulgate regulations providing for direct
15 sales of sulfur dioxide allowances, nitrogen oxides al-
16 lowances, and mercury allowances to an owner or
17 operator of a facility. The regulations shall provide
18 that—

19 “(A) such allowances may be used only to
20 meet the requirements of section 422, 432, 452,
21 and 472, as the case may be, for such facility
22 and for the year in which the purchase is made
23 or the prior year;

24 “(B) each such sulfur dioxide allowance
25 shall be sold for \$2,000, each such nitrogen ox-

1 ides allowance shall be sold for \$4,000, and
2 each such mercury allowance shall be sold for
3 \$2,187.50, with such prices adjusted for infla-
4 tion based on the Consumer Price Index on the
5 date of enactment of the Clear Skies Act of
6 2005 and annually thereafter;

7 “(C) the proceeds from any sales of allow-
8 ances under subparagraph (B) shall be, in ac-
9 cordance with paragraph (j), deposited in the
10 Compliance Assistance Account;

11 “(D) except for allowances subject to sub-
12 paragraph (E), any allowances directly pur-
13 chased from the Administrator shall be taken
14 from, and reduce, the amount of sulfur dioxide
15 allowances, nitrogen oxides allowances, or mer-
16 cury allowances in the set-aside under section
17 424(a)(3), 434(a)(6), 454(a)(5), 454(b)(5), or
18 474(e), as the case may be, that are allocated
19 for the year in which the purchase is made or,
20 as necessary to provide sufficient allowances for
21 such purchase, for a subsequent year in chrono-
22 logical order; and

23 “(E) if the designated representative does
24 not use any such allowance in accordance with
25 paragraph (A) the designated representative

1 shall hold the allowance for deduction by the
2 Administrator. The Administrator shall deduct
3 the allowance without refund or other form of
4 recompense.

5 “(4) USE OF ALLOWANCES.—Except as pro-
6 vided in paragraph (3), allowances may not be used
7 prior to the calendar year for which they are allo-
8 cated but may be used in succeeding years. Nothing
9 in this section or in the allowance system regulations
10 shall relieve the Administrator of the Administra-
11 tor’s permitting, monitoring and enforcement obliga-
12 tions under this Act, nor relieve affected facilities of
13 their requirements and liabilities under the Act.

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

18 “(g) APPLICABILITY OF THE ANTITRUST LAWS.—

19 “(1) IN GENERAL.—Nothing in this section
20 affects—

21 “(A) the applicability of the antitrust laws
22 to the transfer, use, or sale of allowances; or

23 “(B) the authority of the Federal Energy
24 Regulatory Commission under any provision of

1 law respecting unfair methods of competition or
2 anticompetitive acts or practices.

3 “(2) DEFINITION OF ANTITRUST LAWS.—In
4 this section, the term ‘antitrust laws’ means those
5 Acts set forth in section 1 of the Clayton Act (15
6 U.S.C. 12).

7 “(h) PUBLIC UTILITY HOLDING COMPANY ACT.—
8 The acquisition or disposition of allowances pursuant to
9 this title including the issuance of securities or the under-
10 taking of any other financing transaction in connection
11 with such allowances shall not be subject to the provisions
12 of the Public Utility Holding Company Act of 1935.

13 “(i) INTERPOLLUTANT TRADING.—Not later than
14 July 1, 2009, the Administrator shall furnish to the Con-
15 gress a study evaluating the environmental and economic
16 consequences of amending this title to permit trading sul-
17 fur dioxide allowances for nitrogen oxides allowances and
18 nitrogen oxides allowances for sulfur dioxide allowances.

19 “(j) COMPLIANCE ASSISTANCE ACCOUNT.—An ac-
20 count shall be established by the Secretary of Energy in
21 consultation with the Administrator:

22 “(1) USE OF AMOUNTS.—Payments or monies
23 deposited in this account in accordance with this
24 title shall be used for the purpose of developing
25 emission control technologies through direct grants

1 to affected units that demonstrate new control tech-
2 nologies regulated under this title.

3 “(2) REGULATIONS.—The Secretary of Energy
4 in consultation with the Administrator shall promul-
5 gate regulations with notice and opportunity for
6 comment to establish criteria for affected units to
7 qualify for this subsection.

8 **“SEC. 403. PERMITS AND COMPLIANCE PLANS.**

9 “(a) PERMIT PROGRAM.—The provisions of this title
10 shall be implemented, subject to section 402, by permits
11 issued to units and facilities subject to this title and en-
12 forced in accordance with the provisions of title V, as
13 modified by this title. Any such permit issued by the Ad-
14 ministrator, or by a State with an approved permit pro-
15 gram, shall prohibit—

16 “(1) annual emissions of sulfur dioxide, nitro-
17 gen oxides, and mercury in excess of the number of
18 allowances required to be held in accordance with
19 sections 412(c), 422, 432, 452, and 472;

20 “(2) exceeding applicable emissions rates under
21 section 441;

22 “(3) the use of any allowance prior to the year
23 for which it was allocated; and

24 “(4) contravention of any other provision of the
25 permit.

1 No permit shall be issued that is inconsistent with the re-
2 quirements of this title, and title V as applicable.

3 “(b) COMPLIANCE PLAN.—

4 “(1) IN GENERAL.—Each initial permit applica-
5 tion shall be accompanied by a compliance plan for
6 the facility to comply with its requirements under
7 this title. Where an affected facility consists of more
8 than one affected unit, such plan shall cover all such
9 units, and such facility shall be considered a ‘facility’
10 under section 502(c). Nothing in this section regard-
11 ing compliance plans or in title V shall be construed
12 as affecting allowances.

13 “(2) STATEMENTS.—

14 “(A) IN GENERAL.—Submission of a state-
15 ment by the owner or operator, or the des-
16 ignated representative of the owners and opera-
17 tors, of a unit subject to the emissions limita-
18 tion requirements of sections 412(c), 413, 414,
19 and 441, that the unit will meet the applicable
20 emissions limitation requirements of such sec-
21 tions in a timely manner or that, in the case of
22 the emissions limitation requirements of sec-
23 tions 412(c), 413, and 414, the owners and op-
24 erators will hold sulfur dioxide allowances in the
25 amount required by section 412(c), shall be

1 deemed to meet the proposed and approved
2 compliance planning requirements of this sec-
3 tion and title V, except that, for any unit that
4 will meet the requirements of this title by
5 means of an alternative method of compliance
6 authorized under section 413 (b), (c), (d), or
7 (f), section 416, and section 441 (d) or (e), the
8 proposed and approved compliance plan, permit
9 application and permit shall include, pursuant
10 to regulations promulgated by the Adminis-
11 trator, for each alternative method of compli-
12 ance a comprehensive description of the sched-
13 ule and means by which the unit will rely on
14 one or more alternative methods of compliance
15 in the manner and time authorized under sub-
16 part 1 of part B or subpart 1 of part C.

17 “(B) OTHER STATEMENTS.—Submission
18 of a statement by the owner or operator, or the
19 designated representative, of a facility that in-
20 cludes a unit subject to the emissions limitation
21 requirements of sections 422, 432, 452, and
22 472 that the owner or operator will hold sulfur
23 dioxide allowances, nitrogen oxide allowances,
24 and mercury allowances, as the case may be, in
25 the amount required by such sections shall be

1 deemed to meet the proposed and approved
2 compliance planning requirements of this sec-
3 tion and title V with regard to subparts A
4 through D.

5 “(3) RECORDING OF TRANSFERS.—Recording
6 by the Administrator of transfers of allowances shall
7 amend automatically, and will not reopen or require
8 reopening of, any or all applicable proposed or ap-
9 proved permit applications, compliance plans, and
10 permits.

11 “(c) PERMITS.—The owner or operator of each facil-
12 ity under this title that includes an affected unit subject
13 to title V shall submit a permit application and compliance
14 plan with regard to the applicable requirements under sec-
15 tions 412(c), 422, 432, 441, 452, and 472 for sulfur diox-
16 ide emissions, nitrogen oxide emissions, and mercury emis-
17 sions from such unit to the permitting authority in accord-
18 ance with the deadline for submission of permit applica-
19 tions and compliance plans under title V. The permitting
20 authority shall issue a permit to such owner or operator,
21 or the designated representative of such owner or oper-
22 ator, that satisfies the requirements of title V and this
23 title.

24 “(d) AMENDMENT OF APPLICATION AND COMPLI-
25 ANCE PLAN.—At any time after the submission of an ap-

1 plication and compliance plan under this section, the ap-
2 plicant may submit a revised application and compliance
3 plan, in accordance with the requirements of this section.

4 “(e) PROHIBITION.—

5 “(1) IN GENERAL.—It shall be unlawful for any
6 person to operate any facility subject to this title ex-
7 cept in compliance with the terms and requirements
8 of a permit application and compliance plan (includ-
9 ing amendments thereto) or permit issued by the
10 Administrator or a State with an approved permit
11 program. For purposes of this subsection, compli-
12 ance, as provided in section 504(f), with a permit
13 issued under title V which complies with this title
14 for facilities subject to this title shall be deemed
15 compliance with this subsection as well as section
16 502(a).

17 “(2) NO TERMINATION OF OPERATIONS.—In
18 order to ensure reliability of electric power, nothing
19 in this title or title V shall be construed as requiring
20 termination of operations of a unit serving a gener-
21 ator for failure to have an approved permit or com-
22 pliance plan under this section.

23 “(f) CERTIFICATE OF REPRESENTATION.—No per-
24 mit shall be issued under this section to an affected unit
25 or facility until the designated representative of the own-

1 ers or operators has filed a certificate of representation
2 with regard to matters under this title, including the hold-
3 ing and distribution of allowances and the proceeds of
4 transactions involving allowances.

5 “(g) MULTIPLE OWNERS.—

6 “(1) IN GENERAL.—No permit shall be issued
7 under this section to an affected unit until the des-
8 ignated representative of the owners or operators
9 has filed a certificate of representation with regard
10 to matters under this title, including the holding and
11 distribution of allowances and the proceeds of trans-
12 actions involving allowances. Where there are mul-
13 tiple holders of a legal or equitable title to, or a
14 leasehold interest in, such a unit, or where a utility
15 or industrial customer purchases power from an af-
16 fected unit (or units) under life-of-the-unit, firm
17 power contractual arrangements, the certificate shall
18 state—

19 “(A) that allowances and the proceeds or
20 transactions involving allowance will be deemed
21 to be held or distributed in proportion to each
22 holder’s legal, equitable, leasehold, or contrac-
23 tual reservation or entitlement, or

24 “(B) if such multiple holders have ex-
25 pressly provided for a different distribution of

1 allowances by contract, that allowances and the
2 proceeds of transactions involving allowances
3 will be deemed to be held or distributed in ac-
4 cordance with the contract.

5 “(2) PASSIVE LESSOR.—A passive lessor, of a
6 person who has an equitable interest through such
7 lessor, whose rental payments are not based, either
8 directly or indirectly, upon the revenues or income
9 from the affected unit shall not be deemed to be a
10 holder of a legal, equitable, leasehold, or contractual
11 interest for the purposes of holding or distributing
12 allowances as provided in this subsection, unless ex-
13 pressly provided for in the leasehold agreement. Ex-
14 cept as otherwise provided in this subsection, where
15 all legal or equitable title to or interest in an af-
16 fected unit is held by a single person, the certifi-
17 cation shall state that all allowances received by the
18 unit are deemed to be held for that person.

19 **“SEC. 404. MONITORING, REPORTING, AND RECORD-**
20 **KEEPING REQUIREMENTS.**

21 “(a) REQUIREMENTS.—

22 “(1) APPLICABILITY.—

23 “(A) IN GENERAL.—The owner and oper-
24 ator of any facility subject to this title shall be
25 required to install and operate CEMS on each

1 affected unit subject to subpart 1 of part B or
2 subpart 1 of part C at the facility, and to qual-
3 ity assure the data, for sulfur dioxide, nitrogen
4 oxides, opacity, and volumetric flow at each
5 such unit.

6 “(B) SPECIFICATION OF REQUIRE-
7 MENTS.—The Administrator shall, by regula-
8 tion, specify the requirements for CEMS under
9 subparagraph (A), for any alternative moni-
10 toring system that is demonstrated as providing
11 information with the same precision, reliability,
12 accessibility, and timeliness as that provided by
13 CEMS, and for recordkeeping and reporting of
14 information from such systems. Such regula-
15 tions may include limitations on the use of al-
16 ternative compliance methods by units equipped
17 with an alternative monitoring system as may
18 be necessary to preserve the orderly functioning
19 of the allowance system, and which will ensure
20 the emissions reductions contemplated by this
21 title. Where 2 or more units utilize a single
22 stack, a separate CEMS shall not be required
23 for each unit, and for such units the regulations
24 shall require that the owner or operator collect

1 sufficient information to permit reliable compli-
2 ance determinations for each such unit.

3 “(2) INSTALLATION AND OPERATION.—

4 “(A) IN GENERAL.—The owner and oper-
5 ator of any facility subject to this title shall be
6 required to install and operate CEMS to mon-
7 itor the emissions from each affected unit at
8 the facility, and to quality assure the data for—

9 “(i) sulfur dioxide, opacity, and volu-
10 metric flow for all affected units subject to
11 subpart 2 of part B at the facility,

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

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

17 “(B) ALTERNATIVE MONITORING.—

18 “(i) IN GENERAL.—The Administrator
19 may specify an alternative monitoring or
20 compliance system for determining mer-
21 cury emissions. In specifying such alter-
22 native monitoring or compliance systems,
23 the lack of commercially available appro-
24 priate and reasonable vendor guarantees
25 shall constitute a reasonable and permis-

1 sible basis for specifying alternative moni-
2 toring or compliance systems for mercury.

3 “(ii) LIMITATIONS.—The regulations
4 under clause (iv) may include limitations
5 on the use of alternative compliance meth-
6 ods by units equipped with an alternative
7 monitoring system as may be necessary to
8 preserve the orderly functioning of the al-
9 lowance system, and which will ensure to a
10 reasonable extent the emissions reductions
11 contemplated by this title.

12 “(iii) NO SEPARATE MONITORING SYS-
13 TEM.—The regulations under clause (iv)
14 shall not require a separate CEMS or
15 other monitoring system for each unit
16 where two or more units utilize a single
17 stack and shall require that the owner or
18 operator collect sufficient information to
19 permit reliable compliance determinations
20 for such units.

21 “(iv) SPECIFICATION OF REQUIRE-
22 MENTS.—The Administrator shall, by reg-
23 ulation, specify the requirements for
24 CEMS under subparagraph (A), for any
25 alternative monitoring or compliance sys-

1 tem that is demonstrated as providing in-
2 formation which is reasonably of the same
3 precision, reliability, accessibility, and
4 timeliness as that provided by CEMS, and
5 for recordkeeping and reporting of infor-
6 mation from such systems. Such regula-
7 tions may include limitations on the use of
8 alternative compliance methods by units
9 equipped with an alternative monitoring
10 system as may be necessary to preserve the
11 orderly functioning of the allowance sys-
12 tem, and which will ensure to a reasonable
13 extent the emissions reductions con-
14 templated by this title. Where two or more
15 units utilize a single stack, a separate
16 CEMS shall not be required for each unit,
17 and for such units the regulations shall re-
18 quire that the owner or operator collect
19 sufficient information to permit reliable
20 compliance determinations for each such
21 unit.

22 “(b) DEADLINES.—

23 “(1) NEW UTILITY UNITS.—Upon commence-
24 ment of commercial operation of each new utility

1 unit under subpart I of part B, the unit shall comply
2 with the requirements of subsection (a)(1).

3 “(2) DEADLINE FOR AFFECTED UNITS UNDER
4 SUBPART 2 OF PART B FOR INSTALLATION AND OP-
5 ERATION OF CEMS.—By the later of the date that is
6 1 year before the commencement date of the sulfur
7 dioxide allowance requirement of section 422, or the
8 date on which the unit commences commercial oper-
9 ation, the owner or operator of each affected unit
10 under subpart 2 of part B shall install and operate
11 CEMS, quality assure the data, and keep records
12 and reports in accordance with the regulations
13 issued under paragraph (a)(2) with regard to sulfur
14 dioxide, opacity, and volumetric flow.

15 “(3) DEADLINE FOR AFFECTED UNITS UNDER
16 SUBPART 3 OF PART B FOR INSTALLATION AND OP-
17 ERATION OF CEMS.—By the later of the date that is
18 1 year before the first covered year, or the date on
19 which the unit commences commercial operation, the
20 owner or operator of each affected unit under sub-
21 part 3 of part B shall install and operate CEMS,
22 quality assure the data, and keep records and re-
23 ports in accordance with the regulations issued
24 under paragraph (a)(2) with regard to sulfur dioxide
25 and volumetric flow.

1 “(4) DEADLINE FOR AFFECTED UNITS UNDER
2 SUBPART 2 OF PART C FOR INSTALLATION AND OP-
3 ERATION OF CEMS.—By the later of the date that is
4 1 year before the commencement date of the nitro-
5 gen oxides allowance requirement under section 452,
6 or the date on which the unit commences commercial
7 operation, the owner or operator of each affected
8 unit under subpart 2 of part C shall install and op-
9 erate CEMS, quality assure the data, and keep
10 records and reports in accordance with the regula-
11 tions issued under paragraph (a)(2) with regard to
12 nitrogen oxides.

13 “(5) DEADLINE FOR AFFECTED UNITS UNDER
14 PART D FOR INSTALLATION AND OPERATION OF
15 CEMS.—By the later of the date that is 1 year be-
16 fore the commencement date of the mercury allow-
17 ance requirement of section 472, or the date on
18 which the unit commences commercial operation, the
19 owner or operator of each affected unit under part
20 D shall install and operate CEMS, quality assure
21 the data, and keep records and reports in accord-
22 ance with the regulations issued under paragraph
23 (a)(2) with regard to mercury.

24 “(c) UNAVAILABILITY OF EMISSIONS DATA.—

1 “(1) SULFUR DIOXIDE AND NITROGEN OX-
2 IDES.—With respect to sulfur dioxide and nitrogen
3 oxides, if CEMS data or data from an alternative
4 monitoring system approved by the Administrator
5 under subsection (a) is not available for any affected
6 unit during any period of a calendar year in which
7 such data is required under this title, and the owner
8 or operator cannot provide information, reasonably
9 satisfactory to the Administrator, on emissions dur-
10 ing that period, the Administrator, in coordination
11 with the owner, shall calculate emissions for that pe-
12 riod pursuant to regulations promulgated for such
13 purpose. The owner or operator shall be liable for
14 excess emissions fees and offsets under section 405
15 in accordance with such regulations. Any fee due
16 and payable under this subsection shall not diminish
17 the liability of the unit’s owner or operator for any
18 fine, penalty, fee, or assessment against the unit for
19 the same violation under any other section of this
20 Act.

21 “(2) MERCURY.—With respect to mercury, if
22 CEMS data or data from an alternative monitoring
23 system approved by the Administrator under sub-
24 section (a) is not available for any affected unit dur-
25 ing any period of a calendar year in which such data

1 is required under this title, and the owner or oper-
2 ator cannot provide information, reasonably satisfac-
3 tory to the Administrator, on emissions during that
4 period, the Administrator in coordination with the
5 owner, shall calculate emissions for that period pur-
6 suant to regulations promulgated for such purpose.
7 The owner or operator shall be liable for excess
8 emissions fees and offsets under section 405 in ac-
9 cordance with such regulations. Any fee due and
10 payable under this subsection shall not diminish the
11 liability of the unit's owner or operator for any fine,
12 penalty, fee, or assessment against the unit for the
13 same violation under any other section of this Act.

14 “(d) IMPLEMENTATION.—With regard to sulfur diox-
15 ide, nitrogen oxides, opacity, and volumetric flow, the Ad-
16 ministrator shall implement subsections (a) and (c) under
17 40 CFR part 75 (2002), amended, as appropriate by the
18 Administrator. With regard to mercury, the Administrator
19 shall implement subsections (a) and (c) by issuing pro-
20 posed regulations not later than 36 months before the
21 commencement date of the mercury allowance requirement
22 under section 472 and final regulations not later than 24
23 months before that commencement date.

24 “(e) PROHIBITION.—It shall be unlawful for the
25 owner or operator of any facility subject to this title to

1 operate a facility without complying with the requirements
2 of this section, and any regulations implementing this sec-
3 tion.

4 **“SEC. 405. EXCESS EMISSIONS PENALTY; GENERAL COMPLI-**
5 **ANCE WITH OTHER PROVISIONS; ENFORCE-**
6 **MENT.**

7 “(a) EXCESS EMISSIONS PENALTY.—

8 “(1) AMOUNT FOR OXIDES OF NITROGEN.—The
9 owner or operator of any unit subject to the require-
10 ments of section 441 that emits nitrogen oxides for
11 any calendar year in excess of the unit’s emissions
12 limitation requirement shall be liable for the pay-
13 ment of an excess emissions penalty, except where
14 such emissions were authorized pursuant to section
15 110(f). That penalty shall be calculated on the basis
16 of the number of tons emitted in excess of the unit’s
17 emissions limitation requirement multiplied by
18 \$2,000.

19 “(2) AMOUNT FOR SULFUR DIOXIDE BEFORE
20 2008.—The owner or operator of any unit subject to
21 the requirements of section 412(c) that emits sulfur
22 dioxide for any calendar year before 2008 in excess
23 of the sulfur dioxide allowances the owner or oper-
24 ator holds for use for the unit for that calendar year
25 shall be liable for the payment of an excess emis-

1 sions penalty, except where such emissions were au-
2 thORIZED pursuant to section 110(f) or (g). That pen-
3 alty shall be calculated as follows:

4 “(A) The product of the unit’s excess emis-
5 sions (in tons) multiplied by \$2,000, if within
6 30 days after the date on which the owner or
7 operator was required to hold sulfur dioxide
8 allowances—

9 “(i) the owner or operator offsets the
10 excess emissions in accordance with para-
11 graph (b)(1); and

12 “(ii) the Administrator receives the
13 penalty payment required under this sub-
14 paragraph.

15 “(B) If the requirements of clause (A)(i)
16 or (A)(ii) are not met, the product of the unit’s
17 excess emissions (in tons) multiplied by \$3,000.

18 “(3) AMOUNT FOR SULFUR DIOXIDE AFTER
19 2007.—If the units at a facility that are subject to
20 the requirements of section 412(c) emit sulfur diox-
21 ide for any calendar year after 2007 in excess of the
22 sulfur dioxide allowances that the owner or operator
23 of the facility holds for use for the facility for that
24 calendar year, the owner or operator shall be liable
25 for the payment of an excess emissions penalty, ex-

1 cept where such emissions were authorized pursuant
2 to section 110(f). That penalty shall be calculated
3 under paragraph (4)(A) or (4)(B).

4 “(4) UNITS SUBJECT TO SECTIONS 422, 432, 452,
5 OR 472.—If the units at a facility that are subject
6 to the requirements of section 422, 432, 452, or 472
7 emit sulfur dioxide, nitrogen oxides, or mercury for
8 any calendar year in excess of the sulfur dioxide al-
9 lowances, nitrogen oxides allowances, or mercury al-
10 lowances, as the case may be, that the owner or op-
11 erator of the facility holds for use for the facility for
12 that calendar year, the owner or operator shall be
13 liable for the payment of an excess emissions pen-
14 alty, except where such emissions were authorized
15 pursuant to section 110(f). That penalty shall be
16 equal to—

17 “(A) the quantity of the units’ excess emis-
18 sions in tons (or, for mercury emissions, in
19 ounces) multiplied by \$2,000 (in the case of
20 sulfur dioxide), \$4,000 (in the case of nitrogen
21 oxides), or \$2187.50 (in the case of mercury) if,
22 on or before the date that is 30 days after the
23 date on which the owner or operator was re-
24 quired to hold sulfur dioxide, nitrogen oxides al-

1 lowance, or mercury allowances, as the case
2 may be—

3 “(i) the owner or operator offsets the
4 excess emissions in accordance with para-
5 graph (2) or (3) of subsection (b), as ap-
6 plicable; and

7 “(ii) the Administrator receives the
8 penalty required under this subparagraph;
9 or

10 “(B) if a requirement under subparagraph
11 (A) is not met, the quantity of the units’ excess
12 emissions in tons (or, for mercury emissions, in
13 ounces) multiplied by the product obtained by
14 multiplying—

15 “(i) 1.5; and

16 “(ii) the respective amount for sulfur
17 dioxide, nitrogen oxides, or mercury speci-
18 fied in subparagraph (A).

19 “(5) PAYMENT.—Any penalty under paragraph
20 (1), (2), (3), or (4) shall be due and payable without
21 demand to the Administrator as provided in regula-
22 tions issued by the Administrator. With regard to
23 the penalty under paragraph 1, the Administrator
24 shall implement this paragraph under 40 CFR part
25 77 (2002), amended as appropriate by the Adminis-

1 trator. With regard to the penalty under paragraphs
2 2, 3, and 4, the Administrator shall implement this
3 paragraph by issuing regulations no later than 24
4 months after the date of enactment of the Clear
5 Skies Act of 2005. Any such payment shall be de-
6 posited in the Compliance Assistance Account.

7 “(b) EXCESS EMISSIONS OFFSET.—

8 “(1) IN GENERAL.—The owner or operator of
9 any unit subject to the requirements of section
10 412(c) that emits sulfur dioxide during any calendar
11 year before 2008 in excess of the sulfur dioxide al-
12 lowances held for the unit for the calendar year shall
13 be liable to offset the excess emissions by an equal
14 tonnage amount in the following calendar year, or
15 such longer period as the Administrator may pre-
16 scribe. The Administrator shall deduct sulfur dioxide
17 allowances equal to the excess tonnage from those
18 held for the facility for the calendar year, or suc-
19 ceeding years during which offsets are required, fol-
20 lowing the year in which the excess emissions oc-
21 curred.

22 “(2) EXCESS EMISSIONS OF SULFUR DIOX-
23 IDE.—If the units at a facility that are subject to
24 the requirements of section 412(c) emit sulfur diox-
25 ide for a year after 2007 in excess of the sulfur di-

1 oxide allowances that the owner or operator of the
2 facility holds for use for the facility for that calendar
3 year, the owner or operator shall be liable to offset
4 the excess emissions by an equal amount of tons in
5 the following calendar year, or such longer period as
6 the Administrator may prescribe. The Administrator
7 shall deduct sulfur dioxide allowances equal to the
8 excess emissions in tons from those held for the fa-
9 cility for the year, or succeeding years during which
10 offsets are required, following the year in which the
11 excess emissions occurred.

12 “(3) EXCESS EMISSIONS OF SULFUR DIOXIDE,
13 NITROGEN OXIDES, OR MERCURY.—If the units at a
14 facility that are subject to the requirements of sec-
15 tion 422, 432, 452, or 472 emit sulfur dioxide, ni-
16 trogen oxides, or mercury for any calendar year in
17 excess of the sulfur dioxide allowances, nitrogen ox-
18 ides allowances, or mercury allowances, as the case
19 may be, that the owner or operator of the facility
20 holds for use for the facility for that calendar year,
21 the owner or operator shall be liable to offset the ex-
22 cess emissions by an equal amount of tons or, for
23 mercury, ounces in the following calendar year, or
24 such longer period as the Administrator may pre-
25 scribe. The Administrator shall deduct sulfur dioxide

1 allowances, nitrogen oxide allowances, or mercury al-
2 lowances, as the case may be, equal to the excess
3 emissions in tons or, for mercury, ounces from those
4 held for the facility for the year, or succeeding years
5 during which offsets are required, following the year
6 in which the excess emissions occurred.

7 “(c) PENALTY ADJUSTMENT.—The Administrator
8 shall, by regulation, adjust the penalty specified in sub-
9 section (a)(1) and (a)(2) for inflation, based on the Con-
10 sumer Price Index, on November 15, 1990, and annually
11 thereafter.

12 “(d) PROHIBITION.—It shall be unlawful for the
13 owner or operator of any unit or facility liable for a pen-
14 alty and offset under this section to fail—

15 “(1) to pay the penalty under subsection (a); or

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

18 “(e) SAVINGS PROVISION.—Nothing in this title shall
19 limit or otherwise affect the application of section 113,
20 114, 120, or 304 except as otherwise explicitly provided
21 in this title.

22 “(f) OTHER REQUIREMENTS.—Except as expressly
23 provided, compliance with the requirements of this title
24 shall not exempt or exclude the owner or operator of any
25 facility subject to this title from compliance with any other

1 applicable requirements of this Act. Notwithstanding any
2 other provision of this Act, no State or political subdivision
3 thereof shall restrict or interfere with the transfer, sale,
4 or purchase of allowances under this title.

5 “(g) VIOLATIONS.—Violation by any person subject
6 to this title of any prohibition of, requirement of, or regu-
7 lation promulgated pursuant to this title shall be a viola-
8 tion of this Act. In addition to the other requirements and
9 prohibitions provided for in this title, the operation of any
10 affected unit or the affected units at a facility to emit sul-
11 fur dioxide, nitrogen oxides, or mercury in violation of sec-
12 tion 412(c), 422, 432, 452, and 472, as the case may be,
13 shall be deemed a violation, with each ton or, in the case
14 of mercury, each ounce emitted in excess of allowances
15 held constituting a separate violation.

16 **“SEC. 406. ELECTION FOR ADDITIONAL UNITS.**

17 “(a) APPLICABILITY.—

18 “(1) IN GENERAL.—The owner or operator of
19 any unit that is not an affected EGU under subpart
20 2 of part B and subpart 2 of part C and whose
21 emissions of sulfur dioxide and nitrogen oxides are
22 vented only through a stack or duct may elect to
23 designate the unit as an affected unit under subpart
24 2 of part B and, if the unit is in a WRAP State (as

1 defined in section 431), subpart 3 of part B and
2 subpart 2 of part C.

3 “(2) EFFECT OF DESIGNATION.—If the owner
4 or operator elects to designate a unit that is solid
5 fuel-fired and emits mercury vented only through a
6 stack or duct, the owner or operator shall also des-
7 ignate the unit as an affected unit under part D. If
8 an elected unit fires only natural gas, the unit may
9 be designated under subpart 2 of part C only.

10 “(b) APPLICATION.—An owner or operator making
11 an election under subsection (a) shall submit an applica-
12 tion for the election to the Administrator for approval.

13 “(c) APPROVAL.—Subject to subsections (d) through
14 (m), if the Administrator determines that an application
15 for an election under subsection (b) meets the require-
16 ments of subsection (a), the Administrator shall approve
17 the designation as an affected unit under subpart 2 of part
18 B and subpart 2 of part C and, if applicable, under sub-
19 part 3 of parts B and D.

20 “(d) ESTABLISHMENT OF BASELINE.—

21 “(1) IN GENERAL.—After approval of a des-
22 ignation under subsection (c), an owner or operator
23 shall install and operate monitoring on the des-
24 ignated unit required under paragraph (5), except
25 that, in a case in which 2 or more units use a single

1 stack, separate monitoring shall be required for each
2 unit unless all units using the same stack are des-
3 ignated as affected units.

4 “(2) BASELINES.—

5 “(A) IN GENERAL.—Units shall have base-
6 lines established using heat input unless the
7 unit qualifies for a product output baseline
8 under paragraph (4).

9 “(B) HEAT INPUT OR PRODUCT OUT-
10 PUT.—The baselines for heat input or product
11 output and sulfur dioxide and nitrogen oxides
12 emission rates, as the case may be, for the unit
13 shall be the unit’s heat input or product output
14 and the emission rates of sulfur dioxide and ni-
15 trogen oxides in accordance with paragraphs
16 (3) and (4).

17 “(C) REGULATIONS.—The Administrator
18 shall promulgate regulations requiring the
19 unit’s baselines for heat input or product out-
20 put and for sulfur dioxide and nitrogen oxides
21 emission rates to be based on the years de-
22 scribed in paragraph (3) or (4) and specifying
23 minimum data requirements consistent with
24 paragraph (5) for baseline determination.

1 “(3) HEAT INPUT AND EMISSIONS BASE-
2 LINES.—For the purposes of this subsection, heat
3 input and emissions baselines shall be calculated, at
4 the election of the owner or operator of the relevant
5 unit, as—

6 “(A)(i) for heat input, the average of the
7 unit’s highest heat input for 3 of the 5 years
8 before the year for which the Administrator is
9 determining the allocations; and

10 “(ii) for emissions baselines, the average of
11 the relevant emissions during those same 3
12 years; or

13 “(B)(i) for heat input, the average of any
14 period of 24 consecutive months during the 10-
15 year period immediately prior to the date of
16 submission of an application under subsection
17 (b), on the condition that the heat input does
18 not exceed 1.2 times the average of the 10-year
19 period; and

20 “(ii) for emissions baselines, the average of
21 the relevant emissions for the 4-year period
22 prior to the date of enactment of the Clear
23 Skies Act of 2005 (for units that submit an ap-
24 plication on or before January 1, 2009), or the
25 average of the relevant emissions for the 4

1 years before the date of submission of the appli-
2 cation under that Act (for units that submit an
3 application after January 1, 2009).

