

108TH CONGRESS
1ST SESSION

S. 1844

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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 2003

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Clear Skies Act of 2003”.

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

“PART A—GENERAL PROVISIONS

- “Sec. 401. (Reserved)
- “Sec. 402. Definitions.
- “Sec. 403. Allowance system.
- “Sec. 404. Permits and compliance plans.
- “Sec. 405. Monitoring, reporting, and recordkeeping requirements.
- “Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.
- “Sec. 407. Election for additional units.
- “Sec. 408. Clean coal technology regulatory incentives.
- “Sec. 409. Electricity reliability.

“PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

- “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.
- “Sec. 421. Definitions.
- “Sec. 422. Applicability.
- “Sec. 423. Limitations on total emissions.
- “Sec. 424. EGU allocations.
- “Sec. 425. Sulfur dioxide early action reduction credits.
- “Sec. 426. Disposition of sulfur dioxide allowances allocated under subpart 1.
- “Sec. 427. Incentives for sulfur dioxide emission control technology.
- “Sec. 431. Definitions.
- “Sec. 432. Applicability.
- “Sec. 433. Limitations on total emissions.
- “Sec. 434. EGU allocations.
- “Sec. 435. WRAP early action reduction credits.

“PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

- “Sec. 441. Nitrogen oxides emission reduction program.
- “Sec. 442. Termination.
- “Sec. 451. Definitions.
- “Sec. 452. Applicability.
- “Sec. 453. Limitations on total emissions.
- “Sec. 454. EGU allocations.
- “Sec. 455. Nitrogen oxides early action reduction credits.
- “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. (Reserved)**

9 **“SEC. 402. DEFINITIONS.**

10 “As used in this title:

11 “(1) The term ‘affected EGU’ shall have the
12 meaning set forth in section 421, 431, 451, or 471,
13 as appropriate.

14 “(2) The term ‘affected facility’ or ‘affected
15 source’ means a facility or source that includes one
16 or more affected units.

1 “(3) The term ‘affected unit’ means—

2 “(A) under this part, a unit that is subject
3 to emission reduction requirements or limita-
4 tions under part B, C, or D or, if applicable,
5 under a specified part or subpart; or

6 “(B) under subpart 1 of part B or subpart
7 1 of part C, a unit that is subject to emission
8 reduction requirements or limitations under
9 that subpart.

10 “(4) The term ‘allowance’ means—

11 “(A) an authorization, by the Adminis-
12 trator under this title, to emit one ton of sulfur
13 dioxide, one ton of nitrogen oxides, or one
14 ounce of mercury; or

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

18 “(5)(A) The term ‘baseline heat input’ means,
19 except under subpart 1 of part B and section 407,
20 the average annual heat input used by a unit during
21 the three years in which the unit had the highest
22 heat input for the period 1998 through 2002.

23 “(B) Notwithstanding subparagraph (A), if a
24 unit commenced or commences operation after Janu-
25 ary 1, 2001, then ‘baseline heat input’ means the

1 manufacturer's design heat input capacity for the
2 unit multiplied by 80 percent for coal-fired units, 50
3 percent for boilers that are not coal-fired, 80 percent
4 for combustion turbine cogeneration units elected
5 under section 407, 50 percent for combustion tur-
6 bines other than simple cycle turbines, and 5 percent
7 for simple cycle combustion turbines.

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

10 “(i) required to be reported under section
11 405 for the unit, if the unit was required to re-
12 port heat input during the year under that sec-
13 tion;

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

17 “(iii) based on data for the unit reported
18 to the State where the unit is located as re-
19 quired by State law, if the unit was not re-
20 quired to report heat input during the year
21 under section 405 and did not report to the En-
22 ergy Information Administration; or

23 “(iv) based on fuel use and fuel heat con-
24 tent data for the unit from fuel purchase or use
25 records, if the unit was not required to report

1 heat input during the year under section 405
2 and did not report to the Energy Information
3 Administration and the State.

4 “(D) Not later than three months after the en-
5 actment of the Clear Skies Act of 2003, the Admin-
6 istrator shall promulgate regulations, without notice
7 and opportunity for comment, specifying the format
8 in which the information under subparagraphs
9 (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted.
10 Not later than nine months after the enactment of
11 the Clear Skies Act of 2003, the owner or operator
12 of any unit under subparagraph (B)(ii) or (C)(ii),
13 (iii), or (iv) to which allowances may be allocated
14 under section 424, 434, 454, or 474 shall submit to
15 the Administrator such information. The Adminis-
16 trator is not required to allocate allowances under
17 such sections to a unit for which the owner or oper-
18 ator fails to submit information in accordance with
19 the regulations promulgated under this subpara-
20 graph.

21 “(6) The term ‘coal’ means any solid fuel classi-
22 fied as anthracite, bituminous, subbituminous, or
23 lignite.

24 “(7) The term ‘coal-derived fuel’ means any
25 fuel (whether in a solid, liquid, or gaseous state)

1 produced by the mechanical, thermal, or chemical
2 processing of coal.

3 “(8) The term ‘coal-fired’ with regard to a unit
4 means, except under subpart 1 of part B, subpart 1
5 of part C, and sections 424 and 434, combusting
6 coal or any coal-derived fuel alone or in combination
7 with any amount of any other fuel in any year.

8 “(9) The term ‘cogeneration unit’ means, ex-
9 cept under subpart 1 of part B and subpart 1 of
10 part C, a unit that produces through the sequential
11 use of energy—

12 “(A) electricity; and

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

16 “(10) The term ‘combustion turbine’ means any
17 combustion turbine that is not self-propelled. The
18 term includes, but is not limited to, a simple cycle
19 combustion turbine, a combined cycle combustion
20 turbine and any duct burner or heat recovery device
21 used to extract heat from the combustion turbine ex-
22 haust, and a regenerative combustion turbine. The
23 term does not include a combined turbine in an inte-
24 grated gasification combined cycle plant.

1 “(11) The term ‘commence commercial oper-
2 ation’ with regard to a unit means the start up of
3 the unit’s combustion chamber and the commence-
4 ment of the generation of electricity for sale.

5 “(12) The term ‘compliance plan’ means ei-
6 ther—

7 “(A) a statement that the facility will com-
8 ply with all applicable requirements under this
9 title; or

10 “(B) under subpart 1 of part B or subpart
11 1 of part C, where applicable, a schedule and
12 description of the method or methods for com-
13 pliance and certification by the owner or oper-
14 ator that the facility is in compliance with the
15 requirements of that subpart.

16 “(13) The term ‘continuous emission moni-
17 toring system’ (CEMS) means the equipment as re-
18 quired by section 405, used to sample, analyze,
19 measure, and provide on a continuous basis a per-
20 manent record of emissions and flow (expressed in
21 pounds per million British thermal units (lbs/
22 mmBtu), pounds per hour (lbs/hr) or such other
23 form as the Administrator may prescribe by regula-
24 tions under section 405.