4 “(4) DESIGNATION FOR PRODUCT OUTPUT
5 BASIS.—

6 “(A) IN GENERAL.—The owner or operator
7 of a unit that is subject to new source perform-
8 ance standards or other measures imposed by
9 this Act on a product output basis rather than
10 a heat input basis may elect to designate the
11 unit as an affected unit under subpart 2 of part
12 B and subpart 2 of part C.

13 “(B) BASELINE PRODUCT OUTPUT AND
14 EMISSIONS BASELINES.—For the purposes of
15 this paragraph, for those units using a product
16 output basis, the baseline product output and
17 emissions baselines in this subparagraph shall
18 be calculated, at the election of the owner or
19 operator of the relevant unit, as—

20 “(i)(I) for product input, the average
21 of the unit’s highest product output for 3
22 of the 5 years preceding the year for which
23 the Administrator is determining the allo-
24 cations; and

1 “(II) for emissions baselines, the aver-
2 age of the relevant emissions for the same
3 years used to determine product output; or

4 “(B)(i) for product input, the average of
5 any period of 24 consecutive months during the
6 10-year period immediately prior to the date of
7 submission of an application under subsection
8 (b), on the condition that the product input
9 does not exceed 1.2 times the average of the
10 10-year period; and

11 “(ii) for emissions baselines, the average of
12 the relevant emissions for the 4-year period
13 prior to the date of enactment of the Clear
14 Skies Act of 2005 (for units that submit an ap-
15 plication on or before January 1, 2009), or the
16 average of the relevant emissions for the 4
17 years before the date of submission of the appli-
18 cation under that Act (for units that submit an
19 application after January 1, 2009).

20 “(5) BASELINE DETERMINATIONS.—

21 “(A) IN GENERAL.—In making baseline
22 determinations under this section, the Adminis-
23 trator may accept any reliable data on emis-
24 sions of sulfur dioxide and nitrogen oxides in

1 addition to, and other than, data collected from
2 CEMS.

3 “(B) TYPES OF DATA.—Reliable data de-
4 scribed in subparagraph (A) includes—

5 “(i) alternative data that has been
6 used to determine compliance with a regu-
7 latory or monitoring requirement under
8 this Act or a comparable State law, if the
9 data establishes a reliable measure of heat
10 input or product output and sulfur dioxide
11 and nitrogen oxides emissions over a simul-
12 taneous period of time; or

13 “(ii) if that data is not available, such
14 other alternative reliable data as the Ad-
15 ministrator may prescribe.

16 “(C) USE OF CEMS FOR COMPLIANCE MON-
17 ITORING.—The Administrator—

18 “(i) shall not require the use of
19 CEMS for compliance monitoring by units
20 of less than 250 mmBtu heat input or
21 equivalent product output capacity subject
22 to this section unless the Administrator
23 concludes that a CEMS requirement is
24 necessary to generate reliable data for
25 compliance determinations;

1 “(ii) shall require the use of CEMS
2 for compliance monitoring by units of be-
3 tween 250 mmBtu and 750 mmBtu heat
4 input or equivalent product output capacity
5 unless the Administrator determines that a
6 CEMS requirement is not necessary to
7 generate reliable data for compliance deter-
8 minations; and

9 “(iii) shall require the use of CEMS
10 for compliance monitoring for all units
11 greater than 750 mmBtu heat input or
12 equivalent product output capacity.

13 “(D) RELIABILITY.—In determining the reli-
14 ability of data for purposes of this subsection, the
15 Administrator shall consider the cost of generating
16 more reliable data compared to the quantitative im-
17 portance of the resulting gain in quantifying emis-
18 sions.

19 “(e) EMISSION LIMITATIONS.—After approval of the
20 designation of the unit under subsection (c), the unit shall
21 become—

22 “(1) an affected unit under subpart 2 of part
23 B, and shall be allocated sulfur dioxide allowances
24 under subsection (f), beginning on the later of Janu-

1 ary 1, 2010, or January 1 of the year after approval
2 of the designation;

3 “(2) an affected unit under subpart 2 of part
4 C, and shall be allocated nitrogen oxides allowances
5 under subsection (f), beginning on the later of Janu-
6 ary 1, 2008, or January 1 of the year after approval
7 of the designation; and

8 “(3) if applicable, an affected unit under part
9 D, and shall be allocated mercury allowances, begin-
10 ning on the later of January 1, 2010, or January 1
11 of the year after approval of designation.

12 “(f) ALLOCATIONS.—

13 “(1) SULFUR DIOXIDE AND NITROGEN OX-
14 IDES.—

15 “(A) IN GENERAL.—The Administrator
16 shall promulgate regulations determining the al-
17 locations of sulfur dioxide allowances and nitro-
18 gen oxides allowances for each year during
19 which a unit is an affected unit under sub-
20 section (e).

21 “(B) ALLOCATIONS.—The regulations shall
22 provide for allocations equal to 70 percent (be-
23 ginning January 1, 2010) and 50 percent (be-
24 ginning January 1, 2018) of the unit’s baseline

1 heat input or product output under subsection
2 (d) multiplied by the lesser of—

3 “(i) the unit’s baseline sulfur dioxide
4 emission rate or nitrogen oxides emission
5 rate, as the case may be; or

6 “(ii) the unit’s most stringent Federal
7 or State emission limitation for sulfur di-
8 oxide or nitrogen oxides applicable to the
9 year on which the unit’s baseline heat
10 input or product output is based under
11 subsection (d).

12 “(2) MERCURY.—

13 “(A) IN GENERAL.—The Administrator
14 shall promulgate regulations providing for the
15 allocation of mercury allowances to solid fuel-
16 fired units designated under this section for
17 each year after January 1, 2010, during which
18 a unit is a designated unit under this section.

19 “(B) ALLOCATIONS.—The regulations shall
20 provide for allocations equal to the lesser of—

21 “(i) the product obtained by
22 multiplying—

23 “(I) the unit’s allowable emis-
24 sions rate for mercury under the na-
25 tional emissions standards for haz-

1 ardous air pollutants for boilers and
2 process heaters, industrial furnaces,
3 kilns, or other stationary combustion
4 devices; by

5 “(II) the unit’s baseline heat
6 input or product output; and

7 “(i) the product obtained by
8 multiplying—

9 “(I) the unit’s most stringent
10 Federal or State emission limitation
11 for mercury emissions rate; by

12 “(II) the unit’s baseline heat
13 input or product output.

14 “(3) LIMITATION.—Allowances allocated to
15 electing units under paragraphs (1) and (2) shall
16 comprise a separate limitation on emissions from
17 sections 423, 433, 453, 473, and other provisions of
18 this Act. These allowances for sulfur dioxide, nitro-
19 gen oxides, or mercury, as the case may be, shall be
20 tradable with allowances allocated under sections
21 424, 434, 454, and 474, as applicable, on the condi-
22 tions that—

23 “(A) electing units may only trade nitrogen
24 oxides within the respective zones established

1 under section 452 within which the electing unit
2 is located; and

3 “(B) affected units within the WRAP
4 States may only purchase sulfur dioxide allow-
5 ances allocated or otherwise distributed by the
6 Administrator to electing units within the
7 WRAP States, and will not be counted for pur-
8 poses of the affected unit’s emissions within the
9 meaning of the WRAP Annex.

10 “(4) INCENTIVES FOR EARLY REDUCTIONS.—

11 “(A) IN GENERAL.—Not later than 180
12 months after the date of enactment of this sec-
13 tion, the Administrator shall promulgate regula-
14 tions authorizing the allocation of sulfur diox-
15 ide, nitrogen oxides, and mercury allowances to
16 units designated under this section that install
17 or modify pollution control equipment or com-
18 bustion technology improvements identified in
19 such regulations after the date of enactment of
20 this section and prior to January 1, 2010.

21 “(B) PROHIBITION ON CERTAIN ALLOCA-
22 TIONS.—No allowances shall be allocated under
23 this paragraph for emissions reductions attrib-
24 utable to—

1 “(i) pollution control equipment or
2 combustion technology improvements that
3 were operational or under construction at
4 any time prior to the date of enactment of
5 this section;

6 “(ii) fuel switching; or

7 “(iii) compliance with any Federal,
8 State, or local statute or regulations.

9 “(C) ALLOWANCES.—The allowances allo-
10 cated to any unit under this paragraph shall—

11 “(i) be in addition to the allowances
12 allocated under paragraphs (1) and (2)
13 and sections 414, 424, 434, 454, and 474;
14 and

15 “(ii) be allocated in an amount equal
16 to 1 allowance of sulfur dioxide and nitro-
17 gen oxides for each 1.05 tons of reduction
18 in emissions of sulfur dioxide and nitrogen
19 oxides, respectively, and 1.05 ounces of re-
20 duction in the emissions of mercury,
21 achieved by the pollution control equip-
22 ment or combustion technology improve-
23 ments starting with the year in which the
24 equipment or improvement is implemented.

1 “(g) WITHDRAWAL.—The Administrator shall pro-
2 mulgate regulations withdrawing from the approved des-
3 ignation under subsection (c) any unit that qualifies as
4 an affected EGU under subpart 2 of part B, subpart 3
5 of part B, subpart 2 of part C, or part D after the ap-
6 proval of the designation of the unit under subsection (c).

7 “(h) REGULATIONS.—Not later than 18 months after
8 the date of enactment of the Clear Skies Act of 2005, the
9 Administrator shall promulgate regulations implementing
10 this section.

11 “(i) APPLICATION PERIOD.—

12 “(1) IN GENERAL.—Applications for designa-
13 tion of units under this section shall be accepted by
14 the Administrator beginning not later than 180 days
15 after the date of enactment of this section.

16 “(2) APPROVAL AND DISAPPROVAL.—Except as
17 provided in paragraph (3), not later than 270 days
18 after accepting an application under paragraph (1),
19 the Administrator shall approve or disapprove the
20 application.

21 “(3) DETERMINATION OF COMPLETION.—

22 “(A) IN GENERAL.—Not later than 90
23 days after accepting an application under para-
24 graph (1), the Administrator shall determine
25 whether the application is complete.

1 “(B) DETERMINATION OF COMPLETION.—
2 Unless an application accepted under paragraph
3 (1) is determined to be incomplete under sub-
4 paragraph (A), the application shall be subject
5 to paragraph (2).

6 “(4) STAY OF DEADLINES.—During the period
7 beginning on the date of acceptance by the Adminis-
8 trator of an application under paragraph (1) and
9 ending on the date on which the Administrator acts
10 on the petition, the applicable compliance deadlines
11 for NESHAPs under subsection (j) shall not apply
12 to the applicable unit that is the subject of the appli-
13 cation.

14 “(j) NESHAP APPLICABILITY.—

15 “(1) APPLICABILITY.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), a unit that is designated as
18 an affected unit under this section shall not be
19 subject to the national emissions standards for
20 hazardous air pollutants (NESHAP) promul-
21 gated under section 112(d) for—

22 “(i) Industrial, Commercial, and Insti-
23 tutional Boilers and Process Heaters (Fed.
24 Reg. 69–55217);

1 “(ii) Plywood and Composite Wood
2 Panel (Fed. Reg. 69–45943);

3 “(iii) Reciprocating Internal Combustion
4 Engines (Fed. Reg. 69–33473); or

5 “(iv) Stationary Combustion Turbines
6 (Fed. Reg. 69–10511).

7 “(B) EXCEPTION.—Units that are boilers
8 or process heaters, industrial furnaces, kilns, or
9 other stationary combustion devices shall be
10 subject on and after January 1, 2010, to the
11 emissions limitation for mercury or the equivalent
12 mercury allocation under subsection (f)(2),
13 along with associated monitoring and compliance
14 requirements, that would be applicable to
15 such units under the NESHAP for those
16 sources promulgated pursuant to section
17 112(d).

18 “(2) REPORTS.—

19 “(A) PRELIMINARY REPORT.—Not later
20 than 18 months after the date of enactment of
21 this section, the Administrator shall publish and
22 make available for public comment a peer reviewed
23 preliminary report characterizing the
24 emissions and public health effects that may
25 reasonably be anticipated to occur from the im-

1 plementation of subsection (j)(1) and subsection
2 (f).

3 “(B) FINAL REPORT.—Not later than 30
4 months after the date on which the preliminary
5 report is published under subparagraph (A), in
6 accordance with section 112(n)(1)(A), the Ad-
7 ministrators shall publish a final report, includ-
8 ing responses to the comments received.

9 “(C) REQUIREMENTS.—The requirements
10 of section 112(n)(1)(A), for purposes of this
11 paragraph, shall be considered to be modified to
12 ensure that the final report under subparagraph
13 (B) includes—

14 “(i) an estimate of the numbers and
15 types of sources that are expected to be
16 designated under this section;

17 “(ii) an estimate of any increase or
18 decrease in the annual emissions of criteria
19 pollutants and of those hazardous air pol-
20 lutants subject to emission limitations
21 under the NESHAPs identified in sub-
22 section (j)(1) from such sources that may
23 reasonably be expected to occur for each
24 year from 2010 through 2018;

1 “(iii) an estimate of any increase or
2 decrease in the annual emissions of criteria
3 pollutants and of those hazardous air pol-
4 lutants subject to emission limitations
5 under the NESHAPs identified in sub-
6 section (j)(1) from such sources that might
7 reasonably be expected to occur for each
8 year from 2010 through 2018, if such
9 sources estimated in clause (i) are not des-
10 ignated under this section; and

11 “(iv) a description of the public health
12 and environmental impacts associated with
13 the emissions increases and decreases de-
14 scribed in clauses (ii) and (iii).

15 “(D) ADDITIONAL AUTHORITY.—

16 “(i) IN GENERAL.—Notwithstanding
17 subsection (j)(1), the Administrator may
18 regulate emissions of hazardous air pollut-
19 ants listed under section 112(b), other
20 than mercury compounds, from sources
21 designated under this section in accordance
22 with section 112(f)(2).

23 “(ii) DETERMINATION.—Not later
24 than 2 years after the date on which the
25 final report under subparagraph (B) is

1 published, the Administrator shall make a
2 determination based on the study and
3 other information satisfying the criteria of
4 the Data Quality Act whether to establish
5 emissions limitations under section 112(f)
6 for sources designated under this section.

7 “(iii) TREATMENT OF DETERMINA-
8 TION.—The determination shall be a final
9 agency action subject to judicial review
10 under section 307 and the Administrative
11 Procedures Act.

12 “(k) EXEMPTION FROM MAJOR SOURCE
13 PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST
14 AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIRE-
15 MENTS.—

16 “(1) MAJOR SOURCE EXEMPTION.—

17 “(A) IN GENERAL.—Subject to subpara-
18 graph (B), a unit designated as an affected unit
19 under this section shall not be considered to be
20 a major source, or a part of a major emitting
21 facility or major stationary combustion device
22 for purposes of compliance with the require-
23 ments of parts C and D of title I, for the 20-
24 year period beginning on the date of enactment
25 of the Clear Skies Act of 2005.

1 “(B) APPLICABILITY.—Subparagraph (A)
2 applies only if, beginning on the date that is 8
3 years after the date of enactment of this section
4 or designation of a unit as an affected unit—

5 “(i)(I) the designated unit either
6 achieves in fact, or is subject to a regu-
7 latory requirement to achieve, a limit on
8 the emissions of particulate matter from
9 the affected unit to the level not greater
10 than the level applicable to the unit either
11 pursuant to subpart D of part 60 of title
12 40, Code of Federal Regulations, or the
13 national emissions standards for hazardous
14 air pollutants for industrial boilers and
15 process heaters issued pursuant to section
16 112; or

17 “(II) the owner or operator of the af-
18 fected unit properly operates, maintains,
19 and repairs pollution control equipment to
20 limit emissions of particulate matter; and

21 “(ii) the owner or operator of the des-
22 ignated unit uses good combustion prac-
23 tices to minimize emissions of carbon mon-
24 oxide.

1 “(2) CLASS I AREA PROTECTIONS.—Notwith-
2 standing the exemption in paragraph (1), an af-
3 fected unit located within 50 kilometers of a Class
4 I area on which construction commences after the
5 date of enactment of this section is subject to those
6 provisions under part C of title I to the review of a
7 new or modified major stationary combustion de-
8 vice’s impact on a Class I area.

9 “(1) LIMITATION.—

10 “(1) IN GENERAL.—No unit designated under
11 this section shall transfer or bank allowances pro-
12 duced as a result of reduced utilization or shutdown,
13 except that such allowances may be transferred or
14 carried forward for use in subsequent years to the
15 extent that—

16 “(A) reduced utilization or shutdown re-
17 sults from the replacement of the unit des-
18 igned under this section, with any other unit
19 or units subject to the requirements of this sub-
20 part; and

21 “(B) the designated unit’s allowances are
22 transferred or carried forward for use at such
23 other replacement unit or units.

24 “(2) NO GREATER ALLOCATION.—In no case
25 may the Administrator allocate to a source des-

1 ignated under this section allowances in an amount
2 greater than the emissions resulting from operation
3 of the source in full compliance with the require-
4 ments of this Act.

5 “(3) NO VIOLATION.—No allowances allocated
6 under this Act shall authorize operation of a unit in
7 violation of any other requirements of this Act.

8 “(m) DEFINITION OF PRODUCT OUTPUT.—In this
9 section, the term ‘product output’ means the output of a
10 stationary combustion device that produces a commercial
11 product other than electricity, heat, or steam which may
12 be used to determine a baseline for units for which heat
13 input is not an appropriate baseline.”.

14 **“SEC. 407. CLEAN COAL TECHNOLOGY REGULATORY INCEN-**
15 **TIVES.**

16 “(a) DEFINITION.—For purposes of this section, the
17 term ‘clean coal technology’ means any technology, includ-
18 ing technologies applied at the precombustion, combus-
19 tion, or post combustion stage, at a new or existing facility
20 which will achieve significant reductions in air emissions
21 of sulfur dioxide or oxides of nitrogen associated with the
22 utilization of coal in the generation of electricity, process
23 steam, or industrial products, which is not in widespread
24 use as of November 15, 1990.

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

3 “(1) APPLICABILITY.—This subsection applies
4 to physical or operational changes to existing facili-
5 ties for the sole purpose of installation, operation,
6 cessation, or removal of a temporary or permanent
7 clean coal technology demonstration project. For the
8 purposes of this section, a clean coal technology
9 demonstration project shall mean a project using
10 funds appropriated under the heading ‘Department
11 of Energy—Clean Coal Technology’, up to a total
12 amount of \$2,500,000,000 for commercial dem-
13 onstration of clean coal technology, or similar
14 projects funded through appropriations for the Envi-
15 ronmental Protection Agency. The Federal contribu-
16 tion for qualifying project shall be at least twenty
17 percent of the total cost of the demonstration
18 project.

19 “(2) TEMPORARY PROJECTS.—Installation, op-
20 eration, cessation, or removal of a temporary clean
21 coal technology demonstration project that is oper-
22 ated for a period of 5 years or less, and which com-
23 plies with the State implementation plans for the
24 State in which the project is located and other re-
25 quirements necessary to attain and maintain the na-

1 tional ambient air quality standards during and
2 after the project is terminated, shall not subject
3 such facility to the requirements of section 111 or
4 part C or D of title I.

5 “(3) PERMANENT PROJECTS.—For permanent
6 clean coal technology demonstration projects that
7 constitute repowering as defined in section 411, any
8 qualifying project shall not be subject to standards
9 of performance under section 111 or to the review
10 and permitting requirements of part C for any pol-
11 lutant the potential emissions of which will not in-
12 crease as a result of the demonstration project.

13 “(4) EPA REGULATIONS.—Not later than
14 twelve months after November 15, 1990, the Admin-
15 istrator shall promulgate regulations or interpretive
16 rulings to revise requirements under section 111 and
17 parts C and D, as appropriate, to facilitate projects
18 consistent in this subsection. With respect to parts
19 C and D, such regulations or rulings shall apply to
20 all areas in which EPA is the permitting authority.
21 In those instances in which the State is the permit-
22 ting authority under part C or D, any State may
23 adopt and submit to the Administrator for approval
24 revisions to its implementation plan to apply the reg-

1 ulations or rulings promulgated under this sub-
2 section.

3 “(c) EXEMPTION FOR REACTIVATION OF VERY
4 CLEAN UNITS.—Physical changes or changes in the meth-
5 od of operation associated with the commencement of com-
6 mercial operations by a coal-fired utility unit after a pe-
7 riod of discontinued operation shall not subject the unit
8 to the requirements of section 111 or part C of the Act
9 where the unit—

10 “(1) has not been in operation for the two-year
11 period prior to November 15, 1990, and the emis-
12 sions from such unit continue to be carried in the
13 permitting authority’s emissions inventory on No-
14 vember 15, 1990;

15 “(2) was equipped prior to shut-down with a
16 continuous system of emissions control that achieves
17 a removal efficiency for sulfur dioxide of no less
18 than 85 percent and a removal efficiency for particu-
19 lates of no less than 98 percent;

20 “(3) is equipped with low-NO_x burners prior to
21 the time of commencement; and

22 “(4) is otherwise in compliance with the re-
23 quirements of this Act.

24 **“SEC. 408. ELECTRICITY RELIABILITY.**

25 “(a) RELIABILITY.—

1 “(1) APPLICABILITY.—At any time prior the
2 applicability of this Act under sections 422, 432,
3 452, and 472, in order to ensure the reliability of an
4 electric utility company or system, including a sys-
5 tem cooperatively or municipally owned, for a speci-
6 fied geographic area or service territory, as deter-
7 mined by the Department of Energy in consultation
8 with the Administrator, during the installation of
9 sulfur dioxide pollution control technology or scrub-
10 bers, nitrogen oxides, mercury or particulate matter
11 control technology, or any combination thereof, the
12 owner or operator of an affected unit may meet the
13 requirements of sections 422, 432, 452, and 472 by
14 means of the compliance procedures of this sub-
15 section (a).

16 “(2) PETITION.—The owner or operator of an
17 affected unit that believes it may experience an ad-
18 verse impact on the reliability of the company or
19 system as a result, in substantial part, of the need
20 to construct sulfur dioxide pollution control equip-
21 ment or scrubbers, nitrogen oxides, mercury or par-
22 ticulate matter control technology, or any combina-
23 tion thereof, may petition the Secretary of Energy,
24 in consultation with the Administrator, for a deter-
25 mination that, to a reasonable degree of certainty,

1 reliability will likely be threatened. Upon such a de-
2 termination, the owner or operator may elect to
3 adopt a compliance method meeting the require-
4 ments of this subsection, as follows:

5 “(A) REGULATIONS.—Within 12 months of
6 enactment the Secretary of Energy shall pro-
7 mulgate regulations describing the requirements
8 for a petition and the petition process, which
9 will include notice and public comment. The
10 Secretary of Energy, in consultation with the
11 Administrator, shall make a final determination
12 on a petition within 180 days of the submittal
13 of a reasonably complete petition. Failure to act
14 within the 180-day period will extend the appli-
15 cability by 12 months for all units subject to
16 the petition.

17 “(B) CONTENTS OF PETITION.—The peti-
18 tion must contain—

19 “(i) a description of each affected
20 unit, the estimated outage time and a con-
21 struction schedule;

22 “(ii) an estimate of demand from date
23 of applicability until 2018;

24 “(iii) the impacts on reliability associ-
25 ated with constructing all of the pollution

1 control projects, including those for sulfur
2 dioxide, nitrogen oxides, mercury, or par-
3 ticulate matter, by the respective deadlines;
4 and

5 “(iv) how the proposed compliance
6 schedule would alleviate detrimental im-
7 pacts.

8 “(C) FAILURE TO PROMULGATE REGULA-
9 TIONS.—If the Secretary of Energy fails to pro-
10 mulgate final regulations or such regulations
11 are not effective for any reason, within the pre-
12 scribed time, petitions containing reasonably
13 sufficient information for a final determination
14 may be submitted to the Secretary of Energy
15 and will be deemed complete.

16 “(3) FINAL DETERMINATION.—In making a
17 final determination the Secretary of Energy, in con-
18 sultation with the Administrator, shall consider the
19 following factors, provided that not all factors need
20 be present to make a determination that, to a rea-
21 sonable degree, reliability will be threatened:

22 “(A) SUPPLY.—The ability of vendors to
23 supply scrubbers; scrubber system equipment,
24 materials and scrubber affected balance of plant
25 equipment including fans, pumps, electric mo-

1 tors, motor drives, dampers, electrical power
2 supply equipment; at fair prices with meaning-
3 ful guarantees or warranties as to availability,
4 delivery dates and meeting contracted pollution
5 control reduction requirements or emissions
6 limitations; with similar considerations for ni-
7 trogen oxides, mercury or particulate matter
8 control technology, or any combination thereof.

9 “(B) DESIGN AND CONSTRUCTION RE-
10 SOURCES.—The availability and limitations of
11 key sulfur dioxide, nitrogen oxides or mercury
12 controls design resources and North American
13 construction resources. The design resources
14 shall include Architect Engineering companies
15 experienced in the design of sulfur dioxide, ni-
16 trogen oxides, mercury or particulate matter
17 control technology. The construction resources
18 shall include construction companies with expe-
19 rience in the construction of sulfur dioxide, ni-
20 trogen oxides, mercury, or particulate matter
21 control technology and trained and experienced
22 labor resources including but not limited to
23 boilermakers, iron workers, electricians, me-
24 chanics;

1 “(C) FEASIBILITY OF CONSTRUCTION.—
2 The feasibility to complete the construction of
3 all pollution control technology projects by the
4 relevant applicability compliance deadline;

5 “(D) IMPACT.—The impact in terms of
6 unit outages and construction schedules on a
7 company or systems reliability and whether
8 such impact is unreasonable, which term shall
9 be presumed to be—

10 “(i) an increase in the price of pur-
11 chase power of (10) percent over the esti-
12 mated cost in cents per kilowatt for the
13 company, system or State, utilized in the
14 latest submissions to a relevant State or
15 Federal agency;

16 “(ii) a projected reduction in available
17 generating capacity such that adequate re-
18 serve margins for a company, system or
19 State do not exist, as determined by the
20 Secretary of Energy in coordination with
21 the relevant Federal or State utility agency
22 or reliability council; or

23 “(iii) a supply shortage of coal needed
24 to meet emissions control expectations for
25 any proposed emissions control device.

1 “(E) POSITIVE DETERMINATION.—A com-
2 pany or system which submits a petition to in-
3 stall sulfur dioxide, nitrogen oxides, mercury, or
4 particulate matter control technology, or any
5 combination thereof, on affected units equaling
6 25 percent or more of its coal-fired capacity
7 shall be presumed to meet the requirements of
8 a positive determination from the Secretary of
9 Energy.

10 “(4) COMPLIANCE.—Upon a positive determina-
11 tion by the Secretary of Energy in accordance with
12 paragraph (3)(E), such affected units will be grant-
13 ed a 1-year extension from the relevant applicability
14 date under this title.

15 “(b) SUBMISSION OF PETITION.—During any year
16 covered by this title, an affected unit may submit a peti-
17 tion in accordance with paragraph (a)(2) to allow use of
18 sulfur dioxide allowances, nitrogen oxides allowances, and
19 mercury allowances, as the case may be, allocated for the
20 immediate next year to meet the applicable requirement
21 to hold such allowances equal to the petitioned year’s
22 emissions.

23 “(c) PRESIDENTIAL WAIVER.—Notwithstanding sub-
24 section (a) or any other provision of this Act, The Presi-
25 dent of the United States shall have authority to tempo-

1 rarely grant waivers from emission limitations under sec-
2 tions 412, 422, 432, 452, and 472, as the case may be,
3 if the President determines that the reliability of any por-
4 tion of national electricity supply or national security is
5 imperiled.

6 **“PART B—SULFUR DIOXIDE EMISSION**

7 **REDUCTIONS**

8 **“Subpart 1—Acid Rain Program**

9 **“SEC. 411. DEFINITIONS.**

10 “For purposes of this subpart and subpart 1 of part
11 B:

12 “(1) ACTUAL 1985 EMISSION RATE.—The term
13 ‘actual 1985 emission rate’, for electric utility units
14 means the annual sulfur dioxide or nitrogen oxides
15 emission rate in pounds per million Btu as reported
16 in the 1985 National Acid Precipitation Assessment
17 Program (NAPAP) Emissions Inventory, Version 2,
18 National Utility Reference File (NURF). For non-
19 utility units, the term ‘actual 1985 emission rate’
20 means the annual sulfur dioxide or nitrogen oxides
21 emission rate in pounds per million Btu as reported
22 in the NAPAP Emission Inventory, Version 2.

23 “(2) ALLOWABLE 1985 EMISSIONS RATE.—The
24 term ‘allowable 1985 emissions rate’ means a feder-
25 ally enforceable emissions limitation for sulfur diox-

1 ide or oxides of nitrogen, applicable to the unit in
2 1985 or the limitation applicable in such other sub-
3 sequent year as determined by the Administrator if
4 such a limitation for 1985 does not exist. Where the
5 emissions limitation for a unit is not expressed in
6 pounds of emissions per million Btu, or the aver-
7 aging period of that emissions limitation is not ex-
8 pressed on an annual basis, the Administrator shall
9 calculate the annual equivalent of that emissions
10 limitation.

11 “(3) ALTERNATIVE METHOD OF COMPLI-
12 ANCE.—The term ‘alternative method of compliance’
13 means a method of compliance in accordance with
14 one or more of the following authorities—

15 “(A) a substitution plan submitted and ap-
16 proved in accordance with subsections 413(b)
17 and (c); or

18 “(B) a phase I extension plan approved by
19 the Administrator under section 413(d), using
20 qualifying phase I technology as determined by
21 the Administrator in accordance with that sec-
22 tion.

23 “(4) BASELINE.—The term ‘baseline’ means
24 the annual quantity of fossil fuel consumed by an af-

1 fected unit, measured in millions of British Thermal
2 Units ('mmBtu's'), calculated as follows:

3 "(A) For each utility unit that was in com-
4 mercial operation prior to January 1, 1985, the
5 baseline shall be the annual average quantity of
6 mmBtu's consumed in fuel during calendar
7 years 1985, 1986, and 1987, as recorded by the
8 Department of Energy pursuant to Form 767.
9 For any utility unit for which such form was
10 not filed, the baseline shall be the level specified
11 for such unit in the 1985 (NAPAP) Emissions
12 Inventory, Version 2 (NURF), or in a corrected
13 data base as established by the Administrator
14 pursuant to paragraph (3). For nonutility units,
15 the baseline in the NAPAP Emissions Inven-
16 tory, Version 2. The Administrator, in the Ad-
17 ministrator's sole discretion, may exclude peri-
18 ods during which a unit is shutdown for a con-
19 tinuous period of 4 calendar months or longer,
20 and make appropriate adjustments under this
21 paragraph. Upon petition of the owner or oper-
22 ator of any unit, the Administrator may make
23 appropriate baseline adjustments for accidents,
24 strikes, disruptions of fuel supplies, failure of
25 equipment, other causes beyond the reasonable

1 control of the owner or operator of the unit that
2 caused prolonged outages.

3 “(B) For any other nonutility unit that is
4 not included in the NAPAP Emissions Inven-
5 tory, Version 2, or a corrected data base as es-
6 tablished by the Administrator pursuant to
7 paragraph (3), the baseline shall be the annual
8 average quantity, in mmBtu consumed in fuel
9 by that unit, as calculated pursuant to a meth-
10 od which the Administrator shall prescribe by
11 regulation to be promulgated not later than 18
12 months after November 15, 1990.

13 “(C) The Administrator shall, upon appli-
14 cation or on his own motion, by December 31,
15 1991, supplement data needed in support of
16 this subpart and correct any factual errors in
17 data from which affected phase II units’ base-
18 lines or actual 1985 emission rates have been
19 calculated. Corrected data shall be used for pur-
20 poses of issuing allowances under this subpart.
21 Such corrections shall not be subject to judicial
22 review, nor shall the failure of the Adminis-
23 trator to correct an alleged factual error in such
24 reports be subject to judicial review.

1 “(5) BASIC PHASE II ALLOWANCE ALLOCA-
2 TIONS.—The term ‘basic phase II allowance alloca-
3 tions’ means:

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

11 “(B) For each calendar year beginning in
12 2010, allocations of allowances made by the Ad-
13 ministrator pursuant to section 412 and sub-
14 sections (b)(1), (3), and (4); (c)(1), (2), (3),
15 and (5); (d)(1), (2), (4), and (5); (e); (f);
16 (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i);
17 and (j) of section 414.

18 “(6) CAPACITY FACTOR.—The term ‘capacity
19 factor’ means the ratio between the actual electric
20 output from a unit and the potential electric output
21 from that unit.

22 “(7) COMMENCED.—The term ‘commenced’ as
23 applied to construction of any new electric utility
24 unit means that an owner or operator has under-
25 taken a continuous program of construction or that

1 an owner or operator has entered into a contractual
2 obligation to undertake and complete, within a rea-
3 sonable time, a continuous program of construction.

4 “(8) COMMENCED COMMERCIAL OPERATION.—
5 The term ‘commenced commercial operation’ with
6 regard to a unit means the start up of the unit’s
7 combustion chamber and commencement of the gen-
8 eration of electricity for sale.

9 “(9) CONSTRUCTION.—The term ‘construction’
10 means fabrication, erection, or installation of an af-
11 fected unit.

12 “(10) EXISTING UNIT.—The term ‘existing
13 unit’ means a unit (including units subject to section
14 111) that commenced commercial operation before
15 November 15, 1990. Any unit that commenced com-
16 mercial operation before November 15, 1990, which
17 is modified, reconstructed, or repowered after No-
18 vember 15, 1990, shall continue to be an existing
19 unit for the purposes of this subpart. For the pur-
20 poses of this subpart, existing units shall not include
21 simple combustion turbines, or units which serve a
22 generator with a nameplate capacity of 25 MWe or
23 less.

24 “(11) INDEPENDENT POWER PRODUCER.—The
25 term ‘independent power producer’ means any per-

1 son who owns or operates, in whole or in part, one
2 or more new independent power production facilities.

3 “(12) NEW INDEPENDENT POWER PRODUCTION
4 FACILITY.—The term ‘new independent power pro-
5 duction facility’ means a facility that—

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

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

14 “(C) is a new unit required to hold allow-
15 ances under this subpart.

16 “(13) INDUSTRIAL SOURCE.—The term ‘indus-
17 trial source’ means a unit that does not serve a gen-
18 erator that produces electricity, a ‘nonutility unit’ as
19 defined in this section, or a process source.

20 “(14) LIFE-OF-THE-UNIT, FIRM POWER CON-
21 TRACTUAL ARRANGEMENT.—The term ‘life-of-the-
22 unit, firm power contractual arrangement’ means a
23 unit participation power sales agreement under
24 which a utility or industrial customer reserves, or is
25 entitled to receive, a specified amount or percentage

1 of capacity and associated energy generated by a
2 specified generating unit (or units) and pays its pro-
3 portional amount of such unit's total costs, pursuant
4 to a contract either—

5 “(A) for the life of the unit;

6 “(B) for a cumulative term of no less than
7 30 years, including contracts that permit an
8 election for early termination; or

9 “(C) for a period equal to or greater than
10 25 years or 70 percent of the economic useful
11 life of the unit determined as of the time the
12 unit was built, with option rights to purchase or
13 release some portion of the capacity and associ-
14 ated energy generated by the unit (or units) at
15 the end of the period.

16 “(15) NEW UNIT.—The term ‘new unit’ means
17 a unit that commences commercial operation on or
18 after November 15, 1990.

19 “(16) NONUTILITY UNIT.—The term ‘nonutility
20 unit’ means a unit other than a utility unit.

21 “(17) PHASE II BONUS ALLOWANCE ALLOCA-
22 TIONS.—The term ‘phase II bonus allowance alloca-
23 tions’ means, for calendar year 2000 through 2009,
24 inclusive, and only for such years, allocations made
25 by the Administrator pursuant to section 412, sub-

1 sections (a)(2), (b)(2), (c)(4), (d)(3) (except as oth-
2 erwise provided therein), and (h)(2) of section 414,
3 and section 415.

4 “(18) QUALIFYING PHASE I TECHNOLOGY.—
5 The term ‘qualifying phase I technology’ means a
6 technological system of continuous emission reduc-
7 tion which achieves a 90 percent reduction in emis-
8 sions of sulfur dioxide from the emissions that would
9 have resulted from the use of fuels which were not
10 subject to treatment prior to combustion.

11 “(19) REPOWERING.—The term ‘repowering’
12 means replacement of an existing coal-fired boiler
13 with one of the following clean coal technologies: at-
14 mospheric or pressurized fluidized bed combustion,
15 integrated gasification combined cycle, magneto-
16 hydrodynamics, direct and indirect coal-fired tur-
17 bines, integrated gasification fuel cells, or as deter-
18 mined by the Administrator, in consultation with the
19 Secretary of Energy, a derivative of one or more of
20 these technologies, and any other technology capable
21 of controlling multiple combustion emissions simulta-
22 neously with improved boiler or generation efficiency
23 and with significantly greater waste reduction rel-
24 ative to the performance of technology in widespread
25 commercial use as of November 15, 1990.

1 “(20) RESERVE.—The term ‘reserve’ means
2 any bank of allowances established by the Adminis-
3 trator under this subpart.

4 “(21) UTILITY UNIT.—

5 “(A) IN GENERAL.—The term ‘utility unit’
6 means—

7 “(i) a unit that serves a generator lo-
8 cated in any State and that produces elec-
9 tricity for sale; or

10 “(ii) a unit that, during 1985, served
11 a generator located in any State and that
12 produced electricity for sale.

13 “(B) EXCLUSIONS.—

14 “(i) IN GENERAL.—Notwithstanding
15 subparagraph (A), a unit described in sub-
16 paragraph (A) that—

17 “(I) was in commercial operation
18 during 1985; but

19 “(II) did not during 1985, serve
20 a generator in any State that pro-
21 duced electricity for sale

22 shall not be a utility unit for purposes of
23 this subpart.

24 “(i) UNITS THAT COGENERATE STEAM
25 AND ELECTRICITY.—A unit that cogen-

1 erates steam and electricity is not a ‘utility
2 unit’ for purposes of this subpart unless
3 the unit is constructed for the purpose of
4 supplying, or commences construction after
5 November 15, 1990 and supplies more
6 than one-third of its potential electric out-
7 put capacity of more than 25 megawatts
8 electrical output to any utility power dis-
9 tribution system for sale.

10 **“SEC. 412. ALLOWANCE ALLOCATION.**

11 “(a) IN GENERAL.—Except as provided in sections
12 414(a)(2), 415(a)(3), and 416, beginning January 1,
13 2000, the Administrator shall not allocate annual emission
14 allowances for sulfur dioxide from utility units in excess
15 of 8.90 million tons except that the Administrator shall
16 not take into account unused allowances carried forward
17 by owners and operators of affected units or by other per-
18 sons holding such allowances, following the year for which
19 they were allocated. If necessary to meeting the restric-
20 tions imposed in the preceding sentence, the Adminis-
21 trator shall reduce, pro rata, the basic phase II allowance
22 allocations for each unit subject to the requirements of
23 section 414. Subject to the provisions of section 417, the
24 Administrator shall allocate allowances for each affected
25 unit at an affected source annually, as provided in para-

1 graphs (2) and (3) and section 403. Except as provided
2 in sections 416, the removal of an existing affected unit
3 or source from commercial operation at any time after No-
4 vember 15, 1990 (whether before or after January 1,
5 1995, or January 1, 2000), shall not terminate or other-
6 wise affect the allocation of allowances pursuant to section
7 413 or 414 to which the unit is entitled. Prior to June
8 1, 1998, the Administrator shall publish a revised final
9 statement of allowance allocations, subject to the provi-
10 sions of section 414(a)(2).

11 “(b) NEW UTILITY UNITS.—

12 “(1) PROHIBITION OF EXCEEDING UNIT AL-
13 LOWANCES.—After January 1, 2000 and through
14 December 31, 2007, it shall be unlawful for a new
15 utility unit to emit an annual tonnage of sulfur diox-
16 ide in excess of the number of allowances to emit
17 held for the unit by the unit’s owner or operator.

18 “(2) PROHIBITION OF EXCEEDING SOURCE AL-
19 LOWANCES.—Starting January 1, 2008, a new util-
20 ity unit shall be subject to the prohibition in sub-
21 section (c)(3).

22 “(3) ELIGIBILITY FOR ALLOCATION OF SULFUR
23 DIOXIDE ALLOWANCES.—New utility units shall not
24 be eligible for an allocation of sulfur dioxide allow-
25 ances under subsection (a)(1), unless the unit is

1 subject to the provisions of subsection (g)(2) or (3)
2 of section 414. New utility units may obtain allow-
3 ances from any person, in accordance with this title.
4 The owner or operator of any new utility unit in vio-
5 lation of subsection (b)(1) or subsection(c)(3) shall
6 be liable for fulfilling the obligations specified in sec-
7 tion 405.

8 “(c) PROHIBITIONS.—

9 “(1) IN GENERAL.—It shall be unlawful for any
10 person to hold, use, or transfer any allowance allo-
11 cated under this subpart, except in accordance with
12 regulations promulgated by the Administrator.

13 “(2) PROHIBITION OF EXCEEDING UNIT AL-
14 LOWANCES.—For any year 1995 through 2007, it
15 shall be unlawful for any affected unit to emit sulfur
16 dioxide in excess of the number of allowances held
17 for that unit for that year by the owner or operator
18 of the unit.

19 “(3) PROHIBITION OF EXCEEDING SOURCE AL-
20 LOWANCES.—Starting January 1, 2008, it shall be
21 unlawful for the affected units at a source to emit
22 a total amount of sulfur dioxide during the year in
23 excess of the number of allowances held for the
24 source for that year by the owner or operator of the
25 source.

1 “(4) EFFECT ON OTHER EMISSION LIMITA-
2 TIONS.—Upon the allocation of allowances under
3 this subpart, the prohibition in paragraphs (2) and
4 (3) shall supersede any other emission limitation ap-
5 plicable under this subpart to the units for which
6 such allowances are allocated.

7 “(d) LIMITATION ON REGULATIONS.—In order to en-
8 sure electricity reliability, regulations establishing a sys-
9 tem for issuing, recording, and tracking allowances under
10 section 402(b) and this subpart shall not prohibit or affect
11 temporary increases and decreases in emissions within
12 utility systems, power pools, or utilities entering into al-
13 lowance pool agreements, that result from their oper-
14 ations, including emergencies and central dispatch, and
15 such temporary emissions increases and decreases shall
16 not require transfer of allowances among units nor shall
17 it require recording. The owners or operators of such units
18 shall act through a designated representative. Notwith-
19 standing the preceding sentence, the total tonnage of emis-
20 sions in any calendar year (calculated at the end thereof)
21 from all units in such a utility system, power pool, or al-
22 lowance pool agreements shall not exceed the total allow-
23 ances for such units for the calendar year concerned, in-
24 cluding for calendar years after 2007, allowances held for

1 such units by the owner or operator of the sources where
2 the units are located.

3 “(e) INTEREST IN AFFECTED UNITS.—Where there
4 are multiple holders of a legal or equitable title to, or a
5 leasehold interest in, an affected unit, or where a utility
6 or industrial customer purchases power from an affected
7 unit (or units) under life-of-the-unit, firm power contrac-
8 tual arrangements, the certificate of representation re-
9 quired under section 403(f) shall state—

10 “(1) that allowances under this subpart and the
11 proceeds of transactions involving such allowances
12 will be deemed to be held or distributed in propor-
13 tion to each holder’s legal, equitable, leasehold, or
14 contractual reservation or entitlement; or

15 “(2) if such multiple holders have expressly pro-
16 vided for a different distribution of allowances by
17 contract, that allowances under this subpart and the
18 proceeds of transactions involving such allowances
19 will be deemed to be held or distributed in accord-
20 ance with the contract.

21 A passive lessor, or a person who has an equitable interest
22 through such lessor, whose rental payments are not based,
23 either directly or indirectly, upon the revenues or income
24 from the affected unit shall not be deemed to be a holder
25 of a legal, equitable, leasehold, or contractual interest for

1 the purpose of holding or distributing allowances as pro-
2 vided in this subsection, during either the term of such
3 leasehold or thereafter, unless expressly provided for in the
4 leasehold agreement. Except as otherwise provided in this
5 subsection, where all legal or equitable title to or interest
6 in an affected unit is held by a single person, the certifi-
7 cation shall state that all allowances under this subpart
8 received by the unit are deemed to be held for that person.

9 **“SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.**

10 “(a) EMISSION LIMITATIONS.—

11 “(1) ALLOCATION.—After January 1, 1995,
12 each source that includes one or more affected units
13 listed in table A is an affected source under this sec-
14 tion. After January 1, 1995, it shall be unlawful for
15 any affected unit (other than an eligible phase I unit
16 under section 413(d)(2)) to emit sulfur dioxide in
17 excess of the tonnage limitation stated as a total
18 number of allowances in table A for phase 1;
19 unless—

20 “(A) the emissions reduction requirements
21 applicable to such unit have been achieved pur-
22 suant to subsection (b) or (d); or

23 “(B) the owner or operator of such unit
24 holds allowances to emit not less than the unit’s
25 total annual emissions, except that, after Janu-

1 ary 1, 2000, the emissions limitations estab-
2 lished in this section shall be superseded by
3 those established in section 414. The owner or
4 operator of any unit in violation of this section
5 be fully liable for such violation including, but
6 not limited to, liability for fulfilling the obliga-
7 tions specified in section 405.

8 “(2) DETERMINATION.—Not later than Decem-
9 ber 31, 1991, the Administrator shall determine the
10 total tonnage of reductions in the emissions of sulfur
11 dioxide from all utility units in calendar year 1995
12 that will occur as a result of compliance with the
13 emissions limitation requirements of this section,
14 and shall establish a reserve of allowances equal in
15 amount to the number of tons determined thereby
16 not to exceed a total of 3.50 million tons. In making
17 such a determination, the Administrator shall com-
18 pute for each unit subject to the emissions limitation
19 requirements of this section the difference
20 between—

21 “(A) the product of its baseline multiplied
22 by the lesser of each unit’s allowable 1985
23 emissions rate and its actual 1985 emissions
24 rate, divided by 2,000; and

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

14 “(3) ADDITIONAL ALLOCATIONS.—In addition
15 to allowances allocated pursuant to paragraph (1),
16 in each calendar year beginning in 1995 and ending
17 in 1999, inclusive, the Administrator shall allocate
18 for each unit on table A that is located in the States
19 of Illinois, Indiana, or Ohio (other than units at
20 Kyger Creek, Clifty Creek and Joppa Steam), allow-
21 ances in an amount equal to 200,000 multiplied by
22 the unit’s pro rata share of the total number of al-
23 lowances allocated for all units on table A in the 3
24 States (other than units at Kyger Creek, Clifty
25 Creek, and Joppa Steam) pursuant to paragraph

1 (1). Such allowances shall be excluded from the cal-
2 culation of the reserve under paragraph (2).

3 “(b) SUBSTITUTIONS.—The owner or operator of an
4 affected unit under subsection (a) may include in its sec-
5 tion 403 permit application and proposed compliance plan
6 a proposal to reassign, in whole or in part, the affected
7 unit’s sulfur dioxide reduction requirements to any other
8 unit(s) under the control of such owner or operator. Such
9 proposal shall specify—

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

15 “(2) the original affected unit’s baseline, the ac-
16 tual and allowable 1985 emissions rate for sulfur di-
17 oxide, and the authorized annual allowance alloca-
18 tion stated in table A;

19 “(3) calculation of the annual average tonnage
20 for calendar years 1985, 1986, and 1987, emitted by
21 the substitute unit or units, based on the baseline
22 for each unit, as defined in section 411(4), multi-
23 plied by the lesser of the unit’s actual or allowable
24 1985 emissions rate;

1 “(4) the emissions rates and tonnage limita-
2 tions that would be applicable to the original and
3 substitute affected units under the substitution pro-
4 posal;

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

11 “(6) such other information as the Adminis-
12 trator may require.

13 “(c) ADMINISTRATOR’S ACTION ON SUBSTITUTION
14 PROPOSALS.—

15 “(1) IN GENERAL.—The Administrator shall
16 take final action on such substitution proposal in ac-
17 cordance with section 403(c) if the substitution pro-
18 posal fulfills the requirements of this subsection.
19 The Administrator may approve a substitution pro-
20 posal in whole or in part and with such modifica-
21 tions or conditions as may be consistent with the or-
22 derly functioning of the allowance system and which
23 will ensure the emissions reductions contemplated by
24 this title. If a proposal does not meet the require-
25 ments of subsection (b), the Administrator shall dis-

1 approve it. The owner or operator of a unit listed in
2 table A shall not substitute another unit or units
3 without the prior approval of the Administrator.

4 “(2) ISSUANCE OF PERMITS.—Upon approval of
5 a substitution proposal, each substitute unit, and
6 each source with such unit, shall be deemed affected
7 under this title, and the Administrator shall issue a
8 permit to the original and substitute affected source
9 and unit in accordance with the approved substi-
10 tution plan and section 403. The Administrator shall
11 allocate allowances for the original and substitute af-
12 fected units in accordance with the approved substi-
13 tution proposal pursuant to section 412. It shall be
14 unlawful for any source or unit that is allocated al-
15 lowances pursuant to this section to emit sulfur di-
16 oxide in excess of the emissions limitation provided
17 for in the approved substitution permit and plan un-
18 less the owner or operator of each unit governed by
19 the permit and approved substitution plan holds al-
20 lowances to emit not less than the unit’s total an-
21 nual emissions. The owner or operator of any origi-
22 nal or substitute affected unit operated in violation
23 of this subsection shall be fully liable for such viola-
24 tion, including liability for fulfilling the obligations
25 specified in section 405. If a substitution proposal is

1 disapproved, the Administrator shall allocate allow-
2 ances to the original affected unit or units in accord-
3 ance with subsection (a).

4 “(d) ELIGIBLE PHASE I EXTENSION UNITS.—

5 “(1) IN GENERAL.—The owner or operator of
6 any affected unit subject to an emissions limitation
7 requirement under this section may petition the Ad-
8 ministrator in its permit application under section
9 403 for an extension of 2 years of the deadline for
10 meeting such requirement, provided that the owner
11 or operator of any such unit holds allowances to
12 emit not less than the unit’s total annual emissions
13 for each of the 2 years of the period of extension.
14 To qualify for such an extension, the affected unit
15 must either employ a qualifying phase I technology,
16 or transfer its phase I emissions reduction obligation
17 to a unit employing a qualifying phase I technology.
18 Such transfer shall be accomplished in accordance
19 with a compliance plan, submitted and approved
20 under section 403, that shall govern operations at all
21 units included in the transfer, and that specifies the
22 emissions reduction requirements imposed pursuant
23 to this title.

24 “(2) REQUIREMENTS FOR EXTENSION PRO-
25 POSALS.—Such extension proposal shall—

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

4 “(B) provide a copy of an executed con-
5 tract, which may be contingent upon the Ad-
6 ministrators approving the proposal, for the de-
7 sign engineering, and construction of the quali-
8 fying phase I technology for the extension unit,
9 or for the unit or units to which the extension
10 unit’s emission reduction obligation is to be
11 transferred;

12 “(C) specify the unit’s or units’ baselines,
13 actual 1985 emissions rates, allowable 1985
14 emissions rates, and projected utilizations for
15 calendar years 1995 through 1999;

16 “(D) require CEMS on both the eligible
17 phase I extension unit or units and the transfer
18 unit or units beginning no later than January
19 1, 1995; and

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

24 “(3) APPROVAL OR DISAPPROVAL.—The Ad-
25 ministrators shall review and take final action on

1 each extension proposal in order of receipt, con-
2 sistent with section 403, and for an approved pro-
3 posal shall designate the unit or units as an eligible
4 phase I extension unit. The Administrator may ap-
5 prove an extension proposal in whole or in part, and
6 with such modifications or conditions as may be nec-
7 essary, consistent with the orderly functioning of the
8 allowance system, and to ensure the emissions reduc-
9 tions contemplated by the subpart.

10 “(4) DETERMINING THE AVAILABILITY OF AL-
11 LOCATIONS.—In order to determine the number of
12 proposals eligible for allocations from the reserve
13 under subsection (a)(2) and the number of the al-
14 lowances remaining available after each proposal is
15 acted upon, the Administrator shall reduce the total
16 number of allowances remaining available in the re-
17 serve by the number of allowances calculated accord-
18 ing to subparagraph (A), (B), and (C) until either
19 no allowances remain available in the reserve for fur-
20 ther allocation or all approved proposals have been
21 acted upon. If no allowances remain available in the
22 reserve for further allocation before all proposals
23 have been acted upon by the Administrator, any
24 pending proposals shall be disapproved. The Admin-
25 istrator shall calculate allowances equal to—

1 “(A) the difference between the lesser of
2 the average annual emissions in calendar years
3 1988 and 1989 or the projected emissions ton-
4 nage for calendar year 1995 of each eligible
5 phase I extension unit, as designated under
6 paragraph (3), and the product of the unit’s
7 baseline multiplied by an emission rate of 2.50
8 lbs/mmBtu, divided by 2,000;

9 “(B) the difference between the lesser of
10 the average annual emissions in calendar years
11 1988 and 1989 or the projected emissions ton-
12 nage for calendar year 1996 of each eligible
13 phase I extension unit, as designated under
14 paragraph (3), and the product of the unit’s
15 baseline multiplied by an emission rate of 2.50
16 lbs/mmBtu, divided by 2,000; and

17 “(C) the amount by which (i) the product
18 of each unit’s baseline multiplied by an emis-
19 sion rate of 1.20 lbs/mmBtu, divided by 2,000,
20 exceeds (ii) the tonnage level specified under
21 subparagraph (E) of paragraph (2) of this sub-
22 section multiplied by a factor of 3.

23 “(5) ALLOCATION OF INITIAL ALLOWANCES.—
24 Each eligible phase I extension unit shall receive al-
25 lowances determined under subsection (a)(1) or (c)

1 of this section. In addition, for calendar year 1995,
2 the Administrator shall allocate to each eligible
3 phase I extension unit, from the allowance reserve
4 created pursuant to subsection (a)(2), allowances
5 equal to the difference between the lesser of the av-
6 erage annual emissions in calendar years 1988 and
7 1989 or its projected emission tonnage for calendar
8 year 1995 and the product of the unit's baseline
9 multiplied by an emission rate of 2.50 lbs/mmBtu,
10 divided by 2,000. In calendar year 1996, the Admin-
11 istrator shall allocate for each eligible unit, from the
12 allowance reserve created pursuant to subsection
13 (a)(2), allowances equal to the difference between
14 the lesser of the average annual emissions in cal-
15 endar years 1988 and 1989 or its projected emis-
16 sions tonnage for calendar year 1996 and the prod-
17 uct of the unit's baseline multiplied by an emission
18 rate of 2.50 lbs/mmBtu, divided by 2,000. It shall
19 be unlawful for any source or unit subject to an ap-
20 proved extension plan under this subsection to emit
21 sulfur dioxide in excess of the emissions limitations
22 provided for in the permit and approved extension
23 plan, unless the owner or operator of each unit gov-
24 erned by the permit and approved plan holds allow-

1 ances to emit not less than the unit's total annual
2 emissions.

3 “(6) ALLOCATION OF ADDITIONAL ALLOW-
4 ANCES.—In addition to allowances specified in para-
5 graph (4), the Administrator shall allocate for each
6 eligible phase I extension unit employing qualifying
7 phase I technology, for calendar years 1997, 1998,
8 and 1999, additional allowances, from any remaining
9 allowances in the reserve created pursuant to sub-
10 section (a)(2), following the reduction in the reserve
11 provided for in paragraph (4), not to exceed the
12 amount by which (A) the product of each eligible
13 unit's baseline times an emission rate of 1.20 lbs/
14 mmBtu, divided by 2,000 exceeds (B) the tonnage
15 level specified under subparagraph (E) of paragraph
16 (2) of this subsection.

17 “(7) DEDUCTION FROM ANNUAL ALLOWANCE
18 ALLOCATIONS.—After January 1, 1997, in addition
19 to any liability under this Act, including under sec-
20 tion 405, if any eligible phase I extension unit em-
21 ploying qualifying phase I technology or any transfer
22 unit under this subsection emits sulfur dioxide in ex-
23 cess of the annual tonnage limitation specified in the
24 extension plan, as approved in paragraph (2) of this
25 subsection, the Administrator shall, in the calendar

1 year following such excess, deduct allowances equal
2 to the amount of such excess from such unit's an-
3 nual allowance allocation.

4 “(e) AUTHORIZATION.—

5 “(1) IN GENERAL.—In the case of a unit that
6 receives authorization from the Governor of the
7 State in which such unit is located to make reduc-
8 tions in the emissions of sulfur dioxide prior to cal-
9 endar year 1995 and that is part of a utility system
10 that meets the following requirements—

11 “(A) the total coal-fired generation within
12 the utility system as a percentage of total sys-
13 tem generation decreased by more than 20 per-
14 cent between January 1, 1980, and December
15 31, 1985; and

16 “(B) the weighted capacity factor of all
17 coal-fired units within the utility system aver-
18 aged over the period from January 1, 1985,
19 through December 31, 1987, was below 50 per-
20 cent, the Administrator shall allocate allowances
21 under this paragraph for the unit pursuant to
22 this subsection. The Administrator shall allo-
23 cate allowances for a unit that is an affected
24 unit pursuant to section 414 (but is not also an
25 affected unit under this section) and part of a

1 utility system that includes 1 or more affected
2 units under section 414 for reductions in the
3 emissions of sulfur dioxide made during the pe-
4 riod 1995–1999 if the unit meets the require-
5 ments of this subsection and the requirements
6 of the preceding sentence, except that for the
7 purposes of applying this subsection to any
8 such unit, the prior year concerned as specified
9 below, shall be any year after January 1, 1995
10 but prior to January 1, 2000.

11 “(2) ALLOWANCES FOR EARLY REDUCTIONS.—

12 In the case of an affected unit under this section de-
13 scribed in subparagraph (A), the allowances allo-
14 cated under this subsection for early reductions in
15 any prior year may not exceed the amount which (A)
16 the product of the unit’s baseline multiplied by the
17 unit’s 1985 actual sulfur dioxide emission rate (in
18 lbs. per mmBtu), divided by 2,000 exceeds (B) the
19 allowances specified for such unit in Table A. In the
20 case of an affected unit under section 414 described
21 in subparagraph (A), the allowances awarded under
22 this subsection for early reductions in any prior year
23 may not exceed the amount by which (i) the product
24 of the quality of fossil fuel consumed by the unit (in
25 mmBtu) in the prior year multiplied by the lesser of

1 2.50 or the most stringent emission rate (in lbs. per
 2 mmBtu) applicable to the unit under the applicable
 3 implementation plan, divided by 2,000 exceeds (ii)
 4 the unit's actual tonnage of sulfur dioxide emission
 5 for the prior year concerned. Allowances allocated
 6 under this subsection for units referred to in sub-
 7 paragraph (A) may be allocated only for emission re-
 8 ductions achieved as a result of physical changes or
 9 changes in the method of operation made after No-
 10 vember 15, 1990, including changes in the type or
 11 quality of fossil fuel consumed.

12 “(3) EFFECT OF SUBSECTION.—In no event
 13 shall the provisions of this subsection be interpreted
 14 as an event of force majeure or a commercial im-
 15 practicability or in any other way as a basis for ex-
 16 cused nonperformance by a utility system under a
 17 coal sales contract in effect before November 15,
 18 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

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

State	Plant name	Generator	Phase I allowances		
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		
J. McDonough	4	37,640			
	1	19,910			
Wansley	2	20,600			
	1	70,770			
Yates	2	2	65,430		
		1	7,210		
	2	7,040			
	3	6,950			
	4	8,910			
	5	9,410			
	6	24,760			
	7	21,480			
	Illinois	Baldwin	1	42,010	
			2	44,420	
3			42,550		
Coffeen		1	11,790		
		2	35,670		
Grand Tower		4	5,910		
Hennepin		2	18,410		
Joppa Steam		1	12,590		
		2	10,770		
		3	12,270		
		4	11,360		
		5	11,420		
		6	10,620		
		1	31,530		
Kincaid		2	33,810		
		3	13,890		
		2	8,880		
Indiana	Bailly	7	11,180		
		8	15,630		
	Breed	1	18,500		
	Cayuga	1	33,370		
		2	34,130		
	Clifty Creek	1	20,150		
		2	19,810		
		3	20,410		

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

State	Plant name	Generator	Phase I allowances
		4	20,080
		5	19,360
		6	20,380
	E. W. Stout	5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
	.....	3	6,530
	.....	4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
	.....	2	2,860
	.....	3	3,750
	.....	5	3,670
	.....	6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780

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

State	Plant name	Generator	Phase I allowances
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270

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

State	Plant name	Generator	Phase I allowances
		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
	Martins Creek	1	12,660

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

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

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

State	Plant name	Generator	Phase I allowances
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

1 “(f) ENERGY CONSERVATION AND RENEWABLE EN-
2 ERGY.—

3 “(1) DEFINITIONS.—In this subsection:

4 “(A) QUALIFIED ENERGY CONSERVATION
5 MEASURE.—The term ‘qualified energy con-
6 servation measure’ means a cost effective meas-
7 ure, as identified by the Administrator in con-
8 sultation with the Secretary of Energy, that in-
9 creases the efficiency of the use of electricity
10 provided by an electric utility to its customers.

11 “(B) QUALIFIED RENEWABLE ENERGY.—
12 The term ‘qualified renewable energy’ means
13 energy derived from biomass, solar, geothermal,
14 or wind as identified by the Administrator in
15 consultation with the Secretary of Energy.

16 “(C) ELECTRIC UTILITY.—The term ‘elec-
17 tric utility’ means any person, State agency, or
18 Federal agency, which sells electric energy.

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

4 “(A) IN GENERAL.—The regulations under
5 paragraph (4) shall provide that for each ton of
6 sulfur dioxide emissions avoided by an electric
7 utility, during the applicable period, through
8 the use of qualified energy conservation meas-
9 ures or qualified renewable energy, the Admin-
10 istrator shall allocate a single allowance to such
11 electric utility, on a first-come-first-served basis
12 from the Conservation and Renewable Energy
13 Reserve established under subsection (g), up to
14 a total of 300,000 allowances for allocation
15 from such Reserve.

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

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

24 “(ii) The emissions of sulfur dioxide
25 avoided through the use of qualified energy

1 conservation measures or qualified renew-
2 able energy are quantified in accordance
3 with regulations promulgated by the Ad-
4 ministrator under this subsection.

5 “(iii)(I) Such electric utility has
6 adopted and is implementing a least cost
7 energy conservation and electric power
8 plan which evaluates a range of resources,
9 including new power supplies, energy con-
10 servation, and renewable energy resources,
11 in order to meet expected future demand
12 at the lowest system cost.

13 “(II) The qualified energy conserva-
14 tion measures or qualified renewable en-
15 ergy, or both, are consistent with that
16 plan.

17 “(III) Electric utilities subject to the
18 jurisdiction of a State regulatory authority
19 must have such plan approved by such au-
20 thority. For electric utilities not subject to
21 the jurisdiction of a State regulatory au-
22 thority such plan shall be approved by the
23 entity with rate-making authority for such
24 utility.

1 “(iv) In the case of qualified energy
2 conservation measures undertaken by a
3 State regulated electric utility, the Sec-
4 retary of Energy certifies that the State
5 regulatory authority with jurisdiction over
6 the electric rates of such electric utility has
7 established rates and charges which ensure
8 that the net income of such electric utility
9 after implementation of specific cost effec-
10 tive energy conservation measures is at
11 least as high as such net income would
12 have been if the energy conservation meas-
13 ures had not been implemented. Upon the
14 date of any such certification by the Sec-
15 retary of Energy, all allowances which, but
16 for this paragraph, would have been allo-
17 cated under subparagraph (B) before such
18 date, shall be allocated to the electric util-
19 ity. This clause is not a requirement for
20 qualified renewable energy.

21 “(v) Such utility or any subsidiary of
22 the utility’s holding company owns or oper-
23 ates at least one affected unit.

24 “(C) PERIOD OF APPLICABILITY.—Allow-
25 ances under this subsection shall be allocated

1 only with respect to kilowatt hours of electric
2 energy saved by qualified energy conservation
3 measures or generated by qualified renewable
4 energy after January 1, 1992, and before the
5 earlier of (i) December 31, 2000, or (ii) the
6 date on which any electric utility steam gener-
7 ating unit owned or operated by the electric
8 utility to which the allowances are allocated be-
9 comes subject to this subpart (including those
10 sources that elect to become affected by this
11 title, pursuant to section 417).

12 “(D) DETERMINATION OF AVOIDED EMIS-
13 SIONS.—

14 “(i) APPLICATION.—In order to re-
15 ceive allowances under this subsection, an
16 electric utility shall make an application
17 which—

18 “(I) designates the qualified en-
19 ergy conservation measures imple-
20 mented and the qualified renewable
21 energy sources used for purposes of
22 avoiding emissions;

23 “(II) calculates, in accordance
24 with subparagraphs (F) and (G), the
25 number of tons of emissions avoided

1 by reason of the implementation of
2 such measures or the use of such re-
3 newable energy sources; and

4 “(III) demonstrates that the re-
5 quirements of subparagraph (B) have
6 been met. Such application for allow-
7 ances by a State-regulated electric
8 utility shall require approval by the
9 State regulatory authority with juris-
10 diction over such electric utility. The
11 authority shall review the application
12 for accuracy and compliance with this
13 subsection and the rules under this
14 subsection. Electric utilities whose re-
15 tail rates are not subject to the juris-
16 diction of a State regulatory authority
17 shall apply directly to the Adminis-
18 trator for such approval.