1 “(14) The term ‘designated representative’
2 means a responsible person or official authorized by
3 the owner or operator of a unit and the facility that
4 includes the unit to represent the owner or operator
5 in matters pertaining to the holding, transfer, or dis-
6 position of allowances, and the submission of and
7 compliance with permits, permit applications, and
8 compliance plans.

9 “(15) The term ‘duct burner’ means a combus-
10 tion device that uses the exhaust from a combustion
11 turbine to burn fuel for heat recovery.

12 “(16) The term ‘fossil fuel’ means natural gas,
13 petroleum, coal, or any form of solid, liquid, or gas-
14 eous fuel derived from such material.

15 “(17) The term ‘fossil fuel-fired’ with regard to
16 a unit means combusting fossil fuel, alone or in com-
17 bination with no more than 10 percent of other fuel.

18 “(18) The term ‘fuel oil’ means a petroleum-
19 based fuel, including diesel fuel or petroleum deriva-
20 tives.

21 “(19) The term ‘gas-fired’ with regard to a unit
22 means, except under subpart 1 of part B and sub-
23 part 1 of part C, combusting only natural gas or
24 fuel oil, with natural gas comprising at least 90 per-

1 cent, and fuel oil comprising no more than 10 per-
2 cent, of the unit's total heat input in any year.

3 “(20) The term ‘gasify’ means to convert car-
4 bon-containing material into a gas consisting pri-
5 marily of carbon monoxide and hydrogen.

6 “(21) The term ‘generator’ means a device that
7 produces electricity and, under subpart 1 of part B
8 and subpart 1 of part C, that is reported as a gener-
9 ating unit pursuant to Department of Energy Form
10 860.

11 “(22) The term ‘heat input’ with regard to a
12 specific period of time means the product (in
13 mmBtu/time) of the gross calorific value of the fuel
14 (in mmBtu/lb) and the fuel feed rate into a unit (in
15 lb of fuel/time) and does not include the heat derived
16 from preheated combustion air, recirculated flue
17 gases, or exhaust.

18 “(23) The term ‘integrated gasification com-
19 bined cycle plant’ means any combination of equip-
20 ment used to gasify fossil fuels (with or without
21 other material) and then burn the gas in a combined
22 cycle combustion turbine.

23 “(24) The term ‘oil-fired’ with regard to a unit
24 means, except under sections 424 and 434, com-
25 busting fuel oil for 10 percent or more of the unit's

1 total heat input, and combusting no coal or coal-de-
2 rived fuel, in any year.

3 “(25) The term ‘owner or operator’ with regard
4 to a unit or facility means, except for subpart 1 of
5 part B and subpart 1 of part C, any person who
6 owns, leases, operates, controls, or supervises the
7 unit or the facility.

8 “(26) The term ‘permitting authority’ means
9 the Administrator, or the State or local air pollution
10 control agency, with an approved permitting pro-
11 gram under title V of the Act.

12 “(27) The term ‘potential electrical output’ with
13 regard to a generator means the nameplate capacity
14 of the generator multiplied by 8,760 hours.

15 “(28) The term ‘simple cycle combustion tur-
16 bine’ means a combustion turbine that does not ex-
17 tract heat from the combustion turbine exhaust
18 gases.

19 “(29) The term ‘stationary source’ means any
20 building, structure, facility, or installation located on
21 one or more contiguous or adjacent properties under
22 common control or ownership of the same person or
23 persons which emits or may emit any air pollutant
24 subject to regulations under the Clear Skies Act of
25 2003.

1 “(30) The term ‘State’ means—

2 “(A) one of the forty-eight contiguous
3 States, Alaska, Hawaii, the District of Colum-
4 bia, the Commonwealth of Puerto Rico, the Vir-
5 gin Islands, Guam, American Samoa, or the
6 Commonwealth of the Northern Mariana Is-
7 lands; or

8 “(B) under subpart 1 of part B and sub-
9 part 1 of part C, one of the forty-eight contig-
10 uous States or the District of Columbia.

11 “(31) The term ‘unit’ means—

12 “(A) a fossil fuel-fired boiler, combustion
13 turbine, or integrated gasification combined
14 cycle plant; or

15 “(B) under subpart 1 of part B and sub-
16 part 1 of part C, a fossil fuel-fired combustion
17 device.

18 “(32) The term ‘utility unit’ shall have the
19 meaning set forth in section 411.

20 “(33) The term ‘year’ means calendar year.

21 **“SEC. 403. ALLOWANCE SYSTEM.**

22 “(a) ALLOCATIONS IN GENERAL.—

23 “(1) For the emission limitation programs
24 under this title, the Administrator shall allocate an-
25 nual allowances for an affected unit, to be held or

1 distributed by the designated representative of the
2 owner or operator in accordance with this title as
3 follows—

4 “(A) sulfur dioxide allowances in an
5 amount equal to the annual tonnage emission
6 limitation calculated under section 413, 414,
7 415, or 416, except as otherwise specifically
8 provided elsewhere in subpart 1 of part B, or
9 in an amount calculated under section 424 or
10 434;

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

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

15 “(2) Notwithstanding any other provision of
16 law to the contrary, the allocation of any allowances
17 for any unit or facility under sections 424, 434, 454,
18 and 474 shall not be enjoined.

19 “(3) Allowances shall be allocated by the Ad-
20 ministrator without cost to the recipient, in accord-
21 ance with this title.

22 “(b) ALLOWANCE TRANSFER SYSTEM.—Allowances
23 allocated or sold by the Administrator under this title may
24 be transferred among designated representatives of the
25 owners or operators of affected facilities under this title

1 and any other person, as provided by the allowance system
2 regulations promulgated by the Administrator. With re-
3 gard to sulfur dioxide allowances, the Administrator shall
4 implement this subsection under 40 CFR part 73 (2002),
5 amended as appropriate by the Administrator. With re-
6 gard to nitrogen oxides allowances and mercury allow-
7 ances, the Administrator shall implement this subsection
8 by promulgating regulations not later than twenty-four
9 months after the date of enactment of the Clear Skies Act
10 of 2003. The regulations under this subsection shall estab-
11 lish the allowance system prescribed under this section,
12 including, but not limited to, requirements for the alloca-
13 tion, transfer, and use of allowances under this title. Such
14 regulations shall prohibit the use of any allowance prior
15 to the calendar year for which the allowance was allocated
16 and shall provide, consistent with the purposes of this
17 title, for the identification of unused allowances, and for
18 such unused allowances to be carried forward and added
19 to allowances allocated in subsequent years, except as oth-
20 erwise provided in section 425. Such regulations shall pro-
21 vide, or shall be amended to provide, that transfers of al-
22 lowances shall not be effective until certification of the
23 transfer, signed by a responsible official of the transferor,
24 is received and recorded by the Administrator.