19 “(E) AVOIDED EMISSIONS FROM QUALI-
20 FIED ENERGY CONSERVATION MEASURES.—For
21 the purposes of this subsection, the emission
22 tonnage deemed avoided by reason of the imple-
23 mentation of qualified energy conservation
24 measures for any calendar year shall be a ton-
25 nage equal to the product of multiplying—

1 “(i) the kilowatt hours that would
2 otherwise have been supplied by the utility
3 during such year in the absence of such
4 qualified energy conservation measures, by
5 “(ii) 0.004, and dividing by 2,000.

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

15 “(G) PROHIBITIONS.—

16 “(i) No allowances shall be allocated
17 under this subsection for the implementa-
18 tion of programs that are exclusively infor-
19 mational or educational in nature.

20 “(ii) No allowances shall be allocated
21 for energy conservation measures or renew-
22 able energy that were operational before
23 January 1, 1992.

24 “(3) SAVINGS PROVISION.—Nothing in this sub-
25 section precludes a State or State regulatory author-

1 ity from providing additional incentives to utilities to
2 encourage investment in demand-side resources.

3 “(4) REGULATIONS.—The Administrator shall
4 implement this subsection under 40 CFR part 73
5 (2002), amended as appropriate by the Adminis-
6 trator. Such regulations shall list energy conserva-
7 tion measures and renewable energy sources which
8 may be treated as qualified energy conservation
9 measures and qualified renewable energy for pur-
10 poses of this subsection. Allowances shall only be al-
11 located if all requirements of this subsection and the
12 rules promulgated to implement this subsection are
13 complied with. The Administrator shall review the
14 determinations of each State regulatory authority
15 under this subsection to encourage consistency from
16 electric utility and from State-to-State in accordance
17 with the Administrator’s rules. The Administrator
18 shall publish the findings of this review no less than
19 annually.

20 “(g) CONSERVATION AND RENEWABLE ENERGY RE-
21 SERVE.—The Administrator shall establish a Conservation
22 and Renewable Energy Reserve under this subsection. Be-
23 ginning on January 1, 1995, the Administrator may allo-
24 cate from the Conservation and Renewable Energy Re-
25 serve an amount equal to a total of 300,000 allowances

1 for emissions of sulfur dioxide pursuant to section 411.
2 In order to provide 300,000 allowances for such reserve,
3 in each year beginning in calendar year 2000 and until
4 calendar year 2009, inclusive, the Administrator shall re-
5 duce each unit's basic phase II allowance allocation on the
6 basis of its pro rata share of 30,000 allowances. Notwith-
7 standing the prior sentence, if allowances remain in the
8 reserve on January 1, 2010, the Administrator shall allo-
9 cate such allowances for affected units under section 414
10 on a pro rata basis. For purposes of this subsection, for
11 any unit subject to the emissions limitation requirements
12 of section 414, the term 'pro rata basis' refers to the ratio
13 which the reductions made in such unit's allowances in
14 order to establish the reserve under this subsection bears
15 to the total of such reductions for all such units.

16 “(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR
17 UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL
18 BASELINE.—

19 “(1) OPTIONAL BASELINE FOR UNITS IN CER-
20 TAIN SYSTEMS.—In the case of a unit subject to the
21 emissions limitation requirements of this section
22 which (as of November 15, 1990)—

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

1 “(B) has decreased its sulfur dioxide emis-
2 sions rate by 60 percent or greater since 1980,
3 and

4 “(C) is part of a utility system which has
5 a weighted average sulfur dioxide emissions rate
6 for all fossil fueled-fired units below 1.0 lbs/
7 mmBtu, at the election to the owner or oper-
8 ator of such unit, the unit’s baseline may be
9 calculated—

10 “(i) as provided under section 411, or

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

15 “(2) ALLOWANCE ALLOCATION.—Whenever a
16 unit referred to in paragraph (1) elects to calculate
17 its baseline as provided in clause (ii) of paragraph
18 (1), the Administrator shall allocate allowances for
19 the unit pursuant to section 412(a), this section,
20 and section 414 (as basic phase II allowance alloca-
21 tions) in an amount equal to the baseline selected
22 multiplied by the lower of the average annual emis-
23 sion rate for such unit in 1989, or 1.0 lbs/mmBtu.
24 Such allowance allocation shall be in lieu of any allo-

1 cation of allowances under this section and section
2 414.

3 **“SEC. 414. PHASE II SULFUR DIOXIDE REQUIREMENTS.**

4 “(a) APPLICABILITY.—

5 “(1) BASIC PHASE II ALLOWANCE ALLOCA-
6 TIONS.—After January 1, 2000, each existing utility
7 unit as provided below is subject to the limitations
8 or requirements of this section. Each utility unit
9 subject to an annual sulfur dioxide tonnage emission
10 limitation under this section is an affected unit
11 under this subpart. Each source that includes one or
12 more affected units is an affected source. In the case
13 of an existing unit that was not in operation during
14 calendar year 1985, the emission rate for a calendar
15 year after 1985, as determined by the Adminis-
16 trator, shall be used in lieu of the 1985 rate.

17 “(2) BASIC PHASE II BONUS ALLOWANCE ALLO-
18 CATIONS.—In addition to basic phase II allowance
19 allocations, in each year beginning in calendar year
20 2000 and ending in calendar year 2009, inclusive,
21 the Administrator shall allocate up to 530,000 phase
22 II bonus allowances pursuant to subsections (b)(2),
23 (c)(4), (d)(3) (A) and (B), and (h)(2) of this section
24 and section 415.

1 “(3) ADDITIONAL ALLOWANCE ALLOCATIONS
2 FOR CERTAIN AFFECTED SOURCES AND UNITS.—In
3 addition to basic phase II allowances allocations and
4 phase II bonus allowance allocations, beginning Jan-
5 uary 1, 2000, the Administrator shall allocate for
6 each unit listed on table A in section 413 (other
7 than units at Kyger Creek, Clifty Creek, and Joppa
8 Stream) and located in the States of Illinois, Indi-
9 ana, Ohio, Georgia, Alabama, Missouri, Pennsyl-
10 vania, West Virginia, Kentucky, or Tennessee allow-
11 ances in an amount equal to 50,000 multiplied by
12 the unit’s pro rata share of the total number of
13 basic allowances allocated for all units listed on table
14 A (other than units at Kyger Creek, Clifty Creek,
15 and Joppa Stream). Allowances allocated pursuant
16 to this paragraph shall not be subject to the
17 8,900,000 ton limitation in section 412(a).

18 “(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND
19 1.20 LBS/MMBTU.—

20 “(1) BASIC PHASE II ALLOWANCE ALLOCA-
21 TIONS.—Except as otherwise provided in paragraph
22 (3), after January 1, 2000, it shall be unlawful for
23 any existing utility unit that serves a generator with
24 nameplate capacity equal to, or greater, than 75
25 MWe and an actual 1985 emission rate equal to or

1 greater than 1.20 lbs/mmBtu to exceed an annual
2 sulfur dioxide tonnage emission limitation equal to
3 the product of the unit's baseline multiplied by an
4 emission rate equal to 1.20 lbs/mmBtu, divided by
5 2,000, unless the owner or operator of such unit
6 holds allowances to emit not less than the unit's
7 total annual emissions or, for a year after 2007, un-
8 less the owner or operator of the source that in-
9 cludes such unit holds allowances to emit not less
10 than the total annual emissions of all affected units
11 at the source.

12 “(2) RESERVE ALLOWANCES.—In addition to
13 allowances allocated pursuant to paragraph (1) and
14 section 412(a) as basic phase II allowance alloca-
15 tions, beginning January 1, 2000, and for each cal-
16 endar year thereafter until and including 2009, the
17 Administrator shall allocate annually for each unit
18 subject to the emissions limitation requirements of
19 paragraph (1) with an actual 1985 emissions rate
20 greater than 1.20 lbs/mmBtu and less than 2.50 lbs/
21 mmBtu and a baseline capacity factor of less than
22 60 percent, allowances from the reserve created pur-
23 suant to subsection (a)(2) in an amount equal to
24 1.20 lbs/mmBtu multiplied by 50 percent of the dif-
25 ference, on a Btu basis, between the unit's baseline

1 and the unit's fuel consumption at a 60 percent ca-
2 pacity factor.

3 “(3) PROHIBITION.—After January 1, 2000, it
4 shall be unlawful for any existing utility unit with an
5 actual 1985 emissions rate equal to or greater than
6 1.20 lbs/mmBtu whose annual average fuel con-
7 sumption during 1985, 1986, and 1987 on a Btu
8 basis exceeded 90 percent in the form of lignite coal
9 which is located in a State in which, as of July 1,
10 1989, no county or portion of a county was des-
11 ignated nonattainment under section 107 of this Act
12 for any pollutant subject to the requirements of sec-
13 tion 109 of this Act to exceed an annual sulfur diox-
14 ide tonnage limitation equal to the product of the
15 unit's baseline multiplied by the lesser of the unit's
16 actual 1985 emissions rate or its allowable 1985
17 emissions rate, divided by 2,000, unless the owner or
18 operator of such unit holds allowances to emit not
19 less than the unit's total annual emissions or, for a
20 year after 2007, unless the owner or operator of the
21 source that includes such unit holds allowances to
22 emit not less than the total annual emissions of all
23 affected units at the source.

24 “(4) ANNUAL ALLOWANCE ALLOCATIONS.—
25 After January 1, 2000, the Administrator shall allo-

1 cate annually for each unit, subject to the emissions
2 limitation requirements of paragraph (1), which is
3 located in a State with an installed electrical gener-
4 ating capacity of more than 30,000,000 kw in 1988
5 and for which was issued a prohibition order or a
6 proposed prohibition order (from burning oil), which
7 unit subsequently converted to coal between January
8 1, 1980, and December 31, 1985, allowances equal
9 to the difference between (A) the product of the
10 unit's annual fuel consumption, on a Btu basis, at
11 a 65 percent capacity factor multiplied by the lesser
12 of its actual or allowable emissions rate during the
13 first full calendar year after conversion, divided by
14 2,000, and (B) the number of allowances allocated
15 for the unit pursuant to paragraph (1): *Provided,*
16 That the number of allowances allocated pursuant to
17 this paragraph shall not exceed an annual total of
18 five thousand. If necessary to meeting the restriction
19 imposed in the preceding sentence the Administrator
20 shall reduce, pro rata, the annual allowances allo-
21 cated for each unit under this paragraph.

22 “(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE
23 AND ABOVE 1.20 LBS/MMBTU.—

24 “(1) STEAM-ELECTRIC CAPACITY EQUAL TO OR
25 GREATER THAN 250 MWE.—Except as otherwise pro-

1 vided in paragraph (3), after January 1, 2000, it
2 shall be unlawful for a coal or oil-fired existing util-
3 ity unit that serves a generator with nameplate ca-
4 pacity of less than 75 MWe and an actual 1985
5 emission rate equal to, or greater than, 1.20 lbs/
6 mmBtu and which is a unit owned by a utility oper-
7 ating company whose aggregate nameplate fossil fuel
8 steam-electric capacity is, as of December 31, 1989,
9 equal to, or greater than, 250 MWe to exceed an an-
10 nual sulfur dioxide emissions limitation equal to the
11 product of the unit's baseline multiplied by an emis-
12 sion rate equal to 1.20 lbs/mmBtu, divided by 2,000
13 unless the owner or operator of such unit holds al-
14 lowances to emit not less than the unit's total an-
15 nual emissions, or for a year after 2007, unless the
16 owner or operator of the source that includes such
17 unit holds allowances to emit not less than the total
18 annual emissions of all affected units at the source.

19 “(2) STEAM-ELECTRIC CAPACITY LESS THAN
20 250 MWE.—After January 1, 2000, it shall be unlaw-
21 ful for a coal or oil-fired existing utility unit that
22 serves a generator with nameplate capacity of less
23 than 75 MWe and an actual 1985 emission rate
24 equal to, or greater than, 1.20 lbs/mmBtu (excluding
25 units subject to section 111 of the Act or to a feder-

1 ally enforceable emissions limitation for sulfur diox-
2 ide equivalent to an annual rate of less than 1.20
3 lbs/mmBtu) and which is a unit owned by a utility
4 operating company whose aggregate nameplate fossil
5 fuel steam-electric capacity is, as of December 31,
6 1989, less than 250 MWe, to exceed an annual sul-
7 fur dioxide tonnage emissions limitation equal to the
8 product of the unit's baseline multiplied by the less-
9 er of its actual 1985 emissions rate or its allowable
10 1985 emissions rate, divided by 2,000, unless the
11 owner or operator of such unit holds allowances to
12 emit not less than the unit's total annual emissions,
13 or for a year after 2007, unless the owner or oper-
14 ator of the source that includes such unit holds al-
15 lowances to emit not less than the total annual emis-
16 sions of all affected units at the source.

17 “(3) STEAM-ELECTRIC CAPACITY BETWEEN 250
18 AND 450 MWE.—After January 1, 2000 it shall be
19 unlawful for any existing utility unit with a name-
20 plate capacity below 75 MWe and an actual 1985
21 emissions rate equal to, or greater than, 1.20 lbs/
22 mmBtu which became operational on or before De-
23 cember 31, 1965, which is owned by a utility oper-
24 ating company with, as of December 31, 1989, a
25 total fossil fuel steam-electric generating capacity

1 greater than 250 MWe, and less than 450 MWe
2 which serves fewer than 78,000 electrical customers
3 as of November 15, 1990, to exceed an annual sul-
4 fur dioxide emissions tonnage limitation equal to the
5 product of its baseline multiplied by the lesser of its
6 actual or allowable 1985 emission rate, divided by
7 2,000, unless the owner or operator holds allowances
8 to emit not less than the units total annual emis-
9 sions, or for a year after 2007, unless the owner or
10 operator of the source that includes such unit holds
11 allowances to emit not less than the total annual
12 emissions of all affected units at the source. After
13 January 1, 2010, it shall be unlawful for each unit
14 subject to the emissions limitation requirements of
15 this paragraph to exceed an annual emissions ton-
16 nage limitation equal to the product of its baseline
17 multiplied by an emissions rate of 1.20 lbs/mmBtu,
18 divided by 2,000, unless the owner or operator holds
19 allowances to emit not less than the unit's total an-
20 nual emissions, or for a year after 2007, unless the
21 owner or operator of the source that includes such
22 unit holds allowances to emit not less than the total
23 annual emissions of all affected units at the source.

24 “(4) RESERVE ALLOWANCES.—In addition to
25 allowances allocated pursuant to paragraph (1) and

1 section 412(a) as basic phase II allowance alloca-
2 tions, beginning January 1, 2000, and for each cal-
3 endar year thereafter until and including 2009, in-
4 clusive, the Administrator shall allocate annually for
5 each unit subject to the emissions limitation require-
6 ments of paragraph (1) with an actual 1985 emis-
7 sions rate equal to, or greater than, 1.20 lbs/mmBtu
8 and less than 2.50 lbs/mmBtu and a baseline capac-
9 ity factor of less than 60 percent, allowances from
10 the reserve created pursuant to subsection (a)(2) in
11 an amount equal to 1.20 lbs/mmBtu multiplied by
12 50 percent of the difference, on a Btu basis, between
13 the unit's baseline and the unit's fuel consumption
14 at a 60 percent capacity factor.

15 “(5) CERTAIN ELECTRIC UTILITY SYSTEMS.—
16 After January 1, 2000, it shall be unlawful for any
17 existing unit with a nameplate capacity below 75
18 MWe and an actual 1985 emissions rate equal to, or
19 greater than, 1.20 lbs/mmBtu which is part of an
20 electric utility system which, as of November 15,
21 1990—

22 “(A) has at least 20 percent of its fossil-
23 fuel capacity controlled by flue gas
24 desulfurization devices;

1 “(B) has more than 10 percent of its fos-
2 sil-fuel capacity consisting of coal-fired units of
3 less than 75 MWe; and

4 “(C) has large units (greater than 400
5 MWe) all of which have difficult or very dif-
6 ficult FGD Retrofit Cost Factors (according to
7 the Emissions and the FGD Retrofit Feasibility
8 at the 200 Top Emitting Generating Stations,
9 prepared for the United States Environmental
10 Protection Agency on January 10, 1986) to ex-
11 ceed an annual sulfur dioxide emissions tonnage
12 limitation equal to the product of its baseline
13 multiplied by an emissions rate of 2.5 lbs/
14 mmBtu, divided by 2,000, unless the owner or
15 operator holds allowances to emit not less than
16 the unit’s total annual emissions, for a year
17 after 2007, or the owner or operator of the
18 source that includes such unit holds allowances
19 to emit not less than the total annual emissions
20 of all affected units at the source. After Janu-
21 ary 1, 2010, it shall be unlawful for each unit
22 subject to the emissions limitation requirements
23 of this paragraph to exceed an annual emissions
24 tonnage limitation equal to the project of its
25 baseline multiplied by an emissions rate of 1.20

1 lbs/mmBtu, divided by 2,000, unless the owner
2 or operator holds for use allowances to emit not
3 less than the unit's total annual emissions for
4 a year after 2007, or the owner or operator of
5 the source that includes such unit holds allow-
6 ances to emit not less than the total annual
7 emissions of all affected units at the source.

8 “(d) COAL-FIRED UNITS BELOW 1.20 LBS/
9 MMBTU.—

10 “(1) RATE LESS THAN 0.60 LBS/MMBTU.—After
11 January 1, 2000, it shall be unlawful for any exist-
12 ing coal-fired utility unit the lesser of whose actual
13 or allowable 1985 sulfur dioxide emissions rate is
14 less than 0.60 lbs/mmBtu to exceed an annual sulfur
15 dioxide tonnage emission limitation equal to the
16 product of the unit's baseline multiplied by—

17 “(A) the lesser of 0.60 lbs/mmBtu or the
18 unit's allowable 1985 emissions rate; and

19 “(B) a numerical factor of 120 percent, di-
20 vided by 2,000, unless the owner or operator of
21 such unit holds allowances to emit not less than
22 the unit's total annual emissions, or for a year
23 after 2007, unless the owner or operator of the
24 source that includes such unit holds allowances

1 to emit not less than the total annual emissions
2 of all affected units at the source.

3 “(2) RATE BETWEEN 0.60 AND 1.20 LBS/
4 MMBTU.—After January 1, 2000, it shall be unlaw-
5 ful for any existing coal-fired utility unit the lesser
6 of whose actual or allowable 1985 sulfur dioxide
7 emissions rate is equal to, or greater than, 0.60 lbs/
8 mmBtu and less than 1.20 lbs/mmBtu to exceed an
9 annual sulfur dioxide tonnage emissions limitation
10 equal to the product of the unit’s baseline multiplied
11 by (A) the lesser of its actual 1985 emissions rate
12 or its allowable 1985 emissions rate, and (B) a nu-
13 merical factor of 120 percent, divided by 2,000, un-
14 less the owner or operator of such unit holds allow-
15 ances to emit not less than the unit’s total annual
16 emissions, or for a year after 2007, unless the owner
17 or operator of the source that includes such unit
18 holds allowances to emit not less than the total an-
19 nual emissions of all affected units at the source.

20 “(3) RESERVE ALLOWANCE.—

21 “(A) IN GENERAL.—In addition to allow-
22 ances allocated pursuant to paragraph (1) and
23 section 412(a) as basic phase II allowance allo-
24 cations, at the election of the designated rep-
25 resentative of the operating company, beginning

1 January 1, 2000, and for each calendar year
2 thereafter until and including 2009, the Admin-
3 istrator shall allocate annually for each unit
4 subject to the emissions limitation requirements
5 of paragraph (1) allowances from the reserve
6 created pursuant to subsection (a)(2) in an
7 amount equal to the amount by which—

8 “(i) the product of the lesser of 0.60 lbs/
9 mmBtu or the unit’s allowable 1985 emissions
10 rate multiplied by the unit’s baseline adjusted
11 to reflect operation at a 60 percent capacity
12 factor, divided by 2,000, exceeds

13 “(ii) the number of allowances allocated
14 for the unit pursuant to paragraph (1) and sec-
15 tion 402(a)(1) as basic phase II allowance allo-
16 cations.

17 “(B) UNITS SUBJECT TO CERTAIN LIMITA-
18 TIONS.—In addition to allowances allocated pursu-
19 ant to paragraph (2) and section 412(a) as basic
20 phase II allowance allocations, at the election of the
21 designated representative of the operating company,
22 beginning January 1, 2000, and for each calendar
23 year thereafter until and including 2009, the Admin-
24 istrator shall allocate annually for each unit subject
25 to the emissions limitation requirements of para-

1 graph (2) allowances from the reserve created pursu-
2 ant to subsection (a)(2) in an amount equal to the
3 amount by which—

4 “(i) the product of the lesser of the unit’s
5 actual 1985 emissions rate or its allowable
6 1985 emissions rate multiplied by the unit’s
7 baseline adjusted to reflect operation at a 60
8 percent capacity factor, divided by 2,000; ex-
9 ceeds

10 “(ii) the number of allowances allocated
11 for the unit pursuant to paragraph (2) and sec-
12 tion 412(a) as basic phase II allowance alloca-
13 tions.

14 “(C) ELECTION BY OPERATING COMPANY.—An
15 operating company with units subject to the emis-
16 sions limitation requirements of this subsection may
17 elect the allocation of allowances as provided under
18 subparagraphs (A) and (B). Such election shall
19 apply to the annual allowance allocation for each
20 and every unit in the operating company subject to
21 the emissions limitation requirements of this sub-
22 section. The Administrator shall allocate allowances
23 pursuant to subparagraphs (A) and (B) only in ac-
24 cordance with this subparagraph.

1 “(4) ALTERNATIVE ALLOCATION.—Notwith-
2 standing any other provision of this section, at the
3 election of the owner or operator, after January 1,
4 2000, the Administrator shall allocate in lieu of allo-
5 cation, pursuant to paragraph (1), (2), (3), (5), or
6 (6), allowances for a unit subject to the emissions
7 limitation requirements of this subsection which
8 commenced commercial operation on or after Janu-
9 ary 1, 1981 and before December 31, 1985, which
10 was subject to, and in compliance with, section 111
11 of the Act in an amount equal to the unit’s annual
12 fuel consumption, on a Btu basis, at a 65-percent-
13 capacity factor multiplied by the unit’s allowable
14 1985 emissions rate, divided by 2,000.

15 “(5) CLEAN COAL TECHNOLOGY DEMONSTRA-
16 TION GRANT.—For the purposes of this section, in
17 the case of an oil- and gas-fired unit which has been
18 awarded a clean coal technology demonstration grant
19 as of January 1, 1991, by the United States Depart-
20 ment of Energy, beginning January 1, 2002, the Ad-
21 ministrator shall allocate for the unit allowances in
22 an amount equal to the unit’s baseline multiplied by
23 1.20 lbs/mmBtu, divided by 2,000.

24 “(e) OIL AND GAS-FIRED UNITS EQUAL TO OR
25 GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20

1 LBS/MMBTU.—After January 1, 2000, it shall be unlawful
2 for any existing oil and gas-fired utility unit the lesser of
3 whose actual or allowable 1985 sulfur dioxide emission
4 rate is equal to, or greater than, 0.60 lbs/mmBtu, but less
5 than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide
6 tonnage limitation equal to the product of the unit's base-
7 line multiplied by (A) the lesser of the unit's allowable
8 1985 emissions rate or its actual 1985 emissions rate and
9 (B) a numerical factor of 120 percent divided by 2,000,
10 unless the owner or operator of such unit holds allowances
11 to emit not less than the unit's total annual emissions,
12 or for a year after 2007, unless the owner or operator
13 of the source that includes such unit holds allowances to
14 emit not less than the total annual emissions of all af-
15 fected units at the source.

16 “(f) OIL AND GAS-FIRED UNITS LESS THAN 0.60
17 LBS/MMBTU.—

18 “(1) IN GENERAL.—After January 1, 2000, it
19 shall be unlawful for any oil and gas-fired existing
20 utility unit the lesser of whose actual or allowance
21 1985 emission rate is less than 0.60 lbs/mmBtu and
22 whose average annual fuel consumption during the
23 period 1980 through 1989 on a Btu basis was 90
24 percent or less in the form of natural gas to exceed
25 an annual sulfur dioxide tonnage emissions limita-

1 tion equal to the product of the unit's baseline mul-
2 tiplied by—

3 “(A) the lesser of 0.60 lbs/mmBtu or the
4 unit's allowance 1985 emissions, and

5 “(B) a numerical factor of 120 percent, di-
6 vided by 2,000, unless the owner or operator of
7 such unit holds allowances to emit not less than
8 the unit's total annual emissions, or for a year
9 after 2007, unless the owner or operator of the
10 source that includes such unit holds allowances
11 to emit not less than the total annual emissions
12 of all affected units at the source.

13 “(2) ADDITIONAL ALLOCATION.—In addition to
14 allowances allocated pursuant to paragraph (1) as
15 basic phase II allowance allocations and section
16 412(a), beginning January 1, 2000, the Adminis-
17 trator shall, in the case of any unit operated by a
18 utility that furnishes electricity, electric energy,
19 steam, and natural gas within an area consisting of
20 a city and 1 contiguous county, and in the case of
21 any unit owned by a State authority, the output of
22 which unit is furnished within that same area con-
23 sisting of a city and 1 contiguous county, the Ad-
24 ministrator shall allocate for each unit in the utility
25 its pro rata share of 7,000 allowances and for each

1 unit in the State authority its pro rata share of
2 2,000 allowances.

3 “(g) UNITS THAT COMMENCE COMMERCIAL OPER-
4 ATION BETWEEN 1986 AND DECEMBER 31, 1995.—

5 “(1) IN GENERAL.—After January 1, 2000, it
6 shall be unlawful for any utility unit that has com-
7 menced commercial operation on or after January 1,
8 1986, but not later than September 30, 1990 to ex-
9 ceed an annual tonnage emission limitation equal to
10 the product of the unit’s annual fuel consumption,
11 on a Btu basis, at a 65-percent-capacity factor mul-
12 tiplied by the unit’s allowance 1985 sulfur dioxide
13 emission rate (converted, if necessary, to pounds per
14 mmBtu), divided by 2,000 unless the owner or oper-
15 ator of such unit holds allowances to emit not less
16 than the unit’s total annual emissions, or for a year
17 after 2007, unless the owner or operator of the
18 source that includes such unit holds allowances to
19 emit not less than the total annual emissions of all
20 affected units at the source.

21 “(2) UNIT ALLOWANCES.—After January 1,
22 2000, the Administrator shall allocate allowances
23 pursuant to section 411 to each unit which is listed
24 in table B of this paragraph in an annual amount
25 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

1 Notwithstanding any other paragraph of this subsection,
 2 for units subject to this paragraph, the Administrator
 3 shall not allocate allowances pursuant to any other para-
 4 graph of this subsection, provided that the owner or oper-
 5 ator of a unit listed on table B may elect an allocation
 6 of allowances under another paragraph of this subsection
 7 in lieu of an allocation under this paragraph.

8 “(3) UNITS THAT COMMENCED COMMERCIAL
 9 OPERATION BETWEEN OCTOBER 1, 1990, AND DE-
 10 CEMBER 31, 1992.—Beginning January 1, 2000, the
 11 Administrator shall allocate to the owner or operator
 12 of any utility unit that commences commercial oper-
 13 ation, or has commenced commercial operation, on
 14 or after October 1, 1990, but not later than Decem-
 15 ber 31, 1992, allowances in an amount equal to the
 16 product of the unit’s annual fuel consumption, on a
 17 Btu basis, at a 65 percent capacity factor multiplied
 18 by the lesser of 0.30 lbs/mmBtu or the unit’s allow-

1 able sulfur dioxide emission rate (converted, if nec-
2 essary, to pounds per mmBtu), divided by 2,000.

3 “(4) UNITS THAT COMMENCED COMMERCIAL
4 OPERATION BETWEEN JANUARY 1, 1993, AND DE-
5 CEMBER 31, 1995.—Beginning January 1, 2000, the
6 Administrator shall allocate to the owner or operator
7 of any utility unit that has commenced construction
8 before December 31, 1990 and that commences com-
9 mercial operation between January 1, 1993, and De-
10 cember 31, 1995, allowances in an amount equal to
11 the product of the unit’s annual fuel consumption,
12 on a Btu basis, at a 65 percent capacity factor mul-
13 tiplied by the lesser of 0.30 lbs/mmBtu or the unit’s
14 allowable sulfur dioxide emission rate (converted, if
15 necessary, to pounds per mmBtu), divided by 2,000.

16 “(5) UNITS THAT CONVERTED TO COAL FIRED
17 OPERATION BETWEEN JANUARY 1, 1985, AND DE-
18 CEMBER 31, 1987.—After January 1, 2000, it shall
19 be unlawful for any existing utility unit that has
20 completed conversion from predominantly gas fired
21 existing operation to coal fired operation between
22 January 1, 1985, and December 31, 1987, for which
23 there has been allocated a proposed or final prohibi-
24 tion order pursuant to section 301(b) of the Power-
25 plant and Industrial Fuel Use Act of 1978 (42

1 U.S.C. 8301 et seq., repealed 1987) to exceed an an-
2 nual sulfur dioxide tonnage emissions limitation
3 equal to the product of the unit's annual fuel con-
4 sumption, on a Btu basis, at a 65 percent capacity
5 factor multiplied by the lesser of 1.20 lbs/mmBtu or
6 the unit's allowable 1987 sulfur dioxide emissions
7 rate, divided by 2,000, unless the owner or operator
8 of such unit has obtained allowances equal to its
9 total annual emissions, or for a year after 2007, un-
10 less the owner or operator of the source that in-
11 cludes such unit holds allowances to emit not less
12 than the total annual emissions of all affected units
13 at the source.

14 “(6) APPLICABILITY TO QUALIFYING SMALL
15 POWER PRODUCTION FACILITIES, QUALIFYING CO-
16 GENERATION FACILITIES, AND NEW INDEPENDENT
17 POWER PRODUCTION FACILITIES.—Unless the Ad-
18 ministrator has approved a designation of such facil-
19 ity under section 417, the provisions of this subpart
20 shall not apply to a ‘qualifying small power produc-
21 tion facility’ or ‘qualifying cogeneration facility’
22 (within the meaning of section 3(17)(C) or 3(18)(B)
23 of the Federal Power Act) or to a ‘new independent
24 power production facility’ if, as of November 15,
25 1990—

1 “(A) an applicable power sales agreement
2 has been executed;

3 “(B) the facility is the subject of a State
4 regulatory authority order requiring an electric
5 utility to enter into a power sales agreement
6 with, purchase capacity from, or (for purposes
7 of establishing terms and conditions of the elec-
8 tric utility’s purchase of power) enter into arbi-
9 tration concerning, the facility;

10 “(C) an electric utility has issued a letter
11 of intent or similar instrument committing to
12 purchase power from the facility at a previously
13 offered or lower price and a power sales agree-
14 ment is executed within a reasonable period of
15 time; or

16 “(D) the facility has been selected as a
17 winning bidder in a utility competitive bid solie-
18 itation.

19 “(h) OIL- AND GAS-FIRED UNITS LESS THAN 10
20 PERCENT OIL CONSUMED.—

21 “(1) IN GENERAL.—After January 1, 2000, it
22 shall be unlawful for any oil- and gas-fired utility
23 unit whose average annual fuel consumption during
24 the period 1980 through 1989 on a Btu basis ex-
25 ceeded 90 percent in the form of natural gas to ex-

1 ceed an annual sulfur dioxide tonnage limitation
2 equal to the product of the unit's baseline multiplied
3 by the unit's actual 1985 emissions rate divided by
4 2,000 unless the owner or operator of such unit
5 holds allowances to emit not less than the unit's
6 total annual emissions, or for a year after 2007, un-
7 less the owner or operator of the source that in-
8 cludes such unit holds allowances to emit not less
9 than the total annual emissions of all affected units
10 at the source.

11 “(2) RESERVE ALLOWANCES.—In addition to
12 allowances allocated pursuant to paragraph (1) and
13 section 412(a) as basic phase II allowance alloca-
14 tions, beginning January 1, 2000, and for each cal-
15 endar year thereafter until and including 2009, the
16 Administrator shall allocate annually for each unit
17 subject to the emissions limitation requirements of
18 paragraph (1) allowances from the reserve created
19 pursuant to subsection (a)(2) in an amount equal to
20 the unit's baseline multiplied by 0.050 lbs/mmBtu,
21 divided by 2,000.

22 “(3) ADDITIONAL ALLOWANCES.—In addition
23 to allowances allocated pursuant to paragraph (1)
24 and section 412(a), beginning January 1, 2010, the
25 Administrator shall allocate annually for each unit

1 subject to the emissions limitation requirements of
2 paragraph (1) allowances in an amount equal to the
3 unit's baseline multiplied by 0.050 lbs/mmBtu, di-
4 vided by 2,000.

5 “(i) UNITS IN HIGH GROWTH STATES.—

6 “(1) ANNUAL ALLOCATIONS.—In addition to al-
7 lowances allocated pursuant to this section and sec-
8 tion 412(a) as basic phase II allowance allocations,
9 beginning January 1, 2000, the Administrator shall
10 allocate annually allowances for each unit, subject to
11 an emissions limitation requirement under this sec-
12 tion, and located in a State that—

13 “(A) has experienced a growth in popu-
14 lation in excess of 25 percent between 1980 and
15 1988 according to State Population and House-
16 hold Estimates, With Age, Sex, and Compo-
17 nents of Change: 1981–1988 allocated by the
18 United States Department of Commerce, and

19 “(B) had an installed electrical generating
20 capacity of more than 30,000,000 kw in 1988,
21 in an amount equal to the difference between—

22 “(i) the number of allowances that
23 would be allocated for the unit pursuant to
24 the emissions limitation requirements of
25 this section applicable to the unit adjusted

1 to reflect the unit's annual average fuel
2 consumption on a Btu basis of any three
3 consecutive calendar years between 1980
4 and 1989 (inclusive) as elected by the
5 owner or operator; and

6 “(ii) the number of allowances allo-
7 cated for the unit pursuant to the emis-
8 sions limitation requirements of this sec-
9 tion:

10 *Provided*, That the number of allowances allo-
11 cated pursuant to this subsection shall not ex-
12 ceed an annual total of 40,000. If necessary to
13 meeting the 40,000 allowance restriction im-
14 posed under this subsection the Administrator
15 shall reduce, pro rata, the additional annual al-
16 lowances allocated to each unit under this sub-
17 section.

18 “(2) ADDITIONAL ALLOCATIONS.—Beginning
19 January 1, 2000, in addition to allowances allocated
20 pursuant to this section and section 402(a)(1) as
21 basic phase II allowance allocations, the Adminis-
22 trator shall allocate annually for each unit subject to
23 the emissions limitation requirements of subsection
24 (b)(1)—

1 “(A) the lesser of whose actual or allow-
2 able 1980 emissions rate has declined by 50
3 percent or more as of November 15, 1990;

4 “(B) whose actual emissions rate is less
5 than 1.2 lbs/mmBtu as of January 1, 2000;

6 “(C) which commenced operation after
7 January 1, 1970;

8 “(D) which is owned by a utility company
9 whose combined commercial and industrial kilo-
10 watt-hour sales have increased by more than 20
11 percent between calendar year 1980 and No-
12 vember 15, 1990; and

13 “(E) whose company-wide fossil-fuel sulfur
14 dioxide emissions rate has declined 40 percent
15 or more from 1980 to 1988, allowances in an
16 amount equal to the difference between—

17 “(i) the number of allowances that
18 would be allocated for the unit pursuant to
19 the emissions limitation requirements of
20 subsection (b)(1) adjusted to reflect the
21 unit’s annual average fuel consumption on
22 a Btu basis for any three consecutive years
23 between 1980 and 1989 (inclusive) as
24 elected by the owner or operator; and

1 “(ii) the number of allowances allo-
2 cated for the unit pursuant to the emis-
3 sions limitation requirements of subsection
4 (b)(1):

5 *Provided*, That the number of allowances allo-
6 cated pursuant to this paragraph shall not ex-
7 ceed an annual total of 5,000. If necessary to
8 meeting the 5,000 allowance restriction imposed
9 in the last clause of the preceding sentence the
10 Administrator shall reduce, pro rata, the addi-
11 tional allowances allocated to each unit pursu-
12 ant to this paragraph.

13 “(j) CERTAIN MUNICIPALLY OWNED POWER
14 PLANTS.—Beginning January 1, 2000, in addition to al-
15 lowances allocated pursuant to this section and section
16 412(a) as basic phase II allowance allocations, the Admin-
17 istrator shall allocate annually for each existing munici-
18 pally owned oil and gas-fired utility unit with nameplate
19 capacity equal to, or less than, 40 MWe, the lesser of
20 whose actual or allowable 1985 sulfur dioxide emission
21 rate is less than 1.20 lbs/mmBtu, allowances in an amount
22 equal to the product of the unit’s annual fuel consumption
23 on a Btu basis at a 60 percent capacity factor multiplied
24 by the lesser of its allowable 1985 emission rate or its
25 actual 1985 emission rate, divided by 2,000.

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

3 “(a) ELECTION OF GOVERNOR.—In addition to basic
4 phase II allowance allocations, upon the election of the
5 Governor of any State, with a 1985 statewide annual sul-
6 fur dioxide emissions rate equal to or less than, 0.80 lbs/
7 mmBtu, averaged over all fossil fuel-fired utility steam
8 generating units, beginning January 1, 2000, and for each
9 calendar year thereafter until and including 2009, the Ad-
10 ministrator shall allocate, in lieu of other phase 11 bonus
11 allowance allocations, allowances from the reserve created
12 pursuant to section 414(a)(2) to all such units in the State
13 in an amount equal to 125,000 multiplied by the unit’s
14 pro rata share of electricity generated in calendar year
15 1985 at fossil fuel-fired utility steam units in all States
16 eligible for the election.

17 “(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant
18 to section 412(a), each Governor of a State eligible to
19 make an election under paragraph (a) shall notify the Ad-
20 ministrator of such election. In the event that the Gov-
21 ernor of any such State fails to notify the Administrator
22 of the Governor’s elections, the Administrator shall allo-
23 cate allowances pursuant to section 414.

24 “(c) ALLOWANCES AFTER JANUARY 1, 2010.—After
25 January 1, 2010, the Administrator shall allocate allow-

1 ances to units subject to the provisions of this section pur-
2 suant to section 414.

3 **“SEC. 416. ELECTION FOR ADDITIONAL SOURCES.**

4 “(a) APPLICABILITY.—The owner or operator of any
5 unit that is not, nor will become, an affected unit under
6 section 412(b), 413, or 414, that emits sulfur dioxide, may
7 elect to designate that unit or source to become an af-
8 fected unit and to receive allowances under this subpart.
9 An election shall be submitted to the Administrator for
10 approval, along with a permit application and proposed
11 compliance plan in accordance with section 403. The Ad-
12 ministrator shall approve a designation that meets the re-
13 quirements of this section, and such designated unit shall
14 be allocated allowances, and be an affected unit for pur-
15 poses of this subpart.

16 “(b) ESTABLISHMENT OF BASELINE.—The baseline
17 for a unit designated under this section shall be estab-
18 lished by the Administrator by regulation, based on fuel
19 consumption and operating data for the unit for calendar
20 years 1985, 1986, and 1987, or if such data is not avail-
21 able, the Administrator may prescribe a baseline based on
22 alternative representative data.

23 “(c) EMISSION LIMITATIONS.—

24 “(1) ELECTIONS SUBMITTED BEFORE JANUARY
25 1, 2002.—For a unit for which an election, along

1 with a permit application and compliance plan, is
2 submitted to the Administrator under paragraph (a)
3 before January 1, 2002, annual emissions limita-
4 tions for sulfur dioxide shall be equal to the product
5 of the baseline multiplied by the lesser of the unit's
6 1985 actual or allowable emission rate in lbs/
7 mmBtu, or, if the unit did not operate in 1985, by
8 the lesser of the unit's actual or allowable emission
9 rate for a calendar year after 1985 (as determined
10 by the Administrator); divided by 2,000.

11 “(2) ELECTIONS SUBMITTED AFTER JANUARY
12 1, 2002.—For a unit for which an election, along
13 with a permit application and compliance plan, is
14 submitted to the Administrator under paragraph (a)
15 on or after January 1, 2002, annual emissions limi-
16 tations for sulfur dioxide shall be equal to the prod-
17 uct of the baseline multiplied by the lesser of the
18 unit's 1985 actual or allowable emission rate in lbs/
19 mmBtu, or, if the unit did not operate in 1985, by
20 the lesser of the unit's actual or allowable emission
21 rate for a calendar year after 1985 (as determined
22 by the Administrator); divided by 4,000.

23 “(d) ALLOWANCES AND PERMITS.—The Adminis-
24 trator shall issue allowances to an affected unit under this
25 section in an amount equal to the emissions limitation cal-

1 culated under subsection (e), in accordance with section
2 412. Such allowance may be used in accordance with, and
3 shall be subject to, the provisions of section 412. Affected
4 sources under this section shall be subject to the require-
5 ments of sections 404, 405, 406, and 412.

6 “(e) LIMITATION.—Any unit designated under this
7 section shall not transfer or bank allowances produced as
8 a result of reduced utilization or shutdown, except that,
9 such allowances may be transferred or carried forward for
10 use in subsequent years to the extent that the reduced
11 utilization or shutdown results from the replacement of
12 thermal energy from the unit designated under this sec-
13 tion, with thermal energy generated by any other unit or
14 units subject to the requirements of this subpart, and the
15 designated unit’s allowances are transferred or carried for-
16 ward for use at such other replacement unit or units. In
17 no case may the Administrator allocate to a source des-
18 ignated under this section allowances in an amount great-
19 er than the emissions resulting from operation of the
20 source in full compliance with the requirements of this
21 Act. No such allowances shall authorize operation of a unit
22 in violation of any other requirements of this Act.

23 “(f) IMPLEMENTATION.—The Administrator shall
24 implement this section under 40 CFR part 74 (2002),
25 amended as appropriate by the Administrator.

1 **“SEC. 417. AUCTIONS, RESERVE.**

2 “(a) SPECIAL RESERVE OF ALLOWANCES.—For pur-
3 poses of establishing the Special Allowance Reserve, the
4 Administrator shall withhold—

5 “(1) 2.8 percent of the allocation of allowances
6 for each year from 1995 through 1999 inclusive; and

7 “(2) 2.8 percent of the basic phase 11 allow-
8 ance allocation of allowances for each year beginning
9 in the year 2000;

10 which would (but for this subsection) be issued for each
11 affected unit at an affected source. The Administrator
12 shall record such withholding for purposes of transferring
13 the proceeds of the allowance sales under this subsection.
14 The allowances so withheld shall be deposited in the Re-
15 serve under this section.

16 “(b) AUCTION SALES.—

17 “(1) SUBACCOUNT FOR AUCTIONS.—The Ad-
18 ministrator shall establish an Auction Subaccount in
19 the Special Reserve established under this section.

20 The Auction Subaccount shall contain allowances to
21 be sold at auction under this section in the amount
22 of 150,000 tons per year for each year from 1995
23 through 1999, inclusive and 250,000 tons per year
24 for each year from 2000 through 2009, inclusive.

25 “(2) ANNUAL AUCTIONS.—Commencing in
26 1993 and in each year thereafter until 2010, the Ad-

1 administrator shall conduct auctions at which the al-
 2 lowances referred to in paragraph (1) shall be of-
 3 fered for sale in accordance with regulations promul-
 4 gated by the Administrator. The allowances referred
 5 to in paragraph (1) shall be offered for sale at auc-
 6 tion in the amounts specified in table C. The auction
 7 shall be open to any person. A person wishing to bid
 8 for such allowances shall submit (by a date set by
 9 the Administrator) to the Administrator (on a sealed
 10 bid schedule provided by the Administrator) offers to
 11 purchase specified numbers of allowances at speci-
 12 fied prices. Such regulations shall specify that the
 13 auctioned allowances shall be allocated and sold on
 14 the basis of bid price, starting with the highest-
 15 priced bid and continuing until all allowances for
 16 sale at such auction have been allocated. The regula-
 17 tions shall not permit that a minimum price be set
 18 for the purchase of withheld allowances. Allowances
 19 purchased at the auction may be used for any pur-
 20 pose and at any time after the auction, subject to
 21 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

TABLE C—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION—Continued

Year of sale	Spot auction (same year)	Advance auction
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000	125,000	125,000
2001	125,000	125,000
2002	125,000	125,000
2003	125,000	125,000
2004	125,000	125,000
2005	125,000	125,000
2006–2009	125,000	0

1 “(3) PROCEEDS.—

2 “(A) TRANSFER.—Notwithstanding section
3 3302 of title 31 of the United States Code or
4 any other provision of law, within 90 days of re-
5 ceipt, the Administrator shall transfer the pro-
6 ceeds from the auction under this section, on a
7 pro rata basis, to the owners or operators of the
8 affected units at an affected source from whom
9 allowances were withheld under subsection (b).
10 No funds transferred from a purchaser to a
11 seller of allowances under this paragraph shall
12 be held by any officer or employee of the United
13 States or treated for any purpose as revenue to
14 the United States or the Administrator.

15 “(B) RETURN.—At the end of each year,
16 any allowances offered for sale but not sold at
17 the auction shall be returned without charge, on

1 a pro rata basis, to the owner or operator of the
2 affected units from whose allocation the allow-
3 ances were withheld. With 170 days after the
4 date of enactment of the Clear Skies Act of
5 2005, any allowance withheld under paragraph
6 (a)(2) but not offered for sale at an auction
7 shall be returned without charge, on a pro rata
8 basis, to the owner or operator of the affected
9 units from whose allocation the allowances were
10 withheld.

11 “(4) RECORDING BY EPA.—The Administrator
12 shall record and publicly report the nature, prices
13 and results of each auction under this subsection, in-
14 cluding the prices of successful bids, and shall
15 record the transfers of allowances as a result of each
16 auction in accordance with the requirements of this
17 section. The transfer of allowances at such auction
18 shall be recorded in accordance with the regulations
19 promulgated by the Administrator under this sub-
20 part.

21 “(c) CHANGES IN AUCTIONS AND WITHHOLDING.—
22 Pursuant to rulemaking after public notice and comment
23 the Administrator may at any time after the year 1998
24 (in the case of advance auctions) and 2005 (in the case

1 of spot auctions) decrease the number of allowances with-
2 held and sold under this section.

3 “(d) **TERMINATION OF AUCTIONS.**—Not later than
4 the commencement date of the sulfur dioxide allowance re-
5 quirement under section 422, the Administrator shall ter-
6 minate the withholding of allowances and the auction sales
7 under this section. Pursuant to regulations under this sec-
8 tion, the Administrator may by delegation or contract pro-
9 vide for the conduct of sales or auctions under the Admin-
10 istrator’s supervision by other departments or agencies of
11 the United States Government or by nongovernmental
12 agencies, groups, or organizations.

13 “(e) **APPLICABLE LAW.**—The Administrator shall
14 implement this section under 40 CFR part 73 (2002),
15 amended as appropriate by the Administrator.

16 **“SEC. 418. INDUSTRIAL SULFUR DIOXIDE EMISSIONS.**

17 “(a) **REPORT.**—Not later than January 1, 1995 and
18 every 5 years thereafter, the Administrator shall transmit
19 to the Congress a report containing an inventory of na-
20 tional annual sulfur dioxide emissions from industrial
21 sources (as defined in section 411(11)), including units
22 subject to section 414(g)(2), for all years for which data
23 are available, as well as the likely trend in such emission
24 over the following twenty-year period. The reports shall
25 also contain estimates of the actual emission reduction in

1 each year resulting from promulgation of the diesel fuel
2 desulfurization regulations under section 214.

3 “(b) 5.60 MILLION TON CAP.—Whenever the inven-
4 tory required by this section indicates that sulfur dioxide
5 emissions from industrial sources, including units subject
6 to section 414(g)(2), and may reasonably be expected to
7 reach levels greater than 5.60 million tons per year, the
8 Administrator shall take such actions under the Act as
9 may be appropriate to ensure that such emissions do not
10 exceed 5.60 million tons per year. Such actions may in-
11 clude the promulgation of new and revised standards of
12 performance for new sources, including units subject to
13 section 414(g)(2), under section 111(b), as well as pro-
14 mulgation of standards of performance for existing
15 sources, including units subject to section 414(g)(2),
16 under authority of this section. For an existing source reg-
17 ulated under this section, ‘standard of performance’
18 means a standard which the Administrator determines is
19 applicable to that source and which reflects the degree of
20 emission reduction achievable through the application of
21 the best system of continuous emission reduction which
22 (taking into consideration the cost of achieving such emis-
23 sion reduction, and any nonair quality health and environ-
24 mental impact and energy requirements) the Adminis-

1 trator determines has been adequately demonstrated for
2 that category of sources.

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

6 **“SEC. 419. TERMINATION.**

7 “Starting January 1, 2010, the owners or operators
8 of affected units and affected facilities under sections
9 412(b) and (c) and 416 and shall no longer be subject
10 to the requirements of sections 412 through 417.

11 **“Subpart 2—Clear Skies Sulfur Dioxide Allowance**
12 **Program**

13 **“SEC. 421. DEFINITIONS.**

14 “For purposes of this subpart—

15 “(1) AFFECTED EGU.—The term ‘affected
16 EGU’ means—

17 “(A) for a unit serving a generator before
18 the date of enactment of the Clear Skies Act of
19 2005, a unit in a State serving a generator with
20 a nameplate capacity of greater than twenty-
21 five megawatts that produced or produces elec-
22 tricity for sale during 2002 or any year there-
23 after, except for a cogeneration unit that meets
24 the criteria for qualifying cogeneration facilities
25 codified in section 292.205 of title 18 of the

1 Code of Federal Regulations as issued on April
2 1, 2002 during 2002 and each year thereafter;
3 and

4 “(B) for a unit commencing service of a
5 generator on or after the date of enactment of
6 the Clear Skies Act of 2005, a unit in a State
7 serving a generator that produces electricity for
8 sale during any year starting with the year the
9 unit commences service of a generator, except
10 for a gas-fired unit serving one or more genera-
11 tors with total nameplate capacity of 25
12 megawatts or less, or a cogeneration unit that
13 meets the criteria for qualifying for a cogenera-
14 tion facilities codified in section 292.205 of title
15 18 of the Code of Federal Regulations as issued
16 on April 1, 2002, during each year starting
17 with the unit commences service of a generator.

18 Notwithstanding paragraphs (A) and (B), the term
19 ‘affected EGU’ does not include a solid waste incin-
20 eration unit subject to section 129 or a unit for the
21 treatment, storage, or disposal of hazardous waste
22 subject to section 3005 of the Solid Waste Disposal
23 Act.

24 “(2) COAL-FIRED.—The term ‘coal-fired’ with
25 regard to a unit means, for purposes of section 424,

1 combusting coal or any coal-derived fuel alone or in
2 combination with any amount of any other fuel in
3 any year during 1998 through 2002 or, for a unit
4 that commenced operation on or after January 1,
5 2003, a unit designed to combust coal or any coal
6 derived fuel alone or in combination with any other
7 fuel.

8 “(3) EASTERN BITUMINOUS.—The term ‘East-
9 ern bituminous’ means bituminous that is from a
10 mine located in a State east of the Mississippi River.

11 “(4) GENERAL ACCOUNT.—The term ‘general
12 account’ means an account in the Allowance Track-
13 ing System under section 402(c) established by the
14 Administrator for any person under 40 CFR part
15 73.31(c) (2002), amended as appropriate by the Ad-
16 ministrators.

17 “(5) OIL-FIRED.—The term ‘oil-fired’ with re-
18 gard to a unit means, for purposes of section 424,
19 combusting fuel oil for more than 10 percent of the
20 unit’s total heat input, and combusting no coal or
21 coal-derived fuel, in any year during 1998 through
22 2002 or, for a unit that commenced operation on or
23 after January 1, 2003, a unit designed to combust
24 oil for more than 10 percent of the unit’s total heat

1 input and not to combust any coal or coal-derived
2 fuel.

3 “(6) UNIT ACCOUNT.—The term ‘unit account’
4 means an account in the Allowance Tracking System
5 under section 402(c) established by the Adminis-
6 trator for any unit under 40 CFR section 73.31 (a)
7 and (b) (2002), amended as appropriate by the Ad-
8 ministrator.

9 **“SEC. 422. APPLICABILITY.**

10 “(a) PROHIBITION.—Starting January 1, 2010, it
11 shall be unlawful for the affected EGUs at a facility to
12 emit a total amount of sulfur dioxide during the year in
13 excess of the number of sulfur dioxide allowances held for
14 such facility for that year by the owner or operator of the
15 facility.

16 “(b) ALLOWANCES HELD.—Only sulfur dioxide al-
17 lowances under section 423 shall be held in order to meet
18 the requirements of subsection (a).

19 **“SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.**

20 “For affected EGUs for 2010 and each year there-
21 after, the Administrator shall allocate sulfur dioxide allow-
22 ances under section 424.

“TABLE A—TOTAL SO₂ ALLOWANCES ALLOCATED FOR EGUS

Year	SO ₂ allowances allocated
2010	4,416,666
2011–2012	4,416,667
2013–2017	4,500,000
2018 and thereafter	3,000,000.

1 **“SEC. 424. EGU ALLOCATIONS.**

2 “(a) IN GENERAL.—Not later than 3 years before the
3 commencement date of the sulfur dioxide allowance re-
4 quirement of section 422, the Administrator shall promul-
5 gate regulations determining allocations of sulfur dioxide
6 allowances for affected EGUs for each year during 2010
7 and thereafter. The regulations shall provide that:

8 “(1) 91 percent of the total amount of sulfur
9 dioxide allowances shall be allocated to fossil-fuel-
10 fired affected EGUs under this section shall be allo-
11 cated by the Administrator to individual EGUs as
12 follows:

13 “(A) For each unit account and each gen-
14 eral account in the Allowance Tracking System,
15 the Administrator shall determine the total
16 amount of sulfur dioxide allowances allocated
17 under subpart 1 for 2010 and thereafter that
18 are recorded, as of 12:00 noon, Eastern Stand-
19 ard time, on the date 180 days after enactment
20 of the Clear Skies Act of 2005. The Adminis-
21 trator shall determine this amount in accord-
22 ance with 40 CFR part 73 (2002), amended as
23 appropriate by the Administrator, except that
24 the Administrator shall apply a discount rate of
25 7 percent for each year after 2010 to the

1 amounts of sulfur dioxide allowances allocated
2 for 2011 or later.

3 “(B) For each unit account and each gen-
4 eral account in the Allowance Tracking System,
5 the Administrator shall determine an amount of
6 sulfur dioxide allowances equal to the allocation
7 amount under subparagraph (A) multiplied by
8 the ratio of the amount of sulfur dioxide allow-
9 ances determined to be recorded in that account
10 under clause (i) to the total amount of sulfur
11 dioxide allowances determined to be recorded in
12 all unit accounts and general accounts in the
13 Allowance Tracking System under clause (i).

14 “(C) The Administrator shall allocate to
15 each facility’s account in the Allowance Track-
16 ing System an amount of sulfur dioxide allow-
17 ances equal to the total amount of sulfur diox-
18 ide allowances determined under clause (ii) for
19 the unit accounts of the units at the facility and
20 shall allocate to each general account in the Al-
21 lowance Tracking System the amount of sulfur
22 dioxide allowances determined under clause (ii)
23 for that general account.

24 “(2)(A) 7 percent of the total amount of sulfur
25 dioxide allowances allocated each year under section

1 423 shall be allocated for units at a facility that are
2 affected EGUs, but did not receive sulfur dioxide al-
3 locations under subpart 1 of this title.

4 “(B) The Administrator shall allocate each year
5 for the units under subparagraph (A) that com-
6 menced commercial operation before January 1,
7 2001, an amount of sulfur dioxide allowances deter-
8 mined by:

9 “(i) For such units at the facility that are
10 coal-fired, multiplying 0.40 lb/mmBtu by the
11 total baseline heat input of such units and con-
12 verting to tons.

13 “(ii) For such units at the facility that are
14 oil-fired, multiplying 0.20 lb/mmBtu by the
15 total baseline heat input of such units and con-
16 verting to tons.

17 “(iii) For all such other units at the facil-
18 ity that are not covered by clause (i) or (ii),
19 multiplying 0.05 lb/mmBtu by the total baseline
20 heat input of such units and converting to tons.

21 “(iv) If the total of the amounts for all fa-
22 cilities under clauses (i), (ii), and (iii) exceeds
23 the allocation amount under subparagraph (A),
24 multiplying the allocation amount under sub-
25 paragraph (A) by the ratio of the total of the

1 amounts for the facility under clauses (i), (ii),
2 and (iii) to the total of the amounts for all fa-
3 cilities under clause (i), (ii), and (iii).

4 “(v) Allocating to each facility the lesser of
5 the total of the amounts for the facility under
6 clauses (i), (ii), and (iii) or, if the total of the
7 amounts for all facilities under clauses (i), (ii),
8 and (iii) exceeds the allocation amount under
9 subparagraph (A), the amount under clause
10 (iv).

11 “(C) The Administrator shall allocate each year
12 for units under subparagraph (A) that commence
13 commercial operation on or after January 1, 2001
14 and before January 1, 2005, an amount of sulfur di-
15 oxide allowances determined by:

16 “(i) For such units at the facility that are
17 coal-fired or oil-fired, multiplying 0.19 lb/
18 mmBtu by the total baseline heat input of such
19 units and converting to tons.

20 “(ii) For all such other units at the facility
21 that are not covered by clause (i), multiplying
22 .005 lb/mmBtu by the total baseline heat input
23 of such units and converting to tons.

24 “(iii) If the total of the amounts for all fa-
25 cilities under clauses (i) and (ii) exceeds the al-

1 location amount under subparagraph (A), mul-
2 tipling the allocation amount under subpara-
3 graph (A) by the ratio of the total of the
4 amounts for the facility under clauses (i) and
5 (ii) to the total of the amounts for all facilities
6 under clauses (i) and (ii).

7 “(iv) Allocating to each facility the lesser
8 of the total of the amounts for the facility
9 under clauses (i) and (ii) or, if the total of the
10 amounts for all facilities under clauses (i) and
11 (ii) exceeds the allocation amount under sub-
12 paragraph (A), the amount under clause (iv).
13 The Administrator shall allocate to the facilities
14 under paragraph (1) and this paragraph on a
15 pro rata basis (based on the allocations under
16 those paragraphs) any allowances not allocated
17 under this paragraph. However, no unit shall
18 receive an allocation in excess of the product
19 obtained by multiplying the baseline heat input
20 of the unit and the quotient obtained by divid-
21 ing the sulfur dioxide emission rate of the unit
22 by 2000.

23 “(D) Allowances allocated under this paragraph
24 shall be allocated to each unit on a first-come basis
25 determined by the date on which the unit com-

1 mences operation. If the unit has no applicable na-
2 tional emission standard for sulfur dioxide under
3 section 481, the unit shall be allocated no sulfur di-
4 oxide allowances.

5 “(E) In the event that allocation demand ex-
6 ceeds supply, the Administrator shall allocate allow-
7 ances under subparagraph (A) giving first priority to
8 units qualifying under subparagraph (B), second pri-
9 ority to units qualifying under subparagraph (C),
10 and third priority to units qualifying under subpara-
11 graph (D). Allowances allocated under subparagraph
12 (D) shall be allocated to units on a first come basis
13 determined by date of unit commencement of con-
14 struction, provided that such unit actually com-
15 mences operation. As such, allocations to units
16 under subparagraph (D) will not be reduced as a re-
17 sult of new units commencing commercial operation.

18 “(F) DISTRIBUTION OF REMAINING ALLOW-
19 ANCES.—

20 “(i) IN GENERAL.—Any sulfur dioxide al-
21 lowances remaining after the allocation of al-
22 lowances under this paragraph shall be distrib-
23 uted on a pro rata basis among the units that
24 received mercury allowances under this para-
25 graph.

1 “(ii) ADDITIONAL REMAINING ALLOW-
2 ANCES.—Allowances remaining after each
3 iteration of the calculation under clause (i) shall
4 be allocated in accordance with that subpara-
5 graph.

6 “(3) 2 percent of the total amount of sulfur di-
7 oxide allowances allocated each year under section
8 423 shall be allocated to a set-aside for direct sales
9 under section 402(e)(3)(D). Any sulfur dioxide al-
10 lowances allocated for the year and remaining in the
11 set-aside, as of the deadline established by the Ad-
12 ministrator for holding sulfur dioxide allowances for
13 a facility for the year under section 422, shall be al-
14 located to the units that were allocated sulfur diox-
15 ide allowances for the year under paragraph (1) or
16 (2).

17 “(A) Except as provided in subparagraph
18 (B), each unit shall be allocated the amount of
19 sulfur dioxide allowances for the year remaining
20 in the set-aside, multiplied by the amount of
21 sulfur dioxide allowances allocated to the unit
22 for the year under paragraph (1) or (2) and di-
23 vided by the total amount of nitrogen oxides al-
24 lowances allocated to all units for the year
25 under paragraphs (1) or (2).

1 “(B) If any unit’s allocation for the year
2 under subparagraph (A) and this subparagraph
3 would otherwise result in the unit being allo-
4 cated a total amount of sulfur dioxide allow-
5 ances under paragraph (1) or (2), subpara-
6 graph (A), and this subparagraph exceeding the
7 unit’s baseline heat input multiplied by the
8 quotient obtained by dividing the unit’s allow-
9 able sulfur dioxide emissions rate by 2000, the
10 amount of sulfur dioxide allowances that ex-
11 ceeds such product shall be instead allocated to
12 the other units under subparagraph (A) on a
13 pro rata basis, based on the units’ allocations
14 under paragraph (1) or (2), subparagraph (A),
15 and this subparagraph.

16 “(b) FAILURE TO PROMULGATE.—

17 “(1) ANNUAL NOTICE.—For each year 2010
18 and thereafter, if the Administrator has not promul-
19 gated regulations, determining allocations under
20 subsection (a), each affected EGU shall comply with
21 section 422 by providing annual notice to the per-
22 mitting authority. Such notice shall indicate the
23 amount of allowances the affected EGU believes it
24 has for the relevant year and the amount of sulfur
25 dioxide emissions for such year. The amount of sul-

1 fur dioxide emissions shall be determined using rea-
2 sonable industry accepted methods unless the Ad-
3 ministrator has promulgated applicable monitoring
4 and alternative monitoring requirements.

5 “(2) RECONCILIATION.—Upon promulgation of regu-
6 lations under subsection (a) determining the allocations
7 for 2010 and thereafter, and promulgating regulations
8 under section 402(b) providing for the transfer of sulfur
9 dioxides and section 402(c) establishing an Allowance
10 Transfer System for sulfur dioxide allowances, each unit’s
11 emissions shall be compared to and reconciled to its actual
12 allocations under the promulgated regulations. Each unit
13 will have nine (9) months to purchase any allowance short-
14 fall through allowances purchased from other allowance
15 holders or through direct sale.

16 **“SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES**
17 **ALLOCATED UNDER SUBPART 1.**

18 “(a) REMOVAL FROM ACCOUNTS.—After allocating
19 allowances under section 424(a)(1), the Administrator
20 shall remove from the unit accounts and general accounts
21 in the Allowance Tracking System under section 402(c)
22 and from the Special Allowances Reserve under section
23 418 all sulfur dioxide allowances allocated or deposited
24 under subpart 1 for 2010 or later.

1 “(b) REGULATIONS.—The Administrator shall pro-
2 mulgate regulations as necessary to assure that the re-
3 quirement to hold allowances under section 422 may be
4 met using sulfur dioxide allowances allocated under sub-
5 part 1 for 1995 through 2009. No part of this Act shall
6 be construed to prevent use of unused pre-2010 allowances
7 to meet the requirements of section 422.

8 **“SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION**
9 **CONTROL TECHNOLOGY.**

10 “(a) RESERVE.—The Administrator shall establish a
11 reserve of 250,000 sulfur dioxide allowances comprising
12 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur
13 dioxide allowances for 2011, and 83,333 sulfur dioxide al-
14 lowances for 2012.

15 “(b) APPLICATION.—Not later than 18 months after
16 the enactment of the Clear Skies Act of 2005, an owner
17 or operator of an affected EGU that commenced operation
18 before 2001 and that during 2001 combusted Eastern bi-
19 tuminous may submit an application to the Administrator
20 for sulfur dioxide allowances from the reserve under sub-
21 section (a). The application shall include each of the fol-
22 lowing:

23 “(1) A statement that the owner or operator
24 will install and commence operation of specified sul-
25 fur dioxide control technology at the unit within 24

1 months after approval of the application under sub-
2 section (c) if the unit is allocated the sulfur dioxide
3 allowances requested under paragraph (4). The
4 owner or operator shall provide description of the
5 control technology.

6 “(2) A statement that, during the period start-
7 ing with the commencement of operation of sulfur
8 dioxide technology under paragraph (1) through
9 2009, the unit will combust Eastern bituminous at
10 a percentage of the unit’s total heat input equal to
11 or exceeding the percentage of total heat input com-
12 busted by the unit in 2001 if the unit is allocated
13 the sulfur dioxide allowances requested under para-
14 graph (4).