1 “(c) ALLOWANCE TRACKING SYSTEM.—The Admin-
2 istrator shall promulgate regulations establishing a system
3 for issuing, recording, and tracking allowances, which
4 shall specify all necessary procedures and requirements for
5 an orderly and competitive functioning of the allowance
6 system. Such system shall provide, by twenty-four months
7 prior to the compliance year, for one or more facility-wide
8 accounts for holding sulfur dioxide allowances, nitrogen
9 oxides allowances, and, if applicable, mercury allowances
10 for all affected units at an affected facility. With regard
11 to sulfur dioxide allowances, the Administrator shall im-
12 plement this subsection under 40 CFR part 73 (2002),
13 amended as appropriate by the Administrator. With re-
14 gard to nitrogen oxides allowances and mercury allow-
15 ances, the Administrator shall implement this subsection
16 by promulgating regulations not later than twenty-four
17 months after the date of enactment of the Clear Skies Act
18 of 2003. All allowance allocations and transfers shall,
19 upon recording by the Administrator, be deemed a part
20 of each unit’s or facility’s permit requirements pursuant
21 to section 404, without any further permit review and revi-
22 sion.

23 “(d) NATURE OF ALLOWANCES.—A sulfur dioxide al-
24 lowance, nitrogen oxides allowance, or mercury allowance
25 allocated or sold by the Administrator under this title is

1 a limited authorization to emit one ton of sulfur dioxide,
2 one ton of nitrogen oxides, or one ounce of mercury, as
3 the case may be, in accordance with the provisions of this
4 title. Such allowance does not constitute a property right.
5 Nothing in this title or in any other provision of law shall
6 be construed to limit the authority of the United States
7 to terminate or limit such authorization. Nothing in this
8 section relating to allowances shall be construed as affect-
9 ing the application of, or compliance with, any other provi-
10 sion of this Act to an affected unit or facility, including
11 the provisions related to applicable National Ambient Air
12 Quality Standards and State implementation plans. Noth-
13 ing in this section shall be construed as requiring a change
14 of any kind in any State law regulating electric utility
15 rates and charges or affecting any State law regarding
16 such State regulation or as limiting State regulation (in-
17 cluding any prudency review) under such a State law.
18 Nothing in this section shall be construed as modifying
19 the Federal Power Act or as affecting the authority of the
20 Federal Energy Regulatory Commission under that Act.
21 Nothing in this title shall be construed to interfere with
22 or impair any program for competitive bidding for power
23 supply in a State in which such program is established.
24 Allowances, once allocated or sold to a person by the Ad-
25 ministrator, may be received, held, and temporarily or per-

1 manently transferred in accordance with this title and the
2 regulations of the Administrator without regard to wheth-
3 er or not a permit is in effect under title V of the Clean
4 Air Act or section 404 of the Clear Skies Act of 2003
5 with respect to the unit for which such allowance was
6 originally allocated and recorded.

7 “(e) PROHIBITION.—

8 “(1) It shall be unlawful for any person to hold,
9 use, or transfer any allowance allocated or sold by
10 the Administrator under this title, except in accord-
11 ance with regulations promulgated by the Adminis-
12 trator.

13 “(2) It shall be unlawful for any affected unit
14 or for the affected units at a facility to emit sulfur
15 dioxide, nitrogen oxides, and mercury, as the case
16 may be, during a year in excess of the number of al-
17 lowances held for that unit or facility for that year
18 by the designated representative as provided in sec-
19 tions 412(c), 422, 432, 452, and 472.

20 “(3) The owner or operator of a facility may
21 purchase allowances directly from the Administrator
22 to be used only to meet the requirements of sections
23 422, 432, 452, and 472, as the case may be, for
24 the year in which the purchase is made or the prior
25 year. Not later than thirty-six months after the date

1 of enactment of the Clear Skies Act of 2003, the
2 Administrator shall promulgate regulations pro-
3 viding for direct sales of sulfur dioxide allowances,
4 nitrogen oxides allowances, and mercury allowances
5 to an owner or operator of a facility. The regulations
6 shall provide that—

7 “(A) such allowances may be used only to
8 meet the requirements of section 422, 432, 452,
9 and 472, as the case may be, for such facility
10 and for the year in which the purchase is made
11 or the prior year;

12 “(B) each such sulfur dioxide allowance
13 shall be sold for \$2,000, each such nitrogen ox-
14 ides allowance shall be sold for \$4,000, and
15 each such mercury allowance shall be sold for
16 \$2,187.50, with such prices adjusted for infla-
17 tion based on the Consumer Price Index on the
18 date of enactment of the Clear Skies Act of
19 2003 and annually thereafter;

20 “(C) the proceeds from any sales of allow-
21 ances under subparagraph (B) shall be, in ac-
22 cordance with paragraph (j), deposited in the
23 Compliance Assistance Account;

24 “(D) except for allowances subject to (E),
25 the allowances directly purchased for use for

1 the year specified in subparagraph (A) shall be,
2 on a pro rata basis, taken from, and reduce, the
3 amount of sulfur dioxide allowances, nitrogen
4 oxides allowances, or mercury allowances, as the
5 case may be, that would otherwise be allocated
6 under section 423, 453, or 473 starting for the
7 second year after the specified year and con-
8 tinuing for each subsequent year as necessary;
9 and

10 “(E) if the designated representative does
11 not use any such allowance in accordance with
12 paragraph (A) the designated representative
13 shall hold the allowance for deduction by the
14 Administrator. The Administrator shall deduct
15 the allowance without refund or other form of
16 recompense.

17 “(4) Allowances may not be used prior to the
18 calendar year for which they are allocated but may
19 be used in succeeding years. Nothing in this section
20 or in the allowance system regulations shall relieve
21 the Administrator of the Administrator’s permitting,
22 monitoring and enforcement obligations under this
23 Act, nor relieve affected facilities of their require-
24 ments and liabilities under the Act.

1 “(f) COMPETITIVE BIDDING FOR POWER SUPPLY.—

2 Nothing in this title shall be construed to interfere with

3 or impair any program for competitive bidding for power

4 supply in a State in which such program is established.

5 “(g) APPLICABILITY OF THE ANTITRUST LAWS.—(1)

6 Nothing in this section affects—

7 “(A) the applicability of the antitrust laws to

8 the transfer, use, or sale of allowances; or

9 “(B) the authority of the Federal Energy Regu-

10 latory Commission under any provision of law re-

11 specting unfair methods of competition or anti-

12 competitive acts or practices.

13 “(2) As used in this section, ‘antitrust laws’ means

14 those Acts set forth in section 1 of the Clayton Act (15

15 U.S.C. 12), as amended.

16 “(h) PUBLIC UTILITY HOLDING COMPANY ACT.—

17 The acquisition or disposition of allowances pursuant to

18 this title including the issuance of securities or the under-

19 taking of any other financing transaction in connection

20 with such allowances shall not be subject to the provisions

21 of the Public Utility Holding Company Act of 1935.

22 “(i) INTERPOLLUTANT TRADING.—Not later than

23 July 1, 2009, the Administrator shall furnish to the Con-

24 gress a study evaluating the environmental and economic

25 consequences of amending this title to permit trading sul-

1 fur dioxide allowances for nitrogen oxides allowances and
2 nitrogen oxides allowances for sulfur dioxide allowances.