15 “(3) A demonstration that the unit will achieve,
16 while combusting fuel in accordance with paragraph
17 (2) and operating the sulfur dioxide control tech-
18 nology specified in paragraph (1), a specified ton-
19 nage of sulfur dioxide emission reductions during the
20 period starting with the commencement of operation
21 of sulfur dioxide control technology under subpara-
22 graph (1) through 2009. The tonnage of emission
23 reductions shall be the difference between emissions
24 monitored at a location at the unit upstream of the
25 control technology described in paragraph (1) and

1 emissions monitored at a location at the unit down-
2 stream of such control technology, while the unit is
3 combusting fuel in accordance with paragraph (2).

4 “(4) A request that the Administrator allocate
5 for the unit a specified number of sulfur dioxide al-
6 lowances from the reserve under subsection (a) for
7 the period starting with the commencement of oper-
8 ation of the sulfur dioxide technology under para-
9 graph (1) through 2009.

10 “(5) A statement of the ratio of the number of
11 sulfur dioxide allowances requested under paragraph
12 (4) to the tonnage of sulfur dioxide emissions reduc-
13 tions under paragraph (3).

14 “(c) APPROVAL OR DISAPPROVAL.—By order subject
15 to notice and opportunity for comment, the Administrator
16 shall—

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

19 “(2) list the applications meeting the require-
20 ments of subsection (b) and their respective allow-
21 ance-to-emission-reduction ratios under paragraph
22 (b)(5) in order, from lowest to highest, of such ra-
23 tios;

24 “(3) for each application listed under paragraph
25 (2), multiply the amount of sulfur dioxide emission

1 reductions requested by each allowance-to-emission-
2 reduction ratio on the list that equals or is less than
3 the ratio for the application;

4 “(4) sum, for each allowance-to-emission-reduc-
5 tion ratio in the list under paragraph (2), the
6 amounts of sulfur dioxide allowances determined
7 under paragraph (3);

8 “(5) based on the calculations in paragraph (4),
9 determine which allowance-to-emission-reduction
10 ratio on the list under paragraph (2) results in the
11 highest total amount of allowances that does not ex-
12 ceed 250,000 allowances; and

13 “(6) approve each application listed under para-
14 graph (2) with a ratio equal to or less than the al-
15 lowance-to-emission-reduction ratio determined
16 under paragraph (5) and disapprove all the other
17 applications.

18 “(d) MONITORING.—

19 “(1) IN GENERAL.—An owner or operator the
20 application of which is approved under subsection (c)
21 shall install, and quality assure the data from—

22 “(A) a CEMS for sulfur dioxide located
23 upstream of the sulfur dioxide control tech-
24 nology under subsection (b)(1) at the unit; and

1 “(B) a CEMS for sulfur dioxide located
2 downstream of such control technology at the
3 unit during the period beginning on the date of
4 commencement of operation of such control
5 technology and ending on December 31, 2009.

6 “(2) COMPLIANCE.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the installation of the CEMS
9 and quality assurance of data under paragraph
10 (1) shall be in accordance with subsection (a)(2)
11 of this section and subsections (c) through (e)
12 of section 404.

13 “(B) EXCEPTION.—In a case in which 2 or
14 more units use a single stack and 1 or more of
15 such units are not covered by an application re-
16 ferred to in paragraph (1), separate monitoring
17 shall be required for each unit.”

18 “(e) ALLOCATIONS.—Not later than 6 months after
19 the commencement date of the sulfur dioxide allowance re-
20 quirement of section 422, for the units for which applica-
21 tions are approved under subsection (c), the Administrator
22 shall allocate sulfur dioxide allowances as follows:

23 “(1) For each unit, the Administrator shall
24 multiply the allowance-to-emission-reduction ratio of

1 the last application that the Administrator approved
2 under subsection (c) by the lesser of—

3 “(A) the total tonnage of sulfur dioxide
4 emissions reductions achieved by the unit, dur-
5 ing the period starting with the commencement
6 of operation of the sulfur dioxide control tech-
7 nology under subparagraph (b)(1) through
8 2009, through use of such control technology;
9 or

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

12 “(2) If the total amount of sulfur dioxide allow-
13 ances determined for all units under paragraph (1)
14 exceeds 250,000 sulfur dioxide allowances, the Ad-
15 ministrator shall multiply 250,000 sulfur dioxide al-
16 lowances by the ratio of the amount of sulfur dioxide
17 allowances determined for each unit under para-
18 graph (1) to the total amount of sulfur dioxide al-
19 lowances determined for all units under paragraph
20 (1).

21 “(3) The Administrator shall allocate to each
22 unit the lesser of the amount determined for that
23 unit under paragraph (1) or, if the total amount of
24 sulfur dioxide allowances determined for all units
25 under paragraph (1) exceeds 250,000 sulfur dioxide

1 allowances, under paragraph (2). The Administrator
2 shall allocate to the facilities under section 424
3 paragraphs (1) and (2) on a pro rata basis (based
4 on the allocations under those paragraphs) any
5 unallocated allowances under this paragraph.

6 (4) TREATMENT AS SINGLE UNIT.—Solely for
7 the purpose of making allocations under this sub-
8 section, the Administrator shall treat as a single
9 unit 2 or more units that use a single stack, are cov-
10 ered by an application approved under subsection
11 (c), and are not separately monitored.

12 **“Subpart 3—Western Regional Air Partnership**

13 **“SEC. 431. DEFINITIONS.**

14 “For purposes of this subpart—

15 “(1) ADJUSTED BASELINE HEAT INPUT.—The
16 term ‘adjusted baseline heat input’ means the aver-
17 age annual heat input used by a unit during the
18 three years in which the unit had the highest heat
19 input for the period from the eighth through the
20 fourth year before the first covered year.

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

24 “(i) on or after January 1 of the fifth
25 year before the first covered year, then ‘ad-

1 justed baseline heat input’ shall mean the
2 average annual heat input used by the unit
3 during the fifth and fourth years before
4 the first covered year; and

5 “(ii) on or after January 1 of the
6 fourth year before the first covered year,
7 then ‘adjusted baseline heat input’ shall
8 mean the annual heat input used by the
9 unit during the fourth year before the first
10 covered year.

11 “(B) A unit’s heat input for a year shall
12 be the heat input—

13 “(i) required to be reported under sec-
14 tion 404 for the unit, if the unit was re-
15 quired to report heat input during the year
16 under that section;

17 “(ii) reported to the Energy Informa-
18 tion Administrator for the unit, if the unit
19 was not required to report heat input
20 under section 404;

21 “(iii) based on data for the unit re-
22 ported to the WRAP State where the unit
23 is located as required by State law, if the
24 unit was not required to report heat input
25 during the year under section 404 and did

1 not report to the Energy Information Ad-
2 ministration; or

3 “(iv) based on fuel use and fuel heat
4 content data for the unit from fuel pur-
5 chase or use records, if the unit was not
6 required to report heat input during the
7 year under section 404 and did not report
8 to the Energy Information Administration
9 and the WRAP State.

10 “(2) AFFECTED EGU.—The term ‘affected
11 EGU’ means an affected EGU under subpart 2 that
12 is in a WRAP State and that—

13 “(A) in 2000, emitted 100 tons or more of
14 sulfur dioxide and was used to produce elec-
15 tricity for sale; or

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

19 “(3) COAL-FIRED.—The term ‘coal-fired’ with
20 regard to a unit means, for purposes of section 434,
21 a unit combusting coal or any coal-derived fuel alone
22 or in combination with any amount of any other fuel
23 in any year during the period from the eighth
24 through the fourth year before the first covered
25 year.

1 “(4) COVERED YEAR.—The term ‘covered year’
2 means—

3 “(A)(i) the third year after the year 2018
4 or later when the total annual sulfur dioxide
5 emissions of all affected EGUs in the WRAP
6 States first exceed 271,000 tons; or

7 “(ii) the third year after the year 2013 or
8 later when the Administrator determines by
9 regulation that the total annual sulfur dioxide
10 emissions of all affected EGUs in the WRAP
11 States are reasonably projected to exceed
12 271,000 tons in 2018 or any year thereafter.
13 The Administrator may make such determina-
14 tion only if all the WRAP States submit to the
15 Administrator a petition requesting that the
16 Administrator issue such determination and
17 make all affected EGUs in the WRAP States
18 subject to the requirements of sections 432
19 through 434; and

20 “(B) each year after the ‘covered year’
21 under subparagraph (A).

22 “(5) OIL-FIRED.—The term ‘oil-fired’ with re-
23 gard to a unit means, for purposes of section 434,
24 a unit combusting fuel oil for more than 10 percent
25 of the unit’s total heat input, and combusting no

1 coal or coal-derived fuel, and any year during the pe-
2 riod from the eighth through the fourth year before
3 the first covered year.

4 “(6) WRAP STATE.—The term ‘WRAP State’
5 means Arizona, California, Colorado, Idaho, Nevada,
6 New Mexico, Oregon, Utah, and Wyoming.

7 **“SEC. 432. APPLICABILITY.**

8 “(a) PROHIBITION.—Starting January 1 of the first
9 covered year, it shall be unlawful for the affected EGUs
10 at a facility to emit a total amount of sulfur dioxide during
11 the year in excess of the number of sulfur dioxide allow-
12 ances held for such facility for that year by the owner or
13 operator of the facility.

14 “(b) ALLOWANCES HELD.—Only sulfur dioxide al-
15 lowances under section 433 shall be held in order to meet
16 the requirements of subsection (a).

17 **“SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.**

18 For affected EGUs, the total amount of sulfur diox-
19 ide allowances that the Administrator shall allocate for
20 each covered year under section 434 shall equal 271,000
21 tons.

22 **“SEC. 434. EGU ALLOCATIONS.**

23 “(a) IN GENERAL.—By January 1 of the year before
24 the first covered year, the Administrator shall promulgate
25 regulations determining, for each covered year, the alloca-

1 tions of sulfur dioxide allowances for the units at a facility
2 that commence commercial operation, and are affected
3 EGUs, as of December 31 of the fourth year before the
4 covered year by—

5 “(1) for such units at the facility that are coal-
6 fired, multiplying 0.40 lb/mmBtu by the total ad-
7 justed baseline heat input of such units and con-
8 verting to tons;

9 “(2) for such units at the facility that are oil-
10 fired, multiplying 0.20 lb/mmBtu by the total ad-
11 justed baseline heat input of such units and con-
12 verting to tons;

13 “(3) for all such other units at the facility that
14 are not covered by paragraph (1) or (2) multiplying
15 0.05 lb/mmBtu by the total adjusted baseline heat
16 input of such units and converting to tons; and

17 “(4) multiplying by 0.91 the allocation amount
18 under section 433 by the ratio of the total of the
19 amounts for the facility under paragraphs (1), (2),
20 and (3) to the total of the amounts for all facilities
21 under paragraphs (1), (2), and (3); and

22 “(5)(A) 7 percent of the total amount of sulfur
23 dioxide allowances allocated each year under section
24 433 shall be allocated for units at a facility that are
25 affected EGUs, but did not receive sulfur dioxide al-

1 locations under paragraph (4). These units shall be
2 allocated allowances in accordance with paragraphs
3 (1), (2), and (3). The Administrator shall conduct
4 for each year the allocation of any sulfur dioxide al-
5 lowances for the year under this paragraph that
6 were not previously allocated.

7 “(B) Allowances allocated under subparagraph
8 (A) shall be allocated to units on a first come basis
9 determined by the date on which the unit com-
10 mences operation. As such, allocations to units
11 under paragraph (A) will not be reduced as a result
12 of new units commencing operation.

13 “(C) Allowances not allocated under subpara-
14 graph (B) shall be allocated to units in paragraphs
15 (A) and (B) on a pro rata basis. However, no unit
16 shall receive an allocation in excess of the product
17 obtained by multiplying the baseline heat input of
18 the unit and the quotient obtained by dividing the
19 sulfur dioxide emission rate of the unit by 2000.

20 “(6) 2 percent of the total amount of sulfur di-
21 oxide allowances allocated each year under section
22 433 shall be allocated to a set-aside for direct sales
23 under section 402(e)(3)(D). Any sulfur dioxide al-
24 lowances allocated for the year and remaining in the
25 set-aside, as of the deadline established by the Ad-

1 administrator for holding sulfur dioxide allowances for
2 a facility for the year under section 432, shall be al-
3 located to the units that were allocated sulfur diox-
4 ide allowances for the year under paragraphs (1)
5 through (5). Each such unit shall be allocated the
6 amount of sulfur dioxide allowances for the year re-
7 maining in the set-aside, multiplied by the amount
8 of sulfur dioxide allowances allocated to the unit for
9 the year under paragraphs (1) through (5) and di-
10 divided by the total amount of sulfur dioxide allow-
11 ances allocated to all units for the year under para-
12 graphs (1) through (5).

13 “(b) FAILURE TO PROMULGATE.—

14 “(1) IN GENERAL.—For each year 2010 and
15 thereafter, if the Administrator has not promulgated
16 regulations, determining allocations under paragraph
17 (a), each affected EGU shall comply with section
18 422 by provided annual notice to the permitting au-
19 thority. Such notice shall indicate the amount of al-
20 lowances the affected EGU believes it has for the
21 relevant year and the amount of sulfur dioxide emis-
22 sions for such year. The amount of sulfur dioxide
23 emissions shall be determined using reasonable in-
24 dustry accepted methods unless the Administrator

1 has promulgated applicable monitoring and alter-
2 native monitoring requirements.

3 “(2) RECONCILIATION.—Upon promulgation of
4 regulations under subsection (a) determining the al-
5 locations for 2010 and thereafter, and promulgating
6 regulations under section 402(b) providing for the
7 transfer of sulfur dioxides and section 402(c) estab-
8 lishing an Allowance Transfer System for sulfur di-
9 oxide allowances, each unit’s emissions shall be com-
10 pared to and reconciled to its actual allocations
11 under the promulgated regulations. Each unit will
12 have nine (9) months to purchase any allowance
13 shortfall through allowances purchased from other
14 allowance holders or through direct sale.

15 **“PART C—NITROGEN OXIDES CLEAR SKIES**

16 **EMISSION REDUCTIONS**

17 **“Subpart 1—Acid Rain Program**

18 **“SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PRO-**
19 **GRAM.**

20 “(a) APPLICABILITY.—On the date that a coal-fired
21 utility unit becomes an affected unit pursuant to sections
22 413 or 414, or on the date a unit subject to the provisions
23 of section 413(d), must meet the sulfur dioxide reduction
24 requirements, each such unit shall become an affected unit

1 for purposes of this section and shall be subject to the
2 emission limitations for nitrogen oxides set forth herein.

3 “(b) EMISSION LIMITATIONS.—

4 (1) IN GENERAL.—The Administrator shall by
5 regulation establish annual allowable emission limi-
6 tations for nitrogen oxides for the types of utility
7 boilers listed below, which limitations shall not ex-
8 ceed the rates listed below: *Provided*, That the Ad-
9 ministrator may set a rate higher than that listed
10 for any type of utility boiler if the Administrator
11 finds that the maximum listed rate for that boiler
12 type cannot be achieved using low NO_x burner tech-
13 nology. The Administrator shall implement this
14 paragraph under 40 CFR part 76.5 (2002). The
15 maximum allowable emission rates are as follows:

16 “(A) for tangentially fired boilers, 0.45 lb/
17 mmBtu; and

18 “(B) for dry bottom wall-fired boilers
19 (other than units applying cell burner tech-
20 nology), 0.50 lb/mmBtu. After January 1,
21 1995, it shall be unlawful for any unit that is
22 an affected unit on that date and is of the type
23 listed in this paragraph to emit nitrogen oxides
24 in excess of the emission rates set by the Ad-
25 ministrator pursuant to this paragraph.

1 “(2) UTILITY BOILERS.—The Administrator
2 shall, by regulation, establish allowable emission lim-
3 itations on a lb/mmBtu, annual average basis, for
4 nitrogen oxides for the following types of utility boil-
5 ers:

6 “(A) wet bottom wall-fired boilers;

7 “(B) cyclones;

8 “(C) units applying cell burner technology;

9 and

10 “(D) all other types of utility boilers.

11 “(3) BASIS OF RATES.—The Administrator
12 shall base such rates on the degree of reduction
13 achievable through the retrofit application of the
14 best system of continuous emission reduction, taking
15 into account available technology, costs and energy
16 and environmental impacts; and which is comparable
17 to the costs of nitrogen oxides controls set pursuant
18 to subsection (b)(1). The Administrator may revise
19 the applicable emission limitations for tangentially
20 fired and dry bottom, wall-fired boilers (other than
21 cell burners) to be more stringent if the Adminis-
22 trator determines that more effective low NO_x
23 burned technology is available: *Provided*, That, no
24 unit that is an affected unit pursuant to section 413
25 and that is subject to the requirements of subsection

1 (b)(1), shall be subject to the revised emission limi-
2 tations, if any. The Administrator shall implement
3 that paragraph under 40 CFR parts 76.6 and 76.7
4 (2002).

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

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

14 “(B) a unit subject to subsection (b)(2) cannot
15 meet the applicable rate using the technology on
16 which the Administrator based the applicable emis-
17 sion limitation.

18 “(2) ELIGIBILITY FOR ALTERNATIVE EMISSION LIMI-
19 TATIONS.—The permitting authority shall base such de-
20 termination upon a showing satisfactory to the permitting
21 authority, in accordance with regulations established by
22 the Administrator, that the owner or operator—

23 “(A) has properly installed appropriate control
24 equipment designed to meet the applicable emission
25 rate;

1 “(B) has properly operated such equipment for
2 a period of 15 months (or such other period of time
3 as the Administrator determines through the regula-
4 tions), and provides operating and monitoring data
5 for such period demonstrating that the unit cannot
6 meet the applicable emission rate; and

7 “(C) has specified an emission rate that such
8 unit can meet on an annual average basis. The per-
9 mitting authority shall issue an operating permit for
10 the unit in question, in accordance with section 403
11 and title V—

12 “(i) that permits the unit during the dem-
13 onstration period referred to in subparagraph
14 (B), to emit at a rate in excess of the applicable
15 emission rate;

16 “(ii) at the conclusion of the demonstra-
17 tion period to revise the operating permit to re-
18 flect the alternative emission rate demonstrated
19 in subparagraphs (B) and (C).

20 “(3) ADDITIONAL CONTROL TECHNOLOGY.—Units
21 subject to subsection (b)(1) for which an alternative emis-
22 sion limitation is established shall not be required to in-
23 stall any additional control technology beyond low NO_x
24 burners. Nothing in this section shall preclude an owner
25 or operator from installing and operating an alternative

1 NO_x control technology capable of achieving the applica-
2 ble emission limitation. The Administrator shall imple-
3 ment this subsection under 40 CFR part 76 (2002),
4 amended as appropriate by the Administrator.

5 “(d) EMISSIONS AVERAGING.—

6 “(1) ALTERNATIVE CONTEMPORANEOUS EMIS-
7 SION LIMITATIONS.—In lieu of complying with the
8 applicable emission limitations under subsection
9 (b)(1), (2), or (c), the owner or operator of two or
10 more units subject to one or more of the applicable
11 emission limitations set pursuant to these sections,
12 may petition the permitting authority for alternative
13 contemporaneous annual emission limitations for
14 such units that ensure that—

15 “(A) the actual annual emission rate in
16 pounds of nitrogen oxides per million Btu aver-
17 aged over the units in question is a rate that
18 is less than; or equal to

19 “(B) the Btu-weighted average annual
20 emission rate for the same units if they had
21 been operated, during the same period of time,
22 in compliance with limitations set in accordance
23 with the applicable emission rates set pursuant
24 to subsections (b)(1) and (2).

1 “(2) OPERATING PERMITS.—If the permitting
2 authority determines, in accordance with regulations
3 issued by the Administrator that the conditions in
4 paragraph (1) can be met, the permitting authority
5 shall issue operating permits for such units, in ac-
6 cordance with section 403 and title V, that allow al-
7 ternative contemporaneous annual emission limita-
8 tions. Such emission limitations shall only remain in
9 effect while both units continue operation under the
10 conditions specified in their respective operating per-
11 mits. The Administrator shall implement this sub-
12 section under 40 CFR part 76 (2002), amended as
13 appropriate by the Administrator.

14 **“SEC. 442. TERMINATION.**

15 “Starting January 1, 2008, the owner or operator of
16 affected units and affected facilities under section 441
17 shall no longer be subject to the requirements of that sec-
18 tion.

19 **“Subpart 2—Clear Skies Nitrogen Oxides Allowance**
20 **Program**

21 **“SEC. 451. DEFINITIONS.**

22 “For purposes of this subpart:

23 “(1) AFFECTED EGU.—The term ‘affected
24 EGU’ means—

1 “(A) for a unit serving a generator before
2 the date of enactment of the Clear Skies Act of
3 2005, a unit in a State serving a generator with
4 a nameplate capacity of greater than 25
5 megawatts that produced or produces electricity
6 for sale during 2002 or any year thereafter, ex-
7 cept for a cogeneration unit that meets the cri-
8 teria for qualifying for a cogeneration facilities
9 codified in section 292.205 of title 18 of the
10 Code of Federal Regulations as issued on April
11 1, 2002 during 2002 and each year thereafter;
12 and

13 “(B) for a unit commencing service of a
14 generator on or after the date of enactment of
15 the Clear Skies Act of 2005, a unit in a State
16 serving a generator that produces electricity for
17 sale during any year starting with the year the
18 unit commences service of a generator, except
19 for a gas-fired unit serving one or more genera-
20 tors with total nameplate capacity of 25
21 megawatts or less, or a cogeneration unit that
22 meets the criteria for qualifying for a cogenera-
23 tion facilities codified in section 292.205 of title
24 18 of the Code of Federal Regulations as issued

1 on April 1, 2002, during each year starting
2 with the unit commences service of a generator.

3 “(C) EXCLUSION.—Notwithstanding para-
4 graphs (A) and (B), the term ‘affected EGU’
5 does not include a solid waste incineration unit
6 subject to section 129 or a unit for the treat-
7 ment, storage, or disposal of hazardous waste
8 subject to section 3005 of the Solid Waste Dis-
9 posal Act.

10 “(2) ADJUSTED BASELINE HEAT INPUT.—The
11 term ‘adjusted baseline heat input’ with regard to a
12 unit means, for purposes of allocating nitrogen ox-
13 ides allowances in a particular year under this sub-
14 part, the unit’s baseline heat input multiplied by—

15 “(A) 1.0 for affected coal-fired units for
16 2008 and each year thereafter;

17 “(B) 0.55 for affected oil- and gas-fired
18 units located in a Zone 1 State for years 2008
19 through 2017 inclusive;

20 “(C) 0.8 for affected oil- and gas-fired
21 units located in a Zone 1 State for 2018 and
22 each year thereafter; and

23 “(D) 0.4 for affected oil- and gas-fired
24 units located in a Zone 2 State for 2008 and
25 each year thereafter.

1 “(3) ALLOWABLE NITROGEN OXIDES EMISSIONS
2 RATE.—The term ‘allowable nitrogen oxides emis-
3 sions rate’ means the most stringent Federal or
4 State emissions limitation for nitrogen oxides that
5 applies to the unit as of date of enactment of this
6 subpart. If the emissions limitation for a unit is not
7 expressed in pounds of emissions per million Btu, or
8 the averaging period of that emissions limitation is
9 not expressed on an annual basis, the Administrator
10 shall calculate the annual equivalent of that emis-
11 sions limitation to establish the allowable rate. Such
12 limitation shall not include any requirement to hold
13 nitrogen oxides allowances under the Federal NO_x
14 Budget Trading Program as codified at 40 CFR
15 part 97 (2002), or any State program adopted to
16 meet the requirements of the NO_x SIP Call as codi-
17 fied at section 51.121 of title 40, Code of Federal
18 Regulations (as in effect for 2004).

19 “(4) ZONE 1 STATE.—The term ‘Zone 1 State’
20 means Alabama, Arkansas, Connecticut, Delaware,
21 the District of Columbia, Florida, Georgia, Illinois,
22 Indiana, Iowa, Kentucky, Louisiana, Maine, Mary-
23 land, Massachusetts, Michigan, Mississippi, the fine
24 grid portion (as defined in section 51.121 of title 40,
25 Code of Federal Regulations (as in effect for 2004))

1 of Missouri, New Hampshire, New Jersey, New
2 York, North Carolina, Ohio, Pennsylvania, Rhode Is-
3 land, South Carolina, Tennessee, Texas east of
4 Interstate 35, Vermont, Virginia, West Virginia, and
5 Wisconsin.

6 “(5) ZONE 2 STATE.—The term ‘Zone 2 State’
7 means Alaska, American Samoa, Arizona, California,
8 Colorado, the Commonwealth of the Northern Mar-
9 iana Islands, the Commonwealth of Puerto Rico,
10 Guam, Hawaii, Idaho, Kansas, Minnesota, the
11 coarse grid portion (as defined in section 51.121 of
12 title 40, Code of Federal Regulations (as in effect
13 for 2004)) of Missouri, Montana, Nebraska, North
14 Dakota, New Mexico, Nevada, Oklahoma, Oregon,
15 South Dakota, Texas west of Interstate 35, Utah,
16 the Virgin Islands, Washington, and Wyoming.

17 **“SEC. 452. APPLICABILITY.**

18 “(a) ZONE 1 PROHIBITION.—

19 (1) IN GENERAL.—Starting January 1, 2008, it
20 shall be unlawful for the affected EGUs at a facility
21 in a Zone 1 State to emit a total amount of nitrogen
22 oxides during a year in excess of the number of ni-
23 trogen oxides allowances held for such facility for
24 that year by the owner or operator of the facility.

1 “(2) LIMITATION.—Only nitrogen oxides allow-
 2 ances under section 453(a) shall be held in order to
 3 meet the requirements of paragraph (1), except as
 4 provided under section 465.

5 “(b) ZONE 2 PROHIBITION.—

6 (1) IN GENERAL.—Starting January 1, 2008, it
 7 shall be unlawful for the affected EGUs at a facility
 8 in a Zone 2 State to emit a total amount of nitrogen
 9 oxides during a year in excess of the number of ni-
 10 trogen oxides allowances held for such facility for
 11 that year by the owner or operator of the facility.

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

15 **“SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.**

16 “(a) ZONE 1 ALLOCATIONS.—For affected EGUs in
 17 the Zone 1 States for 2008 and each year thereafter, the
 18 Administrator shall allocate nitrogen oxides allowances
 19 under section 454(a) as specified in table A.

“TABLE A—TOTAL NO_x ALLOWANCES ALLOCATED FOR EGUS IN
 ZONE 1

Year	NO _x allowances allocated
2008–2017	1,473,603
2018 and thereafter	1,073,603

20 “(b) ZONE 2 ALLOCATIONS.—For affected EGUs in
 21 the Zone 2 States for 2008 and each year thereafter, the

1 Administrator shall allocate nitrogen oxides allowances
 2 under section 454(b) as specified in table B.

“TABLE B—TOTAL NO_x ALLOWANCES ALLOCATED FOR EGUS IN
 ZONE 2

Year	NO _x allowance allocated
2008 and thereafter	714,794

3 **“SEC. 454. EGU ALLOCATIONS.**

4 “(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—

5 “(1) EPA REGULATIONS.—Not later than 18
 6 months before the date on which the nitrogen oxides
 7 allowance requirement under section 452 takes ef-
 8 fect, the Administrator shall promulgate regulations
 9 determining the allocation of nitrogen oxide allow-
 10 ances for 2008 and each subsequent year for units
 11 at a facility in a Zone 1 State that commence com-
 12 mercial operation, and are affected EGUs, as of the
 13 date of enactment of this section.

14 “(2) FORMULA FOR ALLOCATION.—

15 “(A) IN GENERAL.—Subject to subpara-
 16 graph (B) and paragraph (3), the regulations
 17 shall specify that the allocation of nitrogen
 18 oxide allowances for each unit referred to in
 19 paragraph (1) for each year shall be the prod-
 20 uct obtained by multiplying—

21 “(i) the product of 0.95 and the allo-
 22 cation amount under section 453(a); and

23 “(ii) the ratio that—

1 “(I) the total quantity of the ad-
2 justed baseline heat input of the units
3 at the facility; bears to

4 “(II) the total quantity of ad-
5 justed baseline heat input to all af-
6 fected EGUs in the Zone 1 States;
7 and

8 “(B) MAXIMUM ALLOCATION.—Notwith-
9 standing subparagraph (A) and paragraph (3),
10 no unit shall receive an allocation in excess of
11 the product obtained by multiplying—

12 “(i) the adjusted baseline heat input
13 of the unit; and

14 “(ii) the quotient obtained by dividing
15 the allowable nitrogen oxides emissions
16 rate of the unit by 2000.

17 “(3) DISTRIBUTION OF REMAINING ALLOW-
18 ANCES.—

19 “(A) IN GENERAL.—Subject to paragraph
20 (2)(B), any nitrogen oxide allowances remaining
21 after the allocation of allowances under para-
22 graph (2) shall be distributed on a pro rata
23 basis among the units that received nitrogen
24 oxide allowances under that paragraph.

1 “(B) ADDITIONAL REMAINING ALLOW-
2 ANCES.—Allowances remaining after each
3 iteration of the calculation under subparagraph
4 (A) as a result of the limitation under para-
5 graph (2)(B) shall be allocated in accordance
6 with subparagraph (A).

7 “(4) SET-ASIDE FOR NEW UNITS.—

8 “(A) IN GENERAL.—5 percent of the total
9 amount of nitrogen oxide allowances allocated
10 each year under section 453 shall be allocated
11 for units at a facility that are affected EGUs,
12 but did not receive nitrogen oxide allocations
13 under paragraph (2). The Administrator shall
14 conduct for each year the allocation of any ni-
15 trogen oxide allowances for the year under this
16 paragraph that were not previously allocated.

17 “(B) FORMULA FOR ALLOCATION.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii) and subparagraph (E), the regulations
20 promulgated under paragraph (1) shall
21 specify that the allocation of nitrogen oxide
22 allowances for each unit referred to in sub-
23 paragraph (A) for each year shall be the
24 product obtained by multiplying—

200

1 “(I) the adjusted baseline heat
2 input of the unit; and

3 “(II) the quotient obtained by di-
4 viding the allowable nitrogen oxides
5 emissions rate of the unit by 2000.

6 “(ii) ADDITIONAL ALLOWANCES.—
7 Notwithstanding subparagraph (E), no
8 unit shall receive an allocation under this
9 paragraph in excess of the product ob-
10 tained by multiplying—

11 “(I) the baseline heat input of
12 the unit; and

13 “(II) the quotient obtained by di-
14 viding the allowable nitrogen oxides
15 emissions rate of the unit by 2000.

16 “(C) METHOD OF ALLOCATION.—Allow-
17 ances allocated under this paragraph shall be
18 allocated to each unit on a first-come basis de-
19 termined by the date on which the unit com-
20 mences operation.

21 “(D) NO REDUCTION IN ALLOCATIONS.—
22 Allocations to units under this paragraph shall
23 not be reduced as a result of new units com-
24 mencing operation.

1 “(E) DISTRIBUTION OF REMAINING AL-
2 LOWANCES.—Any nitrogen oxide allowances re-
3 maining after the allocation of allowances under
4 subparagraph (B) shall be distributed on a pro
5 rata basis among the units that received nitro-
6 gen oxide allowances under that subparagraph
7 and paragraphs (2) and (3).

8 “(5) SET-ASIDE FOR DIRECT SALES.—93 per-
9 cent of the total amount of nitrogen oxides allow-
10 ances allocated each year under section 453(a) shall
11 be allocated to a set-aside for direct sales under sec-
12 tion 402(e)(3)(D). Any nitrogen oxides allowances
13 allocated for the year and remaining in the set-aside,
14 as of the deadline established by the Administrator
15 for holding nitrogen oxides allowances for a facility
16 for the year under section 452(a), shall be allocated
17 to the units that were allocated nitrogen oxides al-
18 lowances for the year under paragraphs (1) through
19 (4).

20 “(A) Except as provided in subparagraph
21 (B), each unit shall be allocated the amount of
22 nitrogen oxides allowances for the year remain-
23 ing in the set-aside, multiplied by the amount
24 of nitrogen oxides allowances allocated to the
25 unit for the year under paragraphs (2) through

1 (4) and divided by the total amount of nitrogen
2 oxides allowances allocated to all units for the
3 year under paragraphs (1) through (4).

4 “(B) If any unit’s allocation for the year
5 under subparagraph (A) and this subparagraph
6 would otherwise result in the unit being allo-
7 cated a total amount of nitrogen oxides allow-
8 ances under paragraphs (1) through (4), sub-
9 paragraph (A), and this subparagraph exceed-
10 ing the unit’s baseline heat input multiplied by
11 the quotient obtained by dividing the unit’s al-
12 lowable nitrogen oxides emissions rate by 2000,
13 the amount of nitrogen oxides allowances that
14 exceeds such product shall be instead allocated
15 to the other units under subparagraph (A) on
16 a pro rata basis, based on the units’ allocations
17 under paragraphs (1) through (4), subpara-
18 graph (A), and this subparagraph.