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

6 “(1) Payments or monies deposited in this ac-
7 count in accordance with this title shall be used for
8 the purpose of developing emission control tech-
9 nologies through direct grants to affected units that
10 demonstrate new control technologies regulated
11 under this title.

12 “(2) The Secretary of Energy in consultation
13 with the Administrator shall promulgate regulations
14 with notice and opportunity for comment to estab-
15 lish criteria for affected units to qualify for this sub-
16 section.

17 **“SEC. 404. PERMITS AND COMPLIANCE PLANS.**

18 “(a) PERMIT PROGRAM.—The provisions of this title
19 shall be implemented, subject to section 403, by permits
20 issued to units and facilities subject to this title and en-
21 forced in accordance with the provisions of title V, as
22 modified by this title. Any such permit issued by the Ad-
23 ministrator, or by a State with an approved permit pro-
24 gram, shall prohibit—

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

5 “(2) exceeding applicable emissions rates under
6 section 441;

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

9 “(4) contravention of any other provision of the
10 permit.

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

13 “(b) COMPLIANCE PLAN.—Each initial permit appli-
14 cation shall be accompanied by a compliance plan for the
15 facility to comply with its requirements under this title.
16 Where an affected facility consists of more than one af-
17 fected unit, such plan shall cover all such units, and such
18 facility shall be considered a ‘facility’ under section
19 502(c). Nothing in this section regarding compliance plans
20 or in title V shall be construed as affecting allowances.

21 “(1) Submission of a statement by the owner or
22 operator, or the designated representative of the
23 owners and operators, of a unit subject to the emis-
24 sions limitation requirements of sections 412(c),
25 413, 414, and 441, that the unit will meet the appli-

1 cable emissions limitation requirements of such sec-
2 tions in a timely manner or that, in the case of the
3 emissions limitation requirements of sections 412(e),
4 413, and 414, the owners and operators will hold
5 sulfur dioxide allowances in the amount required by
6 section 412(e), shall be deemed to meet the proposed
7 and approved compliance planning requirements of
8 this section and title V, except that, for any unit
9 that will meet the requirements of this title by
10 means of an alternative method of compliance au-
11 thorized under section 413 (b), (c), (d), or (f), sec-
12 tion 416, and section 441 (d) or (e), the proposed
13 and approved compliance plan, permit application
14 and permit shall include, pursuant to regulations
15 promulgated by the Administrator, for each alter-
16 native method of compliance a comprehensive de-
17 scription of the schedule and means by which the
18 unit will rely on one or more alternative methods of
19 compliance in the manner and time authorized under
20 subpart 1 of part B or subpart 1 of part C.

21 “(2) Submission of a statement by the owner or
22 operator, or the designated representative, of a facil-
23 ity that includes a unit subject to the emissions limi-
24 tation requirements of sections 422, 432, 452, and
25 472 that the owner or operator will hold sulfur diox-

1 ide allowances, nitrogen oxide allowances, and mer-
2 cury allowances, as the case may be, in the amount
3 required by such sections shall be deemed to meet
4 the proposed and approved compliance planning re-
5 quirements of this section and title V with regard to
6 subparts A through D.

7 “(3) Recording by the Administrator of trans-
8 fers of allowances shall amend automatically, and
9 will not reopen or require reopening of, any or all
10 applicable proposed or approved permit applications,
11 compliance plans, and permits.

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

1 “(d) AMENDMENT OF APPLICATION AND COMPLI-
2 ANCE PLAN.—At any time after the submission of an ap-
3 plication and compliance plan under this section, the ap-
4 plicant may submit a revised application and compliance
5 plan, in accordance with the requirements of this section.

6 “(e) PROHIBITION.—

7 “(1) It shall be unlawful for any person to oper-
8 ate any facility subject to this title except in compli-
9 ance with the terms and requirements of a permit
10 application and compliance plan (including amend-
11 ments thereto) or permit issued by the Adminis-
12 trator or a State with an approved permit program.
13 For purposes of this subsection, compliance, as pro-
14 vided in section 504(f), with a permit issued under
15 title V which complies with this title for facilities
16 subject to this title shall be deemed compliance with
17 this subsection as well as section 502(a).

18 “(2) In order to ensure reliability of electric
19 power, nothing in this title or title V shall be con-
20 strued as requiring termination of operations of a
21 unit serving a generator for failure to have an ap-
22 proved permit or compliance 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.—No permit shall be issued
6 under this section to an affected unit until the designated
7 representative of the owners or operators has filed a cer-
8 tificate of representation with regard to matters under this
9 title, including the holding and distribution of allowances
10 and the proceeds of transactions involving allowances.
11 Where there are multiple holders of a legal or equitable
12 title to, or a leasehold interest in, such a unit, or where
13 a utility or industrial customer purchases power from an
14 affected unit (or units) under life-of-the-unit, firm power
15 contractual arrangements, the certificate shall state—

16 “(1) that allowances and the proceeds or trans-
17 actions involving allowance will be deemed to be held
18 or distributed in proportion to each holder’s legal,
19 equitable, leasehold, or contractual reservation or en-
20 titlement, or

21 “(2) if such multiple holders have expressly pro-
22 vided for a different distribution of allowances by
23 contract, that allowances and the proceeds of trans-
24 actions involving allowances will be deemed to be
25 held or distributed in accordance with the contract.

1 A passive lessor, of a person who has an equitable interest
2 through such lessor, whose rental payments are not based,
3 either directly or indirectly, upon the revenues or income
4 from the affected unit shall not be deemed to be a holder
5 of a legal, equitable, leasehold, or contractual interest for
6 the purposes of holding or distributing allowances as pro-
7 vided in this subsection, unless expressly provided for in
8 the leasehold agreement. Except as otherwise provided in
9 this subsection, where all legal or equitable title to or in-
10 terest in an affected unit is held by a single person, the
11 certification shall state that all allowances received by the
12 unit are deemed to be held for that person.

13 **“SEC. 405. MONITORING, REPORTING, AND RECORD-**
14 **KEEPING REQUIREMENTS.**

15 “(a) APPLICABILITY.—

16 “(1)(A) The owner and operator of any facility
17 subject to this title shall be required to install and
18 operate CEMS on each affected unit subject to sub-
19 part 1 of part B or subpart 1 of part C at the facil-
20 ity, and to quality assure the data, for sulfur diox-
21 ide, nitrogen oxides, opacity, and volumetric flow at
22 each such unit.

23 “(B) The Administrator shall, by regulations,
24 specify the requirements for CEMS under subpara-
25 graph (A), for any alternative monitoring or compli-

1 ance system that is demonstrated as providing infor-
2 mation which is reasonably of the same precision, re-
3 liability, accessibility, and timeliness as that pro-
4 vided by CEMS, and for recordkeeping and report-
5 ing of information from such systems. Such regula-
6 tions may include limitations on the use of alter-
7 native compliance methods by units equipped with
8 an alternative monitoring system as may be nec-
9 essary to preserve the orderly functioning of the al-
10 lowance system, and which will ensure to a reason-
11 able extent the emissions reductions contemplated by
12 this title. Where two or more units utilize a single
13 stack, a separate CEMS shall not be required for
14 each unit, and for such units the regulations shall
15 require that the owner or operator collect sufficient
16 information to permit reliable compliance determina-
17 tions for each such unit.

18 “(2)(A) The owner and operator of any facility
19 subject to this title shall be required to install and
20 operate CEMS to monitor the emissions from each
21 affected unit at the facility, and to quality assure
22 the data for—

23 “(i) sulfur dioxide, opacity, and volumetric
24 flow for all affected units subject to subpart 2
25 of part B at the facility,

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

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

6 “(B)(i) The Administrator may specify an alter-
7 native monitoring or compliance system for deter-
8 mining mercury emissions. In specifying such alter-
9 native monitoring or compliance systems, the lack of
10 commercially available appropriate and reasonable
11 vendor guarantees shall constitute a reasonable and
12 permissible basis for specifying alternative moni-
13 toring or compliance systems for mercury.

14 “(ii) The regulations under clause (i) may in-
15 clude limitations on the use of alternative compli-
16 ance methods by units equipped with an alternative
17 monitoring system as may be necessary to preserve
18 the orderly functioning of the allowance system, and
19 which will ensure to a reasonable extent the emis-
20 sions reductions contemplated by this title.

21 “(iii) The regulations under clause (i) shall not
22 require a separate CEMS or other monitoring sys-
23 tem for each unit where two or more units utilize a
24 single stack and shall require that the owner or op-

1 erator collect sufficient information to permit reli-
2 able compliance determinations for such units.

3 “(b) DEADLINES.—

4 “(1) NEW UTILITY UNITS.—Upon commence-
5 ment of commercial operation of each new utility
6 unit under subpart I of part B, the unit shall comply
7 with the requirements of subsection (a)(1).

8 “(2) DEADLINE FOR AFFECTED UNITS UNDER
9 SUBPART 2 OF PART B FOR INSTALLATION AND OP-
10 ERATION OF CEMS.—By the later of the date 12
11 months before the commencement date of the sulfur
12 dioxide allowance requirement of section 422, or the
13 date on which the unit commences operation, the
14 owner or operator of each affected unit under sub-
15 part 2 of part B shall install and operate CEMS,
16 quality assure the data, and keep records and re-
17 ports in accordance with the regulations issued
18 under paragraph (a)(2) with regard to sulfur diox-
19 ide, opacity, and volumetric flow.

20 “(3) DEADLINE FOR AFFECTED UNITS UNDER
21 SUBPART 3 OF PART B FOR INSTALLATION AND OP-
22 ERATION OF CEMS.—By the first covered year or the
23 date on which the unit commences commercial oper-
24 ation, the owner or operator of each affected unit
25 under subpart 3 of part B shall install and operate

1 CEMS, quality assure the data, and keep records
2 and reports in accordance with the regulations
3 issued under paragraph (a)(2) with regard to sulfur
4 dioxide and volumetric flow.

5 “(4) DEADLINE FOR AFFECTED UNITS UNDER
6 SUBPART 2 OF PART C FOR INSTALLATION AND OP-
7 ERATION OF CEMS.—By the later of the date the ni-
8 trogen oxides allowance requirement under section
9 452, or the date on which the unit commences oper-
10 ation, the owner or operator of each affected unit
11 under subpart 2 of part C shall install and operate
12 CEMS, quality assure the data, and keep records
13 and reports in accordance with the regulations
14 issued under paragraph (a)(2) with regard to nitro-
15 gen oxides.

16 “(5) DEADLINE FOR AFFECTED UNITS UNDER
17 PART D FOR INSTALLATION AND OPERATION OF
18 CEMS.—By the later of the date 12 months before
19 the commencement date of the mercury allowance
20 requirement of section 472 applies to such unit and
21 commences commercial operation, or the date on
22 which the unit commences operation, the owner or
23 operator of each affected unit under part D shall in-
24 stall and operate CEMS, quality assure the data,
25 and keep records and reports in accordance with the

1 regulations issued under paragraph (a)(2) with re-
2 gard to mercury.

3 “(c) UNAVAILABILITY OF EMISSIONS DATA.—If
4 CEMS data or data from an alternative monitoring system
5 approved by the Administrator under subsection (a) is not
6 available for any affected unit during any period of a cal-
7 endar year in which such data is required under this title,
8 and the owner or operator cannot provide information,
9 reasonably satisfactory to the Administrator, on emissions
10 during that period, the Administrator in coordination with
11 the owner shall calculate emissions for that period pursu-
12 ant to regulations promulgated for such purpose. The
13 owner or operator shall be liable for excess emissions fees
14 and offsets under section 406 in accordance with such reg-
15 ulations. Any fee due and payable under this subsection
16 shall not diminish the liability of the unit’s owner or oper-
17 ator for any fine, penalty, fee or assessment against the
18 unit for the same violation under any other section of this
19 Act.

20 “(d) IMPLEMENTATION.—With regard to sulfur diox-
21 ide, nitrogen oxides, opacity, and volumetric flow, the Ad-
22 ministrator shall implement subsections (a) and (c) under
23 40 CFR part 75 (2002), amended, as appropriate by the
24 Administrator. With regard to mercury, the Administrator
25 shall implement subsections (a) and (c) by issuing pro-

1 posed regulations not later than 36 months before the
2 commencement date of the mercury allowance requirement
3 under section 472 and final regulations not later than 24
4 months before that commencement date.

5 “(e) PROHIBITION.—It shall be unlawful for the
6 owner or operator of any facility subject to this title to
7 operate a facility without complying with the requirements
8 of this section, and any regulations implementing this sec-
9 tion.

10 **“SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLI-**
11 **ANCE WITH OTHER PROVISIONS; ENFORCE-**
12 **MENT.**

13 “(a) EXCESS EMISSIONS PENALTY.—

14 “(1) AMOUNT FOR OXIDES OF NITROGEN.—The
15 owner or operator of any unit subject to the require-
16 ments of section 441 that emits nitrogen oxides for
17 any calendar year in excess of the allowances the op-
18 erator holds for the unit for that calendar year shall
19 be liable for the payment of an excess emissions pen-
20 alty, except where such emission were authorized
21 pursuant to section 110(f). That penalty shall be
22 calculated on the basis of the number of tons emit-
23 ted in excess of the number of allowances held by
24 the operator for the unit for that calendar year mul-
25 tiplied by \$2,000.