19 “(6) FAILURE TO PROMULGATE REGULA-
20 TIONS.—For calendar year 2008 and each calendar
21 year thereafter, if the Administrator has not promul-
22 gated the regulations determining the allocations
23 under this subsection—

24 “(A) each affected unit shall comply with
25 section 452 by providing an annual notice to

1 the permitting authority that indicates the
2 amount of allowances the affected unit believes
3 the affected unit has for the relevant year (in-
4 cluding the quantity of nitrogen oxide emissions
5 of the affected unit for that year);

6 “(B) the amount of nitrogen oxide emis-
7 sions of an affected unit described in subpara-
8 graph (A) shall be determined using reasonable
9 industry accepted methods unless the Adminis-
10 trator has promulgated applicable monitoring
11 and alternative monitoring requirements; and

12 “(C) upon promulgation of regulations
13 under this subsection for Zone 1 determining
14 the allocations for 2008 and each year there-
15 after, and promulgation of regulations under
16 section 402(b) providing for the transfer of ni-
17 trogen oxides and regulations under section
18 402(c) establishing an Allowance Transfer Sys-
19 tem for nitrogen oxide allowances—

20 “(i) the emissions of each unit shall
21 be compared to and reconciled with actual
22 allocations to the unit under the regula-
23 tions; and

24 “(ii) each unit shall have not more
25 than 270 days to submit allowances to the

1 Administrator, without recompense, for
2 any allowance shortfall (including sub-
3 mitted allowances obtained and held by
4 any mechanism consistent with this Act,
5 including direct sale).

6 “(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.—

7 “(1) EPA REGULATIONS.—Not later than 18
8 months before the date on which the nitrogen oxides
9 allowance requirement under section 452 takes ef-
10 fect, the Administrator shall promulgate regulations
11 determining the allocation of nitrogen oxide allow-
12 ances for 2008 and each subsequent year for units
13 at a facility in a Zone 2 State that are affected
14 EGUs as of the date of enactment of this section.

15 “(2) FORMULA FOR ALLOCATION.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B) and paragraph (3), the regulations
18 shall specify that the allocation of nitrogen
19 oxide allowances for each unit referred to in
20 paragraph (1) for each year shall be the prod-
21 uct obtained by multiplying—

22 “(i) the product of 0.95 and the allo-
23 cation amount under section 453(b); and

24 “(ii) the ratio that—

1 “(I) the total quantity of the ad-
2 justed baseline heat input of the units
3 at the facility; bears to

4 “(II) the total quantity of ad-
5 justed baseline heat input to all af-
6 fected EGUs in the Zone 2 States.

7 “(B) MAXIMUM ALLOCATION.—Notwith-
8 standing subparagraph (A) and paragraph (3),
9 no unit shall receive an allocation in excess of
10 the product obtained by multiplying—

11 “(i) the baseline heat input of the
12 unit; and

13 “(ii) the quotient obtained by dividing
14 the allowable nitrogen oxides emissions
15 rate of the unit by 2000.

16 “(3) DISTRIBUTION OF REMAINING ALLOW-
17 ANCES.—

18 “(A) IN GENERAL.—Subject to paragraph
19 (2)(B), any nitrogen oxide allowances remaining
20 after the allocation of allowances under para-
21 graph (2) shall be distributed on a pro rata
22 basis among the units that received nitrogen
23 oxide allowances under that paragraph.

24 “(B) ADDITIONAL REMAINING ALLOW-
25 ANCES.—Allowances remaining after each

1 iteration of the calculation under subparagraph
2 (A) as a result of the limitation under para-
3 graph (2)(B) shall be allocated in accordance
4 with subparagraph (A).

5 “(4) SET-ASIDE FOR NEW UNITS.—

6 “(A) IN GENERAL.—5 percent of the total
7 amount of nitrogen oxide allowances allocated
8 each year under section 453 shall be allocated
9 for units at a facility that are affected EGUs,
10 but did not receive nitrogen oxide allocations
11 under paragraph (2).

12 “(B) FORMULA FOR ALLOCATION.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii) and subparagraph (E), the regulations
15 promulgated under paragraph (1) shall
16 specify that the allocation of nitrogen oxide
17 allowances for each unit referred to in sub-
18 paragraph (A) for each year shall be the
19 product obtained by multiplying—

20 “(I) the adjusted baseline heat
21 input of the unit; and

22 “(II) the quotient obtained by di-
23 viding the allowable nitrogen oxides
24 emissions rate of the unit by 2000.

1 “(ii) ADDITIONAL ALLOWANCES.—
2 Notwithstanding subparagraph (E), no
3 unit shall receive an allocation under this
4 paragraph in excess of the product ob-
5 tained by multiplying—

6 “(I) the baseline heat input of
7 the unit; and

8 “(II) the quotient obtained by di-
9 viding the allowable nitrogen oxides
10 emissions rate of the unit by 2000.

11 “(C) METHOD OF ALLOCATION.—Allow-
12 ances allocated under this paragraph shall be
13 allocated to each unit on a first-come basis de-
14 termined by the date on which the unit com-
15 mences operation.

16 “(D) NO REDUCTION IN ALLOCATIONS.—
17 Allocations to units under this paragraph shall
18 not be reduced as a result of new units com-
19 mencing operation.

20 “(E) DISTRIBUTION OF REMAINING AL-
21 LOWANCES.—Any nitrogen oxide allowances re-
22 maining after the allocation of allowances under
23 subparagraph (B) shall be distributed on a pro
24 rata basis among the units that received nitro-

1 gen oxide allowances under that subparagraph
2 and paragraphs (2) and (3).

3 “(5) SET-ASIDE FOR DIRECT SALES.—2 percent
4 of the total amount of nitrogen oxides allowances al-
5 located each year under section 453(b) shall be allo-
6 cated to a set-aside for direct sales under section
7 402(e)(3)(D). Any nitrogen oxides allowances allo-
8 cated for the year and remaining in the set-aside, as
9 of the deadline established by the Administrator for
10 holding nitrogen oxides allowances for a facility for
11 the year under section 452(b), shall be allocated to
12 the units that were allocated nitrogen oxides allow-
13 ances for the year under paragraphs (1) through
14 (4).

15 “(A) Except as provided in subparagraph
16 (B), each unit shall be allocated the amount of
17 nitrogen oxides allowances for the year remain-
18 ing in the set-aside, multiplied by the amount
19 of nitrogen oxides allowances allocated to the
20 unit for the year under paragraphs (1) through
21 (4) and divided by the total amount of nitrogen
22 oxides allowances allocated to all units for the
23 year under paragraphs (1) through (4).

24 “(B) If any unit’s allocation for the year
25 under subparagraph (A) and this subparagraph

1 would otherwise result in the unit being allo-
2 cated a total amount of nitrogen oxides allow-
3 ances under paragraphs (1) through (4), sub-
4 paragraph (A), and this subparagraph exceed-
5 ing the unit's baseline heat input multiplied by
6 the quotient obtained by dividing the unit's al-
7 lowable nitrogen oxides emissions rate by 2000,
8 the amount of nitrogen oxides allowances that
9 exceeds such product shall be instead allocated
10 to the other units under subparagraph (A) on
11 a pro rata basis, based on the units' allocations
12 under paragraphs (1) through (4), subpara-
13 graph (A), and this subparagraph.

14 “(6) FAILURE TO PROMULGATE REGULA-
15 TIONS.—For calendar year 2008 and each calendar
16 year thereafter, if the Administrator has not promul-
17 gated the regulations determining the allocations
18 under this subsection—

19 “(A) each affected unit shall comply with
20 section 452 by providing an annual notice to
21 the permitting authority that indicates the
22 amount of allowances the affected unit believes
23 the affected unit has for the relevant year (in-
24 cluding the quantity of nitrogen oxide emissions
25 of the affected unit for that year);

1 “(B) the amount of nitrogen oxide emis-
2 sions of an affected unit described in subpara-
3 graph (A) shall be determined using reasonable
4 industry accepted methods unless the Adminis-
5 trator has promulgated applicable monitoring
6 and alternative monitoring requirements; and

7 “(C) upon promulgation of regulations
8 under this subsection for Zone 2 determining
9 the allocations for 2008 and each year there-
10 after, and promulgation of regulations under
11 section 402(b) providing for the transfer of ni-
12 trogen oxides and regulations under section
13 402(c) establishing an Allowance Transfer Sys-
14 tem for nitrogen oxide allowances—

15 “(i) the emissions of each unit shall
16 be compared to and reconciled with actual
17 allocations to the unit under the regula-
18 tions; and

19 “(ii) each unit shall have not more
20 than 270 days to submit allowances to the
21 Administrator, without recompense, for
22 any allowance shortfall (including sub-
23 mitted allowances obtained and held by
24 any mechanism consistent with this Act,
25 including direct sale).

1 **“SEC. 455. NITROGEN OXIDES EARLY ACTION REDUCTION**
2 **CREDITS.**

3 “(a) CREDITS.—Except as provided in subsection (e),
4 the Administrator shall promulgate regulations within 18
5 months authorizing the allocation of nitrogen oxides allow-
6 ances to units designated under this section that install
7 or modify pollution control equipment or combustion tech-
8 nology improvements identified in such regulations after
9 the date of enactment of this section and prior to January
10 1, 2008.

11 “(b) EMISSIONS REDUCTIONS.—No allowances shall
12 be allocated under this section for emissions reductions
13 that are—

14 “(1) attributable to pollution control equipment
15 or combustion technology improvements that were
16 operational at any time prior to the date of enact-
17 ment of this section;

18 “(2) attributable to fuel switching;

19 “(3) required under any Federal, State, or local
20 statute or regulations for the applicable year; or

21 “(4) made by a unit, subject to—

22 “(A) subpart 1 of part C, that are nec-
23 essary for compliance with the limitation on the
24 Btu-weighted average annual emission rate of
25 the unit and 1 or more other units under sec-
26 tion 441(d); or

1 “(B) the requirements in the applicable
2 implementation plan of a NO_x SIP Call State
3 (as defined in section 461(3)) that meet the re-
4 quirements under sections 51.121 and 51.122
5 of title 40, Code of Federal Regulations (as in
6 effect for calendar year 2004) during the period
7 beginning on May 1 and ending on September
8 30.

9 “(c) ALLOCATION.—The allowances allocated to any
10 unit under this section shall be in addition to the allow-
11 ances allocated under section 454 and shall be allocated
12 in an amount equal to one allowance of nitrogen oxides
13 for each 1.05 tons of reduction in emissions of nitrogen
14 oxides achieved by the pollution control equipment or com-
15 bustion technology improvements starting with the year
16 in which the equipment or improvement is implemented.
17 The early compliance reduction allowances available under
18 this section shall be used and tradable in the same manner
19 as allowances under section 454.

20 “(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—
21 The Administrator shall promulgate regulations as nec-
22 essary to ensure affected units receive early compliance
23 allowance credit. Early compliance allowances shall be al-
24 located at the end of an early compliance year. Should the
25 Administrator fail to promulgate allocation regulations by

1 the end of a given year, early compliance allowances for
2 each year shall be allocated at the earliest possible time
3 after allocation regulations are promulgated.

4 “(e) EXCEPTION.—This section shall not apply to re-
5 ductions that are—

6 “(1) made during the period beginning on May
7 1 and ending on September 30 of a year by units
8 that are subject to an applicable implementation
9 plan for a NO_x SIP Call State (as defined in section
10 461(3)) required under section 51.121 of title 40,
11 Code of Federal Regulations (as in effect for cal-
12 endar year 2004); or

13 “(2) necessary to comply with subpart 1 of part
14 C for the applicable year.

15 **“Subpart 3—Ozone Season NO_x Budget Program**

16 **“SEC. 461. DEFINITIONS.**

17 “For purposes of this subpart:

18 “(1) OZONE SEASON.—The term ‘ozone season’
19 means—

20 “(A) with regard to Connecticut, Delaware,
21 the District of Columbia, Maryland, Massachu-
22 setts, New Jersey, New York, Pennsylvania,
23 and Rhode Island, the period May 1 through
24 September 30 for each year starting in 2003;
25 and

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

4 “(2) NON-OZONE SEASON.—The term ‘non-
5 ozone season’ means—

6 “(A) with regard to Connecticut, Delaware,
7 the District of Columbia, Maryland, Massachu-
8 setts, New Jersey, New York, Pennsylvania,
9 and Rhode Island, the period October 1 through
10 April 30; and

11 “(B) with regard to all other States, the
12 period October 1, 2003, through May 29, 2004
13 and the period October 1 through April 30 be-
14 ginning in the year 2004 and for each year
15 thereafter.

16 “(3) NO_x SIP CALL STATE.—The term ‘NO_x
17 SIP Call State’ means Connecticut, Delaware, the
18 District of Columbia, Illinois, Indiana, Kentucky,
19 Maryland, Massachusetts, New Jersey, New York,
20 North Carolina, Ohio, Pennsylvania, Rhode Island,
21 South Carolina, Tennessee, Virginia, and West Vir-
22 ginia and the fine grid portions of Alabama, Geor-
23 gia, Michigan, and Missouri.

24 “(4) FINE GRID PORTIONS OF ALABAMA, GEOR-
25 GIA, MICHIGAN, AND MISSOURI.—The term ‘fine grid

1 portions of Alabama, Georgia, Michigan, and Mis-
2 souri' means the areas in Alabama, Georgia, Michi-
3 gan, and Missouri subject to section 51.121 of the
4 title 40, Code of Federal Regulations (as in effect
5 for 2004).

6 **“SEC. 462. GENERAL PROVISIONS.**

7 “The provisions of sections 402 through 406 shall not
8 apply to this subpart.

9 **“SEC. 463. APPLICABLE IMPLEMENTATION PLAN.**

10 “(a) SIPS.—Except as provided in subsection (b),
11 the applicable implementation plan for each NO_x SIP Call
12 State shall be consistent with the requirements, including
13 the NO_x SIP Call State's nitrogen oxides budget and com-
14 pliance supplement pool, in sections 51.121 and 51.122
15 of title 40, Code of Federal Regulations (as in effect for
16 calendar year 2004).

17 “(b) REQUIREMENTS.—Notwithstanding any provi-
18 sion to the contrary in section 51.121 or 51.122 of title
19 40, Code of Federal Regulations (as in effect for calendar
20 year 2004):

21 “(1) IMPLEMENTATION PLAN.—The applicable
22 implementation plan for each NO_x SIP Call State
23 shall require full implementation of the required
24 emission control measures starting no later than the
25 first ozone season.

1 “(2) EXEMPTION.—Starting January 1,
2 2008—

3 “(A) the owners and operators of a boiler,
4 combustion turbine, or integrated gasification
5 combined cycle plant subject to emission reduc-
6 tion requirements or limitations under part B,
7 C, or D shall no longer be subject to the re-
8 quirements in a NO_x SIP Call State’s applica-
9 ble implementation plan that meet the require-
10 ments of subsection (a) and paragraph (1); and

11 “(B) notwithstanding subparagraph (A), if
12 the Administrator determines, by December 31,
13 2007, that a NO_x SIP Call State’s applicable
14 implementation plan meets the requirements of
15 subsection (a) and paragraph (1), such applica-
16 ble implementation plan shall be deemed to con-
17 tinue to meet such requirements.

18 “(c) SAVINGS PROVISION.—Nothing in this section or
19 section 464 shall preclude or deny the right of any State
20 or political subdivision thereof to adopt or enforce any reg-
21 ulation, requirement, limitation, or standard, relating to
22 a boiler, combustion turbine, or integrated gasification
23 combined cycle plant subject to emission reduction re-
24 quirements or limitations under part B, C, or D, that is
25 more stringent than a regulation, requirement, limitation,

1 or standard in effect under this section or under any other
2 provision of this Act.

3 **“SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION**
4 **OF NO_x TRADING PROGRAM FOR EGUS.**

5 “Starting January 1, 2008, with regard to any boiler,
6 combustion turbine, or integrated gasification combined
7 cycle plant subject to emission reduction requirements or
8 limitations under part B, C, or D, the Administrator shall
9 not administer any nitrogen oxides trading program in-
10 cluded in any NO_x SIP Call State’s applicable implemen-
11 tation plan and meeting the requirements of section
12 463(a) and (b)(1).

13 **“SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES**
14 **ALLOWANCES.**

15 “The Administrator shall promulgate regulations as
16 necessary to assure that the requirement to hold allow-
17 ances under section 452(a)(1) may be met using nitrogen
18 oxides allowances allocated for an ozone season before
19 2008 under a nitrogen oxides trading program that the
20 Administrator administers, is included in a NO_x SIP Call
21 State’s applicable implementation plan, and meets the re-
22 quirements of section 463 (a) and (b)(1).

1 **“SEC. 466. NON-OZONE SEASON VOLUNTARY ACTION CRED-**
2 **ITS.**

3 “An affected facility that voluntarily elects to operate
4 selective catalytic reduction (SCR) units, installed prior to
5 enactment of this title, during the non-ozone season under
6 section 461(2) shall be credited 0.5 allowances per ton of
7 NO_x emissions avoided as a result of operating these con-
8 trols. The amount avoided will equal every ton of nitrogen
9 oxides reduction below the allowable emission rate. The
10 Administrator shall determine if any other existing NO_x
11 emission control devices are generally uneconomic to oper-
12 ate unless EGUs are provided incentives to control NO_x
13 emissions during the non-ozone season. If the Adminis-
14 trator finds that incentives using different control equip-
15 ment are necessary to make the operation of these devices
16 economic, the Administrator shall specify these types of
17 control devices and, for an affected facility with these
18 specified devices, installed prior to enactment of this title,
19 that voluntarily elects to operate these devices during the
20 nonozone season under section 461(2) shall be credited 0.5
21 allowances per ton of emissions avoided as a result of oper-
22 ating these controls. The Administrator shall promulgate
23 regulations as necessary to establish this NO_x allowance
24 credit program. Failure of the Administrator to promul-
25 gate implementing regulations prior to voluntary reduc-
26 tions being undertaken by affected facilities shall not in

1 any manner reduce the number of allowances an otherwise
2 qualifying facility shall be credited upon promulgation of
3 the regulations.

4 **“PART D—MERCURY EMISSIONS REDUCTIONS**

5 **“SEC. 471. DEFINITIONS.**

6 “For purposes of this part:

7 “(1) ADJUSTED BASELINE HEAT INPUT.—The
8 term ‘adjusted baseline heat input’ with regard to a
9 unit means the unit’s baseline heat input multiplied
10 by—

11 “(A) 1.0, for the portion of the baseline
12 heat input that is the unit’s average annual
13 combustion of bituminous during the years on
14 which the unit’s baseline heat input is based;

15 “(B) 3.0, for the portion of the baseline
16 heat input that is the unit’s average annual
17 combustion of lignite during the years on which
18 the unit’s baseline heat input is based;

19 “(C) 1.25, for the portion of the baseline
20 heat input that is the unit’s average annual
21 combustion of subbituminous during the years
22 on which the unit’s baseline heat input is based;
23 and

24 “(D) 1.0, for the portion of the baseline
25 heat input that is not covered by subparagraph

1 (A), (B), or (C) or for the entire baseline heat
2 input if such baseline heat input is not based
3 on the unit's heat input in specified years.

4 “(2) AFFECTED EGU.—

5 “(A) IN GENERAL.—The term ‘affected
6 EGU’ means—

7 “(i) for a unit serving a generator be-
8 fore the date of enactment of the Clear
9 Skies Act of 2005, a coal-fired unit in a
10 State serving a generator with a nameplate
11 capacity of greater than 25 megawatts that
12 produced or produces electricity for sale
13 during 2002 or any year thereafter, except
14 for a cogeneration unit meets the criteria
15 for qualifying for a cogeneration facilities
16 codified in section 292.205 of title 18 of
17 the Code of Federal Regulations as issued
18 on April 1, 2002, during 2002 and each
19 year thereafter; and

20 “(ii) for a unit commencing service of
21 a generator on or after the date of enact-
22 ment of the Clear Skies Act of 2005, a
23 coal-fired unit in a State serving a gener-
24 ator that produces electricity for sale dur-
25 ing any year starting with the year the

1 unit commences service of a generator, ex-
2 cept for a cogeneration unit that meets the
3 criteria for qualifying for a cogeneration
4 facilities codified in section 292.205 of title
5 18 of the Code of Federal Regulations as
6 issued on April 1, 2002, during each year
7 starting with the year the unit commences
8 service of a generator.

9 “(B) EXCLUSION.—Notwithstanding para-
10 graphs (A), the term ‘affected EGU’ does not
11 include—

12 “(i) a solid waste incineration unit
13 subject to section 129;

14 “(ii) a unit for the treatment, storage,
15 or disposal of hazardous waste subject to
16 section 3005 of the Solid Waste Disposal
17 Act; or

18 “(iii) a unit with de minimis emissions
19 equal to or less than 50 pounds on an av-
20 erage annual basis, as calculated by the
21 Administrator for a 3-year period using—

22 “(I) for calendar year 2010, the
23 emissions data for a facility for cal-
24 endar years 2006 through 2009; and

1 “(II) for calendar year 2011 and
 2 subsequent calendar years, the 3 most
 3 recent calendar years for which emis-
 4 sions data are available.

5 “(3) ALLOWABLE MERCURY EMISSIONS RATE.—
 6 The term ‘allowable mercury emissions rate’ means
 7 the most stringent Federal or State emissions limita-
 8 tion for mercury as of the date on which the Admin-
 9 istrator allocates mercury allowances for a unit for
 10 the first year in which the unit is subject to section
 11 472.

12 **“SEC. 472. APPLICABILITY.**

13 “Starting January 1, 2010, it shall be unlawful for
 14 the affected EGUs at a facility in a State to emit a total
 15 amount of mercury during the year in excess of the num-
 16 ber of mercury allowances held for such facility for that
 17 year by the owner or operator of the facility.

18 **“SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.**

19 “For affected EGUs for 2010 and each year there-
 20 after, the Administrator shall allocate mercury allowances
 21 pursuant to section 474.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED
 FOR EGUS

Year	Mercury al- lowances al- located
2010–2017	1,088,000
2018 and thereafter	480,000

1 **“SEC. 474. EGU ALLOCATIONS.**

2 “(a) ALLOCATIONS.—

3 “(1) IN GENERAL.—Not later than 2 years be-
4 fore the commencement date of the mercury allow-
5 ance requirement of section 472, the Administrator
6 shall promulgate regulations determining allocations
7 of mercury allowances for 2010 and thereafter for
8 units at a facility that commence commercial oper-
9 ation by and are affected EGUs as of the date of en-
10 actment of this section.

11 “(2) FORMULA.—Subject to paragraphs (1) and
12 (3), the regulations shall provide that the Adminis-
13 trator shall allocate each year for such units an
14 amount determined by multiplying by 0.93 the allo-
15 cation amount in section 473 by the ratio of the
16 total amount of the adjusted baseline heat input of
17 such units at the facility to the total amount of ad-
18 justed baseline heat input of all affected EGUs.

19 “(3) DISTRIBUTION OF REMAINING ALLOW-
20 ANCES.—

21 “(A) IN GENERAL.—Any mercury allow-
22 ances remaining after the allocation of allow-
23 ances under paragraph (2) shall be distributed
24 on a pro rata basis among the units that re-
25 ceived mercury allowances under that para-
26 graph.

1 “(B) ADDITIONAL REMAINING ALLOW-
2 ANCES.—Allowances remaining after each
3 iteration of the calculation under subparagraph
4 (A) shall be allocated in accordance with that
5 subparagraph.

6 “(b) NEW FACILITIES.—5 percent of the total
7 amount of nitrogen oxides allowances allocated each year
8 under section 473 shall be allocated for units at a facility
9 that are affected EGUs but did not receive mercury alloca-
10 tions under subsection (a). These units shall be allocated
11 allowances for each year by multiplying the adjusted base-
12 line heat input of the unit and the quotient obtained by
13 dividing the allowable mercury emissions rate of the unit
14 by 2000.

15 “(c) ALLOCATION.—Allowances allocated under sub-
16 section (b) shall be allocated to units on a first come basis
17 determined by the date on which the unit commences oper-
18 ation. As such, allocations to units under subsection (b)
19 will not be reduced as a result of new units commencing
20 operation.

21 “(d) UNALLOCATED ALLOWANCES.—

22 “(1) IN GENERAL.—Subject to paragraph (2)
23 allowances not allocated under subsection (c) shall
24 be allocated to units in subsections (a) and (b) on
25 a pro rata basis.

1 “(2) MAXIMUM ALLOCATION.—No unit shall re-
2 ceive an allocation under this subsection in excess of
3 the product obtained by multiplying the adjusted
4 baseline heat input of the unit and the quotient ob-
5 tained by dividing the allowable mercury emission
6 rate of the unit by 2000.

7 “(e) SET-ASIDE FOR DIRECT SALES.—2 percent of
8 the total amount of mercury allowances allocated each
9 year under section 473 shall be allocated to a set-aside
10 for direct sales under section 402(e)(3)(D). Any mercury
11 allowances allocated for the year and remaining in the set-
12 aside, as of the deadline established by the Administrator
13 for holding mercury allowances for a facility for the year
14 under section 472, shall be allocated to the units that were
15 allocated mercury allowances for the year under sub-
16 sections (a) through (d).

17 “(1) Except as provided in paragraph (2), each
18 unit shall be allocated the amount of mercury allow-
19 ances for the year remaining in the set-aside, multi-
20 plied by the amount of mercury allowances allocated
21 to the unit for the year under subsections (a)
22 through (d) and divided by the total amount of mer-
23 cury allowances allocated to all units for the year
24 under subsections (a) through (d).

1 “(2) If any unit’s allocation for the year under
2 paragraph (1) and this paragraph would otherwise
3 result in the unit being allocated a total amount of
4 mercury allowances under subsections (a) through
5 (d), paragraph (1), and this paragraph exceeding the
6 unit’s baseline heat input multiplied by the quotient
7 obtained by dividing the unit’s allowable mercury
8 emissions rate by 2000, the amount of mercury al-
9 lowances that exceeds such product shall be instead
10 allocated to the other units under paragraph (1) on
11 a pro rata basis, based on the units’ allocations
12 under subsections (a) through (d), paragraph (1),
13 and this paragraph.

14 “(f) AMOUNT OF ALLOWANCES.—For each year 2010
15 and thereafter, if the Administrator has not promulgated
16 the regulations determining allocation under subsection
17 (a)—

18 “(1) each affected unit shall comply with sec-
19 tion 472 by providing annual notice to the permit-
20 ting authority. Such notice shall indicate the amount
21 of allowances the affected unit believes it has for the
22 relevant year and the amount of mercury emissions
23 for such year. The amount of mercury emissions
24 shall be determined using reasonable industry ac-
25 cepted methods unless the Administrator has pro-

1 mulgated applicable monitoring and alternative mon-
2 itoring requirements; and

3 “(2) upon promulgation of regulations under
4 subsection (a) determining the allocations for 2010
5 and thereafter, and promulgating regulations under
6 section 402(b) providing for the transfer of mercury
7 allowances and section 402(c) establishing an Allow-
8 ance Transfer System for mercury allowances, each
9 unit’s emissions shall be compared to and reconcile
10 with its actual allocations under the promulgated
11 regulation. Each unit will have nine (9) months to
12 submit allowances to the Administrator, without rec-
13 ompense, for any allowances shortfall. The sub-
14 mitted allowances may have been obtained and held
15 by any mechanism consistent with the Act including,
16 but not limited to, direct sale.

17 **“SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS.**

18 “(a) IN GENERAL.—The Administrator shall promul-
19 gate regulations within 18 months authorizing the alloca-
20 tion of mercury allowances to units designated under this
21 section that install or modify pollution control equipment
22 or combustion technology improvements identified in such
23 regulations after the date of enactment of this section and
24 prior to January 1, 2010.

1 “(b) NONALLOCATION OF ALLOWANCES.—No allow-
2 ances shall be allocated under this paragraph for emis-
3 sions reductions: attributable to pollution control equip-
4 ment or combustion technology improvements that were
5 operational or under construction at any time prior to the
6 date of enactment of this section; attributable to fuel
7 switching; or required under any Federal, State, or local
8 statute or regulations.

9 “(c) AMOUNT OF ALLOWANCES.—The allowances al-
10 located to any unit under this paragraph shall be in addi-
11 tion to the allowances allocated under section 474 and
12 shall be allocated in an amount equal to 1 allowance of
13 mercury for each 1.05 ounces of reduction in emissions
14 of mercury achieved by the pollution control equipment or
15 combustion technology improvements starting with the
16 year in which the equipment or improvement is imple-
17 mented. The early compliance reduction allowances avail-
18 able under this section shall be used and tradable in the
19 same manner as allowances under section 474.

20 “(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—
21 The Administrator shall promulgate regulations as nec-
22 essary to ensure affected units receive early compliance
23 allowance credit. Early compliance allowances shall be al-
24 located at the end of an early compliance year. Should the
25 Administrator fail to promulgate allocation regulations by

1 the end of a given year, early compliance allowances for
2 each year shall be allocated at the earliest possible time
3 after allocation regulations are promulgated.

4 **“PART E—NATIONAL EMISSION STANDARDS; RE-**
5 **SEARCH, ENVIRONMENTAL ACCOUNT-**
6 **ABILITY; MAJOR SOURCE**
7 **PRECONSTRUCTION REVIEW AND BEST**
8 **AVAILABLE RETROFIT CONTROL TECH-**
9 **NOLOGY REQUIREMENTS**

10 **“SEC. 481. NATIONAL EMISSION STANDARDS FOR AF-**
11 **FFECTED UNITS.**

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

13 “(1) COMMENCED.—The term ‘commenced’,
14 with regard to construction, means that an owner or
15 operator has either undertaken a continuous pro-
16 gram of construction or has entered into a contrac-
17 tual obligation to undertake and complete, within a
18 reasonable time, a continuous program of construc-
19 tion. For boilers and integrated gasification com-
20 bined cycle plants, this term does not include under-
21 taking such a program or entering into such an obli-
22 gation more than 36 months prior to the date on
23 which the unit begins operation. For combustion
24 turbines, this term does not include undertaking
25 such a program or entering into such an obligation

1 more than 18 months prior to the date on which the
2 unit begins operation.

3 “(2) CONSTRUCTION.—The term ‘construction’
4 means fabrication, erection, or installation of an af-
5 fected unit.

6 “(3) AFFECTED UNIT.—The term ‘affected
7 unit’ means any unit that is subject to emission limi-
8 tations under subpart 2 of part B, subpart 2 of part
9 C, or part D.

10 “(4) EXISTING AFFECTED UNIT.—The term
11 ‘existing affected unit’ means any affected unit that
12 is not a new affected unit.

13 “(5) NEW AFFECTED UNIT.—The term ‘new af-
14 fected unit;’ means any affected unit, the construc-
15 tion or reconstruction of which is commenced after
16 the date of enactment of the Clear Skies Act of
17 2005, except that for the purpose of any revision of
18 a standard pursuant to subsection (e), ‘new affected
19 unit’ means any affected unit, the construction or
20 reconstruction of which is commenced after the pub-
21 lication of regulations (or, if earlier, proposed regu-
22 lations) prescribing a standard under this section
23 that will apply to such unit.

1 “(6) RECONSTRUCTION.—The term ‘reconstruc-
2 tion’ means the replacement of components of a unit
3 to such an extent that—

4 “(A) the fixed capital cost of the new com-
5 ponents exceeds 50 percent of the fixed capital
6 cost that would be required to construct a com-
7 parable entirely new unit; and

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

11 “(b) EMISSION STANDARDS.—

12 “(1) IN GENERAL.—No later than 12 months
13 after the date of enactment of the Clear Skies Act
14 of 2005, the Administrator shall promulgate regula-
15 tions prescribing the standards in subsections (c)
16 through (d) for the specified affected units and es-
17 tablishing requirements to ensure compliance with
18 these standards, including monitoring, record-
19 keeping, and reporting requirements.

20 “(2) MONITORING.—

21 “(A) IN GENERAL.—The owner or operator
22 of any affected unit subject to the standards for
23 sulfur dioxide, nitrogen oxides, or mercury
24 under this section shall meet the requirements
25 of section 404, except that, where two or more

1 units utilize a single stack, separate monitoring
2 shall be required for each affected unit for the
3 pollutants for which the unit is subject to such
4 standards.

5 “(B) REQUIREMENTS.—The Administrator
6 shall, by regulation, require—

7 “(i) the owner or operator of any af-
8 fected unit subject to the standards for
9 sulfur dioxide, nitrogen oxides, or mercury
10 under this section to—

11 “(I) install and operate CEMS
12 for monitoring output, including elec-
13 tricity and useful thermal energy, on
14 the affected unit and to quality assure
15 the data; and

16 “(II) comply with recordkeeping
17 and reporting requirements, including
18 provisions for reporting output data in
19 megawatt hours.

20 “(ii) the owner or operator of any af-
21 fected unit subject to the standards for
22 particulate matter under this section to—

23 “(I) install and operate CEMS
24 for monitoring particulate matter on

1 the affected unit and to quality assure
2 the data;

3 “(II) comply with recordkeeping
4 and reporting requirements; and

5 “(III) comply with alternative
6 monitoring, quality assurance, record-
7 keeping, and reporting requirements
8 for any period of time for which the
9 Administrator determines that CEMS
10 with appropriate vendor guarantees
11 are not commercially available for
12 particulate matter.