1 “(2) AMOUNT FOR SULFUR DIOXIDE BEFORE
2 2008.—The owner or operator of any unit subject to
3 the requirements of section 412(c) that emits sulfur
4 dioxide for any calendar year before 2008 in excess
5 of the sulfur dioxide allowances the owner or oper-
6 ator holds for use for the unit for that calendar year
7 shall be liable for the payment of an excess emis-
8 sions penalty, except where such emissions were au-
9 thorized pursuant to section 110(f) or (g). That pen-
10 alty shall be calculated as follows:

11 “(A) The product of the unit’s excess emis-
12 sions (in tons) multiplied by \$2,000, if within
13 thirty days after the date on which the owner
14 or operator was required to hold sulfur dioxide
15 allowances—

16 “(i) the owner or operator offsets the
17 excess emissions in accordance with para-
18 graph (b)(1); and

19 “(ii) the Administrator receives the
20 penalty payment required under this sub-
21 paragraph.

22 “(B) If the requirements of clause (A)(i)
23 or (A)(ii) are not met, the product of the unit’s
24 excess emissions (in tons) multiplied by \$4,000.

1 “(3) AMOUNT FOR SULFUR DIOXIDE AFTER
2 2007.—If the units at a facility that are subject to
3 the requirements of section 412(c) emit sulfur diox-
4 ide for any calendar year after 2007 in excess of the
5 sulfur dioxide allowances that the owner or operator
6 of the facility holds for use for the facility for that
7 calendar year, the owner or operator shall be liable
8 for the payment of an excess emissions penalty, ex-
9 cept where such emissions were authorized pursuant
10 to section 110(f). That penalty shall be calculated
11 under paragraph (4)(A) or (4)(B).

12 “(4) UNITS SUBJECT TO SECTIONS 422, 432, 452,
13 OR 472.—If the units at a facility that are subject
14 to the requirements of section 422, 432, 452, or 472
15 emit sulfur dioxide, nitrogen oxides, or mercury for
16 any calendar year in excess of the sulfur dioxide al-
17 lowances, nitrogen oxides allowances, or mercury al-
18 lowances, as the case may be, that the owner or op-
19 erator of the facility holds for use for the facility or
20 units for that calendar year, the owner or operator
21 shall be liable for the payment of an excess emis-
22 sions penalty, except where such emissions were au-
23 thorized pursuant to section 110(f). That penalty
24 shall be calculated as follows:

1 “(A) The product of the units’ excess emis-
2 sions (in tons or, for mercury emissions, in
3 ounces) multiplied by the annual average price
4 of sulfur dioxide allowances, nitrogen oxides al-
5 lowances, or mercury allowances, as the case
6 may be, sold between allowance holders and re-
7 corded in the Allowance Tracking System, if
8 within sixty days after the date on which the
9 owner or operator was required to hold sulfur
10 dioxide, nitrogen oxides allowance, or mercury
11 allowances as the case may be—

12 “(i) the owner or operator offsets the
13 excess emissions in accordance with para-
14 graph (b)(2) or (b)(3), as applicable; and

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

17 “(B) If the requirements of clause (A)(i)
18 or (A)(ii) are not met, the amount of the units’
19 excess emissions (in tons or, for mercury emis-
20 sions, in ounces) multiplied by the average an-
21 nual price of sulfur dioxide allowances, nitrogen
22 oxides allowances, or mercury allowances, as the
23 case may be, sold between allowance holders
24 and recorded in the Allowance Tracking Sys-
25 tem.

1 “(5) PAYMENT.—Any penalty under paragraph
2 1, 2, 3, or 4 shall be due and payable without de-
3 mand to the Administrator as provided in regula-
4 tions issued by the Administrator. With regard to
5 the penalty under paragraph 1, the Administrator
6 shall implement this paragraph under 40 CFR part
7 77 (2002), amended as appropriate by the Adminis-
8 trator. With regard to the penalty under paragraphs
9 2, 3, and 4, the Administrator shall implement this
10 paragraph by issuing regulations no later than 24
11 months after the date of enactment of the Clear
12 Skies Act of 2003. Any such payment shall be de-
13 posited in the Compliance Assistance Account.

14 “(b) EXCESS EMISSIONS OFFSET.—

15 “(1) The owner or operator of any unit subject
16 to the requirements of section 412(c) that emits sul-
17 fur dioxide during any calendar year before 2008 in
18 excess of the sulfur dioxide allowances held for the
19 unit for the calendar year shall be liable to offset the
20 excess emissions by an equal tonnage amount in the
21 following calendar year, or such longer period as the
22 Administrator may prescribe. The Administrator
23 shall deduct sulfur dioxide allowances equal to the
24 excess tonnage from those held for the facility for
25 the calendar year, or succeeding years during which

1 offsets are required, following the year in which the
2 excess emissions occurred.

3 “(2) If the units at a facility that are subject
4 to the requirements of section 412(c) emit sulfur di-
5 oxide for a year after 2007 in excess of the sulfur
6 dioxide allowances that the owner or operator of the
7 facility holds for use for the facility for that calendar
8 year, the owner or operator shall be liable to offset
9 the excess emissions by an equal amount of tons in
10 the following calendar year, or such longer period as
11 the Administrator may prescribe. The Administrator
12 shall deduct sulfur dioxide allowances equal to the
13 excess emissions in tons from those held for the fa-
14 cility for the year, or succeeding years during which
15 offsets are required, following the year in which the
16 excess emissions occurred.

17 “(3) If the units at a facility that are subject
18 to the requirements of section 422, 432, 452, or 472
19 emit sulfur dioxide, nitrogen oxides, or mercury for
20 any calendar year in excess of the sulfur dioxide al-
21 lowances, nitrogen oxides allowances, or mercury al-
22 lowances, as the case may be, that the owner or op-
23 erator of the facility holds for use for the facility for
24 that calendar year, the owner or operator shall be
25 liable to offset the excess emissions by an equal

1 amount of tons or, for mercury, ounces in the fol-
2 lowing calendar year, or such longer period as the
3 Administrator may prescribe. The Administrator
4 shall deduct sulfur dioxide allowances, nitrogen oxide
5 allowances, or mercury allowances, as the case may
6 be, equal to the excess emissions in tons or, for mer-
7 cury, ounces from those held for the facility for the
8 year, or succeeding years during which offsets are
9 required, following the year in which the excess
10 emissions occurred.

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

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

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

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

22 “(e) SAVINGS PROVISION.—Nothing in this title shall
23 limit or otherwise affect the application of section 113,
24 114, 120, or 304 except as otherwise explicitly provided
25 in this title.

1 “(f) OTHER REQUIREMENTS.—Except as expressly
2 provided, compliance with the requirements of this title
3 shall not exempt or exclude the owner or operator of any
4 facility subject to this title from compliance with any other
5 applicable requirements of this Act. Notwithstanding any
6 other provision of this Act, no State or political subdivision
7 thereof shall restrict or interfere with the transfer, sale,
8 or purchase of allowances under this title.

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

20 **“SEC. 407. ELECTION FOR ADDITIONAL UNITS.**

21 “(a) APPLICABILITY.—The owner or operator of any
22 unit that is not an affected EGU under subpart 2 of part
23 B and subpart 2 of part C and whose emissions of sulfur
24 dioxide and nitrogen oxides are vented only through a
25 stack or duct may elect to designate such unit as an af-

1 fected unit under subpart 2 of part B and subpart 2 of
2 part C. If the owner or operator elects to designate a unit
3 that is solid fuel-fired and emits mercury vented only
4 through a stack or duct, the owner or operator shall also
5 designate the unit as an affected unit under part D. If
6 elected unit fires only gaseous fuels, designation may be
7 made under subpart 2 of part C only.

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

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

17 “(d) ESTABLISHMENT OF BASELINE.—

18 “(1) After approval of the designation under
19 subsection (c), the owner or operator shall install
20 and operate GEMS on the unit, and shall quality as-
21 sure the data, in accordance with the requirements
22 of paragraph (a)(2) and subsections (c) through (e)
23 of section 405, except that, where two or more units
24 utilize a single stack, separate monitoring shall be

1 required for each unit unless all units utilizing the
2 single stack are designated as affected units.

3 “(2) The baselines for heat input and sulfur di-
4 oxide and nitrogen oxides emission rates, as the case
5 may be, for the unit shall be the unit’s heat input
6 and the emission rates of sulfur dioxide and nitrogen
7 oxides for a year starting after approval of the des-
8 ignation under subsection (c). The Administrator
9 shall issue regulations requiring the unit’s baselines
10 for heat input and sulfur dioxide and nitrogen oxides
11 emission rates to be based on the same year and
12 specifying minimum requirements concerning the
13 percentage of the unit’s operating hours for which
14 quality assured CEMS data must be available during
15 such year. The baseline heat input and emissions
16 baselines in this subparagraph shall be calculated, at
17 the election of the owner or operator of the relevant
18 unit, under (i) or (ii):

19 “(i) for heat input, the average of the
20 unit’s highest heat input for three years of the
21 five years before the year for which the Admin-
22 istrator is determining the allocations and for
23 emissions baselines, the average of the relevant
24 emissions for the same years used to determine
25 heat input.

1 “(ii) for heat input, the average of any pe-
2 riod of twenty-four consecutive months during a
3 ten-year period immediately prior to submission
4 of an application under subsection (b), and for
5 emissions baselines, the average of the relevant
6 emissions for the same twenty-four month pe-
7 riod used to calculate heat input.

8 “(3) The regulations implementing subpara-
9 graph (2) shall authorize the use of any reliable data
10 on emissions of sulfur dioxide and nitrogen oxides in
11 addition to, and other than, data collected pursuant
12 to paragraph (1), including, but not limited to, alter-
13 native data that has been used to determine compli-
14 ance with a regulatory or monitoring requirement
15 under this Act or a comparable State law if the data
16 establishes a reliable measure of heat input and sul-
17 fur dioxide and nitrogen oxides emissions over a si-
18 multaneous period of time; or if such data is not
19 available, the Administrator may prescribe a baseline
20 based on alternative reliable data. In determining
21 the reliability of data, the Administrator may con-
22 sider the cost of generating more reliable data com-
23 pared to the quantitative importance of the resulting
24 gain in quantifying emissions.

1 “(e) EMISSION LIMITATIONS.—After approval of the
2 designation of the unit under paragraph (c), the unit shall
3 become—

4 “(1) an affected unit under subpart 2 of part
5 B, and shall be allocated sulfur dioxide allowances
6 under paragraph (f), starting the later of January 1,
7 2010, or January 1 of the year after approval of the
8 designation;

9 “(2) an affected unit under subpart 2 of part
10 C, and shall be allocated nitrogen oxides allowances
11 under paragraph (f), starting the later of January 1,
12 2010, or January 1 of the year after approval of the
13 designation; and

14 “(3) if applicable, an affected unit under part
15 D, and shall be allocated mercury allowances, start-
16 ing the later of January 1, 2010, or January 1 of the
17 year after approval of designation.

18 “(f) ALLOCATIONS.—

19 “(1) SULFUR DIOXIDE AND NITROGEN OX-
20 IDES.—The Administrator shall promulgate regula-
21 tions determining the allocations of sulfur dioxide al-
22 lowances and nitrogen oxides allowances for each
23 year during which a unit is an affected unit under
24 subsection (e). The regulations shall provide for allo-
25 cations equal to 70 percent of the following amounts

1 beginning January 1, 2010, and 50 percent of the
2 following amounts beginning January 1, 2018, the
3 unit's baseline heat input under subsection (d) mul-
4 tiplied by the lesser of—

5 “(A) the unit's baseline sulfur dioxide
6 emission rate or nitrogen oxides emission rate
7 as the case may be; or

8 “(B) the unit's most stringent State or
9 Federal emission limitation for sulfur dioxide or
10 nitrogen oxides applicable to the year on which
11 the unit's baseline heat input is based under
12 subsection (d).

13 “(2) MERCURY.—The Administrator shall pro-
14 mulgate regulations providing for the allocation of
15 mercury allowances to solid fuel-fired units des-
16 igned under this section for each year after Janu-
17 ary 1, 2010, during which a unit is a designated
18 unit under this section. The regulations shall provide
19 for allocations equal to the lesser of the following
20 amounts—

21 “(A) the unit's annual allowable emissions
22 rate for mercury under the national emissions
23 standards for hazardous air pollutants for boil-
24 ers and process heaters multiplied by the unit's
25 baseline heat input; or

1 “(B) the unit’s most stringent State or
2 Federal emission limitation for mercury emis-
3 sions rate multiplied by the unit’s baseline heat
4 input.

5 “(3) LIMITATION.—Allowances allocated to
6 electing units under subparagraphs (1) and (2) shall
7 comprise a separate limitation on emissions from
8 sections 423, 433, 453, 473, or other section of this
9 Act. These allowances for sulfur dioxide, nitrogen
10 oxides, or mercury, as the case may be, shall be
11 tradeable with allowances allocated under sections
12 414, 424, 454, 474, as applicable, provided that—

13 “(A) electing units may only trade nitrogen
14 oxides within the respective zones established
15 under section 452 within which the electing unit
16 is located, and

17 “(B) affected units within the WRAP
18 States may only purchase sulfur dioxide allow-
19 ances allocated or otherwise distributed by the
20 Administrator to electing units within the
21 WRAP States, and will not be counted for pur-
22 poses of the affected unit’s emissions within the
23 meaning of the WRAP Annex.

24 “(4) INCENTIVES FOR EARLY REDUCTIONS.—
25 The Administrator shall promulgate regulations

1 within 18 months authorizing the allocation of sulfur
2 dioxide, nitrogen oxides and mercury allowances to
3 units designated under this section that install or
4 modify pollution control equipment or combustion
5 technology improvements identified in such regula-
6 tions after the date of enactment of this section and
7 prior to January 1, 2010. No allowances shall be al-
8 located under this paragraph for emissions reduc-
9 tions attributable to: pollution control equipment or
10 combustion technology improvements that were oper-
11 ational or under construction at any time prior to
12 the date of enactment of this section; fuel switching;
13 or compliance with any Federal regulation. The al-
14 lowances allocated to any unit under this paragraph
15 shall be in addition to the allowances allocated under
16 paragraphs (1) and (2) and sections 414, 424, 434,
17 454, and 474 and shall be allocated in an amount
18 equal to one allowance of sulfur dioxide and nitrogen
19 oxides for each 1.05 tons of reduction in emissions
20 of sulfur dioxide and nitrogen oxides, respectively,
21 and 1.05 ounces of reduction in the emissions of
22 mercury achieved by the pollution control equipment
23 or combustion technology improvements starting
24 with the year in which the equipment or improve-
25 ment 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 or subpart
5 2 of part C, or part D after the approval of the designation
6 of the unit under subsection (c).