13 “(3) COMPLIANCE.—For boilers, integrated
14 gasification combined cycle plants, and coal fired or
15 gas-fired combustion turbines the Administrator
16 shall require that the owner or operator demonstrate
17 compliance with the standards daily, using a 30-day
18 rolling average, except that in the case of mercury,
19 the compliance period shall be the calendar year.
20 For combustion turbines that are oil-fired the Ad-
21 ministrator shall require that the owner or operator
22 demonstrate compliance with the standards hourly,
23 using a 4-hour rolling average.

24 “(c) BOILERS AND INTEGRATED GASIFICATION COM-
25 BINED CYCLE PLANTS.—

1 “(1) IN GENERAL.—After the effective date of
2 standards promulgated under subsection (b), no
3 owner or operator shall cause any boiler or inte-
4 grated gasification combined cycle plant that is a
5 new affected unit to discharge into the atmosphere
6 any gases which contain—

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

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

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

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

15 “(i) mercury emissions from the unit,
16 determined assuming no use of on-site or
17 off-site pre-combustion treatment of coal
18 and no use of technology that captures
19 mercury, are reduced by 80 percent;

20 “(ii) flue gas desulfurization (FGD)
21 and selective catalytic reduction (SCR) are
22 applied to the unit; or

23 “(iii) a technology is applied to the
24 unit and the permitting authority deter-
25 mines that the technology is equivalent in

1 terms of mercury capture to the applica-
2 tion of FGD and SCR.

3 “(2) EXEMPTION.—Notwithstanding subpara-
4 graph (1)(D), integrated gasification combined cycle
5 plants with a combined capacity of less than 5 GW
6 are exempt from the mercury requirement under
7 subparagraph (1)(D) if they are constructed as part
8 of a demonstration project under the Secretary of
9 Energy that will include a demonstration of removal
10 of significant amounts of mercury as determined by
11 the Secretary of Energy in conjunction with the Ad-
12 ministrator as part of the solicitation process.

13 “(3) DISCHARGES.—After the effective date of
14 standards promulgated under subsection (b), no
15 owner or operator shall cause any oil-fired boiler
16 that is an existing affected unit to discharge into the
17 atmosphere any gases which contain particulate mat-
18 ter in excess of 0.30 lb/MWh.

19 “(d) COMBUSTION TURBINES.—

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

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

4 “(B) 0.084 lb/MWh (3.5 ppm at 15 per-
5 cent oxygen), if the unit is not a simple cycle
6 combustion turbine and either uses add-on con-
7 trols or is located within 50 km of a class I
8 area; or

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

13 “(2) COAL-FIRED COMBUSTION TURBINES.—
14 After the effective date of standards promulgated
15 under subsection (b), no owner or operator shall
16 cause any coal-fired combustion turbine that is a
17 new affected unit to discharge into the atmosphere
18 any gases which contain sulfur dioxide, nitrogen ox-
19 ides, particulate matter, or mercury in excess of the
20 emission limits under subparagraphs (c)(1) (A)
21 through (D).

22 “(3) COMBUSTION TURBINES THAT ARE NOT
23 GAS-FIRED OR COAL-FIRED.—After the effective date
24 of standards promulgated under subsection (b), no
25 owner or operator shall cause any combustion tur-

1 bine that is not gas-fired or coal-fired and that is a
2 new affected unit to discharge into the atmosphere
3 any gases which contain—

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

6 “(B) nitrogen oxides in excess of—

7 “(i) 0.289 lb/MWh (12 ppm at 15
8 percent oxygen), if the unit is not a simple
9 cycle combustion turbine, is dual-fuel capa-
10 ble, and uses add-on controls; or is not a
11 simple cycle combustion turbine and is lo-
12 cated within 50 km of a class I area; and

13 “(ii) 1.01 lb/MWh (42 ppm at 15 per-
14 cent oxygen), if the unit is a simple cycle
15 combustion turbine; is not a simple cycle
16 combustion turbine and is not dual-fuel ca-
17 pable; or is not a simple cycle combustion
18 turbine, is dual-fuel capable, and does not
19 use add-on controls.

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

22 “(e) PERIODIC REVIEW AND REVISION.—

23 “(1) IN GENERAL.—The Administrator shall, at
24 least every eight years following the promulgation of
25 standards under subsection (b), review and, if appro-

1 prorate, revise such standards to reflect the degree of
2 emission limitation demonstrated by substantial evi-
3 dence to be achievable through the application of the
4 best system of emission reduction which (taking into
5 account the cost of achieving such reduction and any
6 nonair quality health and environmental impacts and
7 energy requirements). When implementation and en-
8 forcement of any requirement of this Act indicate
9 that emission limitations and percent reductions be-
10 yond those required by the standards promulgated
11 under this section are achieved in practice, the Ad-
12 ministrator shall, when revising standards promul-
13 gated under this section, consider the emission limi-
14 tations and percent reductions achieved in practice.

15 “(2) EXCEPTION.—Notwithstanding the re-
16 quirements of paragraph (1) the Administrator need
17 not review any standard promulgated under sub-
18 section (b) if the Administrator determines that such
19 review is not appropriate in light of readily available
20 information on the efficacy of such standard.

21 “(f) EFFECTIVE DATE.—The standard promulgated
22 pursuant to this section shall become effective upon pro-
23 mulgation.

24 “(g) DELEGATION.—

1 “(1) IN GENERAL.—Each State may develop
2 and submit to the Administration a procedure for
3 implementing and enforcing standards promulgated
4 under this section for affected units located in such
5 State. If the Administrator finds the State proce-
6 dure is adequate, the Administrator shall delegate to
7 such State any authority the Administrator has
8 under this Act to implement and enforce such stand-
9 ards.

10 “(2) ENFORCEMENT.—Nothing in this sub-
11 section shall prohibit the Administrator from enforce-
12 ing any applicable standard under this section.

13 “(h) VIOLATIONS.—After the effective date of stand-
14 ards promulgated under this section, it shall be unlawful
15 for any owner or operator of any affected unit to operate
16 such unit in violation of any standard, established by this
17 section applicable to such unit.

18 “(i) COORDINATION WITH OTHER AUTHORITIES.—
19 For purposes of sections III(e), 113, 114, 116, 120, 303,
20 304, 307, and other provisions for the enforcement of this
21 Act, each standard established pursuant to this section
22 shall be treated in the same manner as a standard of per-
23 formance under section 111, and each affected unit sub-
24 ject to standards under this section shall be treated in the

1 same manner as a stationary combustion device under sec-
2 tion 111.

3 “(j) STATE AUTHORITY.—Nothing in this section
4 shall preclude or deny the right of any State or political
5 subdivision thereof to adopt or enforce any regulation, re-
6 quirement, limitation, or standard relating to affected
7 units, or other EGUs, that is more stringent than a regu-
8 lation, requirement, limitation, or standard in effect under
9 this section or under any other provision of this Act.

10 “(k) OTHER AUTHORITY UNDER THIS ACT.—Noth-
11 ing in this section shall diminish the authority of the Ad-
12 ministrator or a State to establish any other requirements
13 applicable to affected units under any other authority of
14 law, including the authority to establish for any air pollut-
15 ant a national ambient air quality standard, except that
16 no new affected unit subject to standards under this sec-
17 tion shall be subject to standards under section 111 of
18 this Act.

19 **“SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND**
20 **ASSESSMENT.**

21 “(a) PURPOSES.—The Administrator, in collabora-
22 tion with the Secretary of Energy and the Secretary of
23 the Interior, shall conduct a comprehensive program of re-
24 search, environmental monitoring, and assessment to en-
25 hance scientific understanding of the human health and

1 environmental effects of particulate matter and mercury
2 and to demonstrate the efficacy of emission reductions
3 under this title for purposes of reporting to Congress
4 under (e)(2). The purposes of such a program are to—

5 “(1) expand current research and knowledge of
6 the contribution of emissions from electricity genera-
7 tion to exposure and health effects associated with
8 particulate matter and mercury;

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

12 “(3) produce peer-reviewed scientific and tech-
13 nology information;

14 “(4) improve environmental monitoring and as-
15 sessment of sulfur dioxide, nitrogen oxides and mer-
16 cury, and their transformation products, to track
17 changes in human health and the environment at-
18 tributable to emission reductions under this title;
19 and

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

23 “(b) RESEARCH.—The Administrator shall enhance
24 planned and ongoing laboratory and field research and
25 modeling analyses, and conduct new research and analyses

1 to produce peer-reviewed information concerning the
2 human health and environmental effects of mercury and
3 particulate matter and the contribution of United States
4 electrical generating units to those effects. Such informa-
5 tion shall be included in the report under subsection (d).

6 In addition, such research and analyses shall—

7 “(1) improve understanding of the rates and
8 processes governing chemical and physical trans-
9 formations of mercury in the atmosphere, including
10 speciation of emissions from electricity generation
11 and the transport of these species;

12 “(2) improve understanding of the contribution
13 of mercury emissions from electricity generation to
14 mercury in fish and other biota, including—

15 “(A) the response of and contribution to
16 mercury in the biota owing to atmospheric dep-
17 osition of mercury from U.S. electricity genera-
18 tion on both local and regional scales;

19 “(B) long-term contributions of mercury
20 from U.S. electricity generation on mercury ac-
21 cumulations in ecosystems, and the effects of
22 mercury reductions in that sector on the envi-
23 ronment and public health;

24 “(C) the role and contribution of mercury,
25 from U.S. electricity generating facilities and

1 anthropogenic and natural sources to fish con-
2 tamination and to human exposure, particularly
3 with respect to sensitive populations;

4 “(D) the contribution of U.S. electricity
5 generation to population exposure to mercury in
6 freshwater fish and seafood and quantification
7 of linkages between U.S. mercury emissions and
8 domestic mercury exposure and its health ef-
9 fects; and

10 “(E) the contribution of mercury from
11 U.S. electricity generation in the context of
12 other domestic and international sources of
13 mercury, including transport of global anthro-
14 pogenic and natural background levels;

15 “(3) improve understanding of the health ef-
16 fects of fine particulate matter components related
17 to electricity generation emissions (as distinct from
18 other fine particle fractions and indoor air expo-
19 sures) and the contribution of U.S. electrical gener-
20 ating units to those effects including—

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

24 “(B) personal exposure to fine particulate
25 matter from electricity generation; and

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

5 “(c) INNOVATIVE CONTROL TECHNOLOGIES.—The
6 Administrator shall collaborate with the Secretary of En-
7 ergy to enhance research and development, and conduct
8 new research that facilitates research into and develop-
9 ment of innovative technologies to control sulfur dioxide,
10 nitrogen oxides, mercury, and particulate matter at a
11 lower cost than existing technologies. Such research and
12 development shall provide updated information on the cost
13 and feasibility of technologies. Such information shall be
14 included in the report under subsection (d). In addition,
15 the research and development shall—

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

20 “(2) evaluate the overall environmental implica-
21 tions of the various technologies tested including the
22 impact on the characteristics of coal combustion res-
23 idues;

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

4 “(4) evaluate the potential of integrated gasifi-
5 cation combined cycle to adequately control mercury;

6 “(5) expand current programs by the Adminis-
7 trator to conduct research and promote, lower cost
8 CEMS capable of providing real-time measurements
9 of both speciated and total mercury and integrated
10 compact CEMS that provide cost-effective real-time
11 measurements of sulfur dioxide, nitrogen oxides, and
12 mercury;

13 “(6) expand lab- and pilot-scale mercury and
14 multi-pollutant control programs by the Secretary of
15 Energy and the Administrator, including develop-
16 ment of enhanced sorbents and scrubbers for use on
17 all coal types;

18 “(7) characterize mercury emissions from low-
19 rank coals, for a range of traditional control tech-
20 nologies, like scrubbers and selective catalytic reduc-
21 tion; and

22 “(8) improve low cost combustion modifications
23 and controls for dry-bottom boilers.

24 “(d) ENVIRONMENTAL ACCOUNTABILITY.—

1 “(1) MONITORING AND ASSESSMENT.—The Ad-
2 ministrators shall conduct a program of environ-
3 mental monitoring and assessment to track on a
4 continuing basis, changes in human health and the
5 environment attributable to the emission reductions
6 required under this title. Such a program shall—

7 “(A) develop and employ methods to rou-
8 tinely monitor, collect, and compile data on the
9 status and trends of mercury and its trans-
10 formation products in emissions from affected
11 facilities, atmospheric deposition, surface water
12 quality, and biological systems. Emphasis shall
13 be placed on those methods that—

14 “(i) improve the ability to routinely
15 measure mercury in dry deposition pro-
16 cesses;

17 “(ii) improve understanding of the
18 spatial and temporal distribution of mer-
19 cury deposition in order to determine
20 source-receptor relationships and patterns
21 of long-range, regional, and local deposi-
22 tion;

23 “(iii) improve understanding of aggre-
24 gate exposures and additive effects of
25 methylmercury and other pollutants; and

1 “(iv) improve understanding of the ef-
2 fectiveness and cost of mercury emissions
3 controls;

4 “(B) modernize and enhance the national
5 air quality and atmospheric deposition moni-
6 toring networks in order to cost-effectively ex-
7 pand and integrate, where appropriate, moni-
8 toring capabilities for sulfur, nitrogen, and mer-
9 cury to meet the assessment and reporting re-
10 quirements of this section;

11 “(C) perform and enhance long-term moni-
12 toring of sulfur, nitrogen, and mercury, and pa-
13 rameters related to acidification, nutrient en-
14 richment, and mercury bioaccumulation in
15 freshwater and marine biota;

16 “(D) maintain and upgrade models that
17 describe the interactions of emissions with the
18 atmosphere and resulting air quality implica-
19 tions and models that describe the response of
20 ecosystems to atmospheric deposition; and

21 “(E) assess indicators of ecosystems health
22 related to sulfur, nitrogen, and mercury, includ-
23 ing characterization of the causes and effects of
24 episodic exposure to air pollutants and evalua-
25 tion of recovery.

1 “(2) REPORTING REQUIREMENTS.—Not later
2 than January 1, 2008, and not later than every 4
3 years thereafter, the Administrator shall provide a
4 peer reviewed report to the Congress on the costs,
5 benefits, and effectiveness of emission reduction pro-
6 grams under this title.

7 “(A) The report under this subparagraph
8 shall address the relative contribution of emis-
9 sion reductions from U.S. electricity generation
10 under this title compared to the emission reduc-
11 tions achieved under other titles of the Clean
12 Air Act with respect to—

13 “(i) actual and projected emissions of
14 sulfur dioxide, nitrogen oxides, and mer-
15 cury;

16 “(ii) average ambient concentrations
17 of sulfur dioxide and nitrogen oxides trans-
18 formation products, related air quality pa-
19 rameters, and indicators of reductions in
20 human exposure;

21 “(iii) status and trends in total at-
22 mospheric deposition of sulfur, nitrogen,
23 and mercury, including regional estimates
24 of total atmospheric deposition;

25 “(iv) status and trends in visibility;

1 “(v) status of terrestrial and aquatic
2 ecosystems (including forests and forested
3 watersheds, streams, lakes, rivers, estu-
4 aries, and nearcoastal waters);

5 “(vi) status of mercury and its trans-
6 formation products in fish;

7 “(vii) causes and effects of atmos-
8 pheric deposition, including changes in sur-
9 face water quality, forest and soil condi-
10 tions;

11 “(viii) occurrence and effects of coast-
12 al eutrophication and episodic acidification,
13 particularly with respect to high elevation
14 watersheds; and

15 “(ix) reduction in atmospheric deposi-
16 tion rates that should be achieved to pre-
17 vent or reduce adverse ecological effects.

18 “(B) The report under this subparagraph
19 shall address the relative contribution of the
20 United States to world-wide emissions as well
21 as a comparison of the stringency of fossil fuel-
22 fired requirements under the Act to other coun-
23 tries.

1 **“SEC. 483. MAJOR SOURCE PRECONSTRUCTION REVIEW RE-**
2 **QUIREMENTS AND BEST AVAILABLE RET-**
3 **ROFIT CONTROL TECHNOLOGY REQUIRE-**
4 **MENTS; APPLICABILITY TO AFFECTED UNITS.**

5 “(a) MAJOR SOURCE EXEMPTION.—An affected unit
6 shall be considered neither a major emitting facility or
7 major stationary combustion device nor a part of a major
8 emitting facility or major stationary combustion device,
9 for purposes of compliance with the requirements of parts
10 C and part D of title I, and shall not otherwise be subject
11 to the requirements of section 169A or 169B, for a period
12 of 20 years after the date of enactment of this section.
13 This applicability provision only applies to affected units
14 that are either subject to the performance standards of
15 section 481 or meet the following requirements within 3
16 years after the date of enactment of the Clear Skies Act
17 of 2005:

18 “(1) The owner or operator of the affected unit
19 properly operates, maintains and repairs pollution
20 control equipment to limit emissions of particulate
21 matter, or the owner or operator of the affected unit
22 is subject to an enforceable permit issued pursuant
23 to title V or a permit program approved or promul-
24 gated as part of an applicable implementation plan
25 to limit the emissions of particulate matter from the
26 affected unit to 0.03 lb/mmBtu within eight years

1 after the date of enactment of the Clear Skies Act
2 of 2005, and

3 “(2) The owner or operator of the affected unit
4 uses good combustion practices to minimize emis-
5 sions of carbon monoxide. Good combustion prac-
6 tices may be accomplished through control tech-
7 nology, combustion technology improvements, or
8 workplace practices.

9 “(b) CLASS I AREA PROTECTIONS.—Notwith-
10 standing the provisions of subsection (a), an affected unit
11 located within 50 km of a Class I area on which construc-
12 tion commences after the date of enactment of the Clear
13 Skies Act of 2005 is subject to those provisions under part
14 C of title I pertaining to the review of a new or recon-
15 structed major stationary combustion device’s impact on
16 a Class I area.

17 “(c) PRECONSTRUCTION REQUIREMENTS.—Each
18 State shall include in its plan under section 110, as pro-
19 gram to provide for the regulation of the construction of
20 an affected unit that ensures that the following require-
21 ments are met prior to the commencement of construction
22 of an affected unit—

23 “(1) in an area designated as attainment or
24 unclassifiable under section 107(d), the owner or op-
25 erator of the affected unit must demonstrate to the

1 State that the emissions increase from the construc-
2 tion or operation of such unit will not cause, or con-
3 tribute to, air pollution in excess of any national am-
4 bient air quality standard;

5 “(2) in an area designated as nonattainment
6 under section 107(d), the State must determine that
7 the emissions increase from the construction or oper-
8 ation of such unit will not interfere with any pro-
9 gram to assure that the national ambient air quality
10 standards are achieved provided that interference
11 with any program will be deemed not to occur, with
12 respect to each nonattainment area located wholly or
13 partially within the State, if on the date of submis-
14 sion of a complete permit application and through-
15 out a continuous period of three years immediately
16 preceding such date, the nonattainment area was in
17 full compliance with all requirements of this Act, in-
18 cluding but not limited to requirements for State
19 Implementation Plans;

20 “(3) for a reconstructed unit, prior to beginning
21 operation, the unit must comply with either the per-
22 formance standards of section 481 or best available
23 control technology as defined in part C of title I for
24 the pollutants whose hourly emissions will increase
25 at the unit’s maximum capacity; and

1 “(4) the State must provide for an opportunity
2 for interested persons to comment on the Class I
3 area protections and preconstruction requirements
4 as set forth in this section.

5 “(d) DEFINITIONS.—For purposes of this section:

6 “(1) AFFECTED UNIT.—The term ‘affected
7 unit’ means any unit that is subject to emission limi-
8 tations under subpart 2 of part B, subpart 2 of part
9 C, or part D.

10 “(2) CONSTRUCTION.—The term ‘construction’
11 includes the construction of a new affected unit and
12 the modification of any affected unit.

13 “(3) MODIFICATION.—The term ‘modification’
14 means any physical change in, or change in the
15 method of operation of, an affected unit that in-
16 creases the maximum hourly emissions of any pollut-
17 ant regulated under this Act above the maximum
18 hourly emissions achievable at that unit during the
19 five years prior to the change or that results in the
20 emission of any pollutant regulated under this Act
21 and not previously emitted.

22 “(e) SAVINGS CLAUSE.—Nothing in this section shall
23 preclude or deny the right of any State or political subdivi-
24 sion thereof to adopt to enforce any regulation, require-
25 ment, limitation, or standard relating to affected units

1 that is more stringent than a regulation, requirement, lim-
2 itation, or standard in effect under this section or under
3 any other provision of this Act.”.

4 **SEC. 3. OTHER AMENDMENTS.**

5 (a) TITLE I.—Title I of the Clean Air Act is amended
6 as follows:

7 (1) In section 103 by repealing subparagraphs
8 (E) and (F).

9 (2) In section 107(d)(1)(A)—

10 (i) by striking “or” at the end of
11 clause (ii);

12 (ii) by striking the period at the end
13 of clause (iii) and inserting “, or”; and

14 (iii) by adding at the end the fol-
15 lowing:

16 “(iv) notwithstanding clauses (i)
17 through (iii) and subsection (d)(3), if re-
18 quested by a State, an area may be reded-
19 icated as transitional for the PM 2.5 na-
20 tional primary or secondary ambient air
21 quality standards or the 8-hour ozone na-
22 tional primary or secondary ambient air
23 quality standard if—

24 “(I) the Administrator has per-
25 formed air quality modeling and, in

1 the case of an area that needs addi-
2 tional local control measures, the
3 State has performed supplemental air
4 quality modeling, demonstrating that
5 the area will attain the applicable
6 standard or standards not later than
7 December 31, 2015;

8 “(II) such modeling demonstra-
9 tion and all necessary local controls
10 have been approved into the State im-
11 plementation plan not later than 1
12 year after the date of enactment of
13 the Clear Skies Act of 2005; and

14 “(III) the redesignation is made
15 not later than 180 days after the date
16 of that approval.”

17 (3) In section 110 as follows:

18 (A) By amending clause (i) of subsection
19 (a)(2)(D) by inserting “except as provided in
20 subsection (q),” before the word “prohibiting”.

21 (B) By adding the following new sub-
22 sections at the end thereof:

23 “(q) REVIEW OF CERTAIN PLANS.—

24 “(1) IN GENERAL.—The Administrator shall, in
25 reviewing, under subsection (a)(2)(D)(i), any plan

1 with respect to affected units, within the meaning of
2 section 126(d)(1)—

3 “(A) consider, among other relevant fac-
4 tors, emissions reductions required to occur by
5 the attainment date or dates of any relevant
6 nonattainment areas in the other State or
7 States;

8 “(B) not require submission of plan provi-
9 sions mandating emissions reductions from such
10 affected units, unless the Administrator deter-
11 mines that—

12 “(i) emissions from such units may be
13 reduced at least as cost-effectively as emis-
14 sions reductions in the State or each other
15 State from each other principal category of
16 sources of the relevant pollutant, pollut-
17 ants, or pre-cursors thereof, including in-
18 dustrial boilers, on-road mobile sources,
19 and off-road mobile sources, and any other
20 category of sources that the Administrator
21 may identify, and

22 “(ii) reductions in such emissions will
23 improve air quality in the other State’s or
24 States’ nonattainment areas at least as
25 cost-effectively as reductions in emissions

1 in the State or each other State from each
2 other principal category of sources of the
3 relevant pollutant, pollutants, or pre-
4 cursors thereof, to the maximum extent
5 that a methodology is reasonably available
6 to make such a determination;

7 “(C) develop an appropriate peer reviewed
8 methodology for making determinations under
9 subparagraph (B) by December 31, 2006; and

10 “(D) not require submission of plan provi-
11 sions subjecting affected units, within the
12 meaning of section 126(d)(1), to requirements
13 with an effective date prior to December 31,
14 2014.

15 “(2) PROXIMITY.—In making the determination
16 under clause (ii) of subparagraph (B) of paragraph
17 (1), the Administrator will use the best available
18 peer-reviewed models and methodology that consider
19 the proximity of the source or sources to the other
20 State or States and incorporate other source charac-
21 teristics.

22 “(3) EFFECT ON REGULATIONS.—Nothing in
23 paragraph (1) shall be interpreted to require revi-
24 sions to the provisions of sections 51.121 and

1 51.122 of title 40, Code of Federal Regulations (as
2 in effect for 2004).

3 “(r) TRANSITIONAL AREAS.—

4 “(1) MAINTENANCE.—

5 “(A) SUBMISSION OF INVENTORY AND
6 ANALYSIS.—By December 31, 2011, each area
7 designated as transitional pursuant to section
8 107(d)(1) shall submit an updated emission in-
9 ventory and an analysis of whether growth in
10 emissions, including growth in vehicle miles
11 traveled, will interfere with attainment by De-
12 cember 31, 2014.

13 “(B) REVIEW.—No later than December
14 31, 2011, the Administrator shall review each
15 transitional area’s maintenance analysis, and, if
16 the Administrator determines that growth in
17 emissions will interfere with attainment by De-
18 cember 31, 2014, the Administrator shall con-
19 sult with the State and determine what action,
20 if any, is necessary to assure that attainment
21 will be achieved by December 31, 2014.

22 “(2) PREVENTION OF SIGNIFICANT DETERIORA-
23 TION.—Each area designated as transitional pursu-
24 ant to section 107(d)(1) shall be treated as an at-
25 tainment or unclassifiable area for purposes of the

1 prevention of significant deterioration provisions of
2 part C of this title.

3 “(3) CONSEQUENCES OF FAILURE TO ATTAIN
4 BY 2015.—No later than June 30, 2016, the Admin-
5 istrator shall determine whether each area des-
6 igned as transitional for the 8-hour ozone stand-
7 ard or for the PM 2.5 standard has attained that
8 standard. If the Administrator determines that a
9 transitional area has not attained the standard, the
10 area shall be redesignated as nonattainment within
11 one year of the determination and the State shall be
12 required to submit a State implementation plan revi-
13 sion satisfying the provisions of section 172 within
14 three years of redesignation as nonattainment.”.

15 (4) In section 111(b)(1) by adding the following
16 new subparagraph (C) after subparagraph (B):

17 “(C) No standards of performance promul-
18 gated under this section shall apply to units
19 subject to regulations promulgated pursuant to
20 section 481.”.

21 (5) In section 112:

22 (A) By amending paragraph (1) of sub-
23 section (c) to read as follows:

24 “(1) IN GENERAL.—Not later than 12 months
25 after November 15, 1990, the Administrator shall

1 publish, and shall from time to time, but not less
2 often than every eight years, revise, if appropriate,
3 in response to public comment or new information,
4 a list of all categories and subcategories of major
5 sources and area sources (listed under paragraph
6 (3)) of the air pollutants listed pursuant to sub-
7 section (b). Electric utility steam generating units
8 not subject to section 3005 of the Solid Waste Dis-
9 posal Act shall not be included in any category or
10 subcategory listed under this subsection. The Ad-
11 ministrator shall have the authority to regulate the
12 emission of hazardous air pollutants listed under
13 section 112(b), other than mercury compounds, by
14 electric utility steam generating units, provided that
15 any determination shall be based on public health
16 concerns and, on an individual source basis shall:
17 consider the effects of emissions controls installed or
18 anticipated to be installed in order to meet other
19 emission reduction requirements under this Act by
20 2018; and, be based on a peer reviewed study with
21 notice and opportunity to comment, to be completed
22 not before January 2015. Any such regulations shall
23 be promulgated within, and shall not take effect be-
24 fore, the date eight years after the commencement
25 date of the requirements set forth in section 472. To

1 the extent practicable, the categories and subcat-
2 egories listed under this subsection shall be con-
3 sistent with the list of source categories established
4 pursuant to section 111 and part C. Nothing in the
5 preceding sentence limits the Administrator's au-
6 thority to establish subcategories under this section,
7 as appropriate.”.

8 (B) By amending subparagraph (A) of
9 subsection (n)(1) to read as follows:

10 “(A) STUDY.—The Administrator shall
11 perform a study of the hazards to public health
12 reasonably anticipated to occur as a result of
13 emissions by electric utility steam generating
14 units of pollutants listed under subsection (b)
15 after imposition of the requirements of this Act.
16 The Administrator shall report the results of
17 this study to the Congress within three years
18 after November 15, 1990.”

19 (6) Section 126 is amended as follows:

20 (A) By replacing “section 110(a)(2)(D)(ii)
21 or this section” in subsection (b) with “section
22 110(a)(2)(D)(i)”.

23 (B) In the language at end of subsection
24 (c) by striking “section 110(a)(2)(D)(ii)” and

1 inserting “section 110(a)(2)(D)(i)” and deleting
2 the last sentence.

3 (D) By adding at the end the following:

4 “(d) DEFINITION OF AFFECTED UNIT.—

5 “(1) IN GENERAL.—For purposes of this sub-
6 section, the term ‘affected unit’ means any unit that
7 is subject to emission limitations under subpart 2 of
8 part B, subpart 2 of part C, or part D, or is a des-
9 ignated unit under section 406.

10 “(2) FINDING FOR AFFECTED UNITS.—To the extent
11 that any petition submitted under subsection (b) after the
12 date of enactment of the Clear Skies Act of 2005 seeks
13 a finding for any affected unit, then, notwithstanding any
14 provision in subsections (a) through (c) to the contrary:

15 “(A) In determining whether to make a finding
16 under subsection (b) for any affected unit, the Ad-
17 ministrators shall consider, among other relevant fac-
18 tors, emissions reductions required to occur by the
19 attainment date or dates of any relevant nonattain-
20 ment areas in the petitioning State or political sub-
21 division.

22 “(B) The Administrator may not determine
23 that affected units emit, or would emit, any air pol-
24 lutant in violation of the prohibition of section

1 110(a)(2)(D)(i) unless that Administrator deter-
2 mines that—

3 “(i) such emissions may be reduced at
4 least as cost-effectively as emissions from each
5 other principal category of sources of sulfur di-
6 oxide or nitrogen oxides, including industrial
7 boilers, on-road mobile sources, and off-road
8 mobile sources, and any other category of
9 sources that the Administrator may identify;
10 and

11 “(ii) reductions in such emissions will im-
12 prove air quality in the petitioning State’s non-
13 attainment area or areas at least as cost-effec-
14 tively as reductions in emissions from each
15 other principal category of sources of sulfur di-
16 oxide or nitrogen oxides to the maximum extent
17 that a methodology is reasonably available to
18 make such a determination.

19 In making the determination under clause (ii), the
20 Administrator shall use the best available peer-re-
21 viewed models and methodology that consider the
22 proximity of the source or sources to the petitioning
23 State or political subdivision and incorporate other
24 sources characteristics.

1 “(C) The Administrator shall develop an appro-
2 priate peer reviewed methodology for making deter-
3 minations under subparagraph (B) by December 31,
4 2006.

5 “(D) The Administrator shall not make any
6 findings with respect to an affected unit under this
7 section prior to December 1, 2011. For any petition
8 submitted prior to January 1, 2010, the Adminis-
9 trator shall make a finding or deny the petition by
10 the December 31, 2011.

11 “(E) The Administrator, by rulemaking, shall
12 extend the compliance and implementation deadlines
13 in subsection (c) to the extent necessary to assure
14 that no affected unit shall be subject to any such
15 deadline prior to January 1, 2014.”.

16 (b) TITLE III.—Section 307(d)(1)(G) of title III of
17 the Clean Air Act is amended to read as follows:

18 “(G) the promulgation or revision of any
19 regulation under title IV,”.

20 (c) NOISE POLLUTION.—Title IV of the Clean Air
21 Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)
22 is redesignated as title VII and amended by renumbering
23 sections 401 through 403 as sections 701 through 703,
24 respectively, and conforming all cross-references thereto
25 accordingly.

1 (d) SECTION 405.—Title IV of the Clean Air Act
2 Amendments of 1990 (relating to acid deposition control)
3 is amended by repealing section 405 (industrial sulfur di-
4 oxide emissions).

5 (e) MONITORING.—Section 821 (a) of title VIII of
6 the Clean Air Act Amendments of 1990 (miscellaneous
7 provisions) is amended to read as follows:

8 “(a) MONITORING.—The Administrator shall promul-
9 gate regulations within eighteen months after November
10 15, 1990, to require that all affected sources subject to
11 subpart 1 of part B of title IV of the Clean Air Act as
12 of December 31, 2009, shall also monitor carbon dioxide
13 emissions according to the same timetable as in section
14 404(b). The regulations shall require that such data be
15 reported to the Administrator. The provisions of section
16 404(e) of title IV of the Clean Air Act shall apply for pur-
17 poses of this section in the same manner and to the same
18 extent as such provision applies to the monitoring and
19 data referred to in section 404. The Administrator shall
20 implement this subsection under 40 CFR part 75 (2002),
21 amended as appropriate by the Administrator.”.