7 “(h) REGULATIONS.—The Administrator shall pro-
8 mulgate regulations implementing this section within 18
9 months of the date of enactment of the Clear Skies Act
10 of 2003.

11 “(i) APPLICATION PERIOD.—Applications for des-
12 ignation of units under this section shall be accepted by
13 the Administrator beginning not later than 180 days after
14 the date of enactment of this section and the Adminis-
15 trator shall approve or disapprove of each application
16 within 90 days of receipt.

17 “(j) NESHAP APPLICABILITY.—

18 “(1) A unit that is designated as an affected
19 unit under this section shall not be subject to any
20 national emissions standards for hazardous air pol-
21 lutants (NESHAP) promulgated pursuant to section
22 112(d) after November 10, 2003, except that units
23 that are boilers or process heaters shall be subject
24 on and after January 1, 2010, to the emissions limi-
25 tation for mercury, and associated monitoring and

1 compliance requirements, that would be applicable to
2 such units under the NESHAP for boilers and proc-
3 ess heaters promulgated pursuant to section 112(d).

4 “(2) Not later than 18 months after the date
5 of enactment of this section, the Administrator shall
6 publish and make available for public comment, a
7 peer reviewed preliminary report characterizing the
8 emissions and public health effects that may reason-
9 ably be anticipated to occur from the implementation
10 of paragraph (1) and subsection (f). No NESHAP
11 for boilers and process heaters shall be promulgated
12 under section 112(d) until the conclusion of, and
13 considering, this report. Under section 112(n)(1)(A),
14 the Administrator shall publish a final report, in-
15 cluding responses to the comments received, not
16 later than 30 months after such date. The require-
17 ments of section 112(n)(1)(A), for purposes of this
18 paragraph, shall be amended as follows. The report
19 shall include—

20 “(A) an estimate of the numbers and types
21 of sources that are expected to be designated
22 under this section;

23 “(B) an estimate of any increase or de-
24 crease in the annual emissions of criteria pollut-
25 ants and of those hazardous air pollutants sub-

1 ject to emission limitations under the
2 NESHAPs identified in paragraph (1) from
3 such sources that may reasonably be expected
4 to occur for each year through 2018;

5 “(C) an estimate of any increase or de-
6 crease in the annual emissions of criteria pollut-
7 ants and of those hazardous air pollutants sub-
8 ject to emission limitations under the
9 NESHAPs identified in paragraph (1) from
10 such sources that might reasonably be expected
11 to occur for each year through 2018, if such
12 sources estimated in subparagraph (A) are not
13 designated under this section; and

14 “(D) a description of the public health and
15 environmental impacts associated with the emis-
16 sions increases and decreases described in sub-
17 paragraphs (B) and (C).

18 Notwithstanding paragraph (1), the Administrator
19 shall have the authority to regulate emissions of haz-
20 ardous air pollutants listed under section 112(b),
21 other than mercury compounds, from sources des-
22 ignated under this section in accordance with the re-
23 gime set forth in section 112(f)(2). The Adminis-
24 trator shall make a determination based on the
25 study and other information satisfying the criteria of

1 the Data Quality Act whether to establish emissions
2 limitations under section 112(f) for sources des-
3 igned under this section, not later than 24 months
4 after the final report is published. The determina-
5 tion shall be a final agency action subject to judicial
6 review under section 307 and the Administrative
7 Procedures Act.

8 “(k) OTHER COMBUSTION SOURCES.—The owner or
9 operator of an affected unit designated under this section
10 may elect to designate other combustion sources, such as
11 kilns and furnaces (including sources that are not oper-
12 ated to generate electricity) that are located on the same
13 property as affected units under this section provided that
14 the emissions from such sources are vented through a
15 stack or duct. A source that is designated as an affected
16 unit under this section shall not be subject to any national
17 emissions standards for hazardous air pollutants promul-
18 gated pursuant to section 112(d) after August 2003. The
19 Administrator shall have the authority to regulate emis-
20 sions of hazardous air pollutants listed under section
21 112(b), other than mercury compounds, by units des-
22 igned as affected units under this section in accordance
23 with the regime set forth in sections 112(n)(1)(A) and
24 112(f)(2) through (4). Any such regulation shall not re-

1 quire compliance with emissions limitations for such pol-
2 lutants before January 1, 2018.

3 “(1) EXEMPTION FROM MAJOR SOURCE
4 PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST
5 AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIRE-
6 MENTS.—

7 “(1) MAJOR SOURCE EXEMPTION.—A unit des-
8 ignated as an affected unit under this section shall
9 not be considered a major source, or a part of a
10 major emitting facility or major stationary source
11 for purposes of compliance with the requirements of
12 parts C and D of title I. This exemption only applies
13 if, beginning 8 years after the date of enactment of
14 this section, or designation as an affected unit—

15 “(A) the designated unit either achieves in
16 fact, or is subject to a regulatory requirement
17 to achieve, a limit on the emissions of particu-
18 late matter from the affected unit to the level
19 not greater than the level applicable to the unit
20 either pursuant to subpart Db of 40 CFR part
21 60 or the national emissions standards for haz-
22 ardous air pollutants for industrial boilers and
23 process heaters issued pursuant to section 112;
24 or the owner or operator of the affected unit
25 properly operates, maintains and repairs pollu-

1 tion control equipment to limit emissions of
2 particulate matter; and

3 “(B) the owner or operator of the des-
4 ignated unit uses good combustion practices to
5 minimize emissions of carbon monoxide.

6 “(2) CLASS I AREA PROTECTIONS.—Notwith-
7 standing the exemption in paragraph (1), an af-
8 fected unit located within 50 km of a Class I area
9 on which construction commences after the date of
10 enactment of this section is subject to those provi-
11 sions under part C of title I to the review of a new
12 or modified major stationary source’s impact on a
13 Class I area.

14 “(m) LIMITATION.—Any unit designated under this
15 section shall not transfer or bank allowances produced as
16 a result of reduced utilization or shutdown. In no case may
17 the Administrator allocate to a source designated under
18 this section allowances in an amount greater than the
19 emissions resulting from operation of the source in full
20 compliance with the requirements of this Act. No such al-
21 lowances shall authorize operation of a unit in violation
22 of any other requirements of this Act.

1 **“SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCEN-**
2 **TIVES.**

3 “(a) DEFINITION.—For purposes of this section,
4 ‘clean coal technology’ means any technology, including
5 technologies applied at the precombustion, combustion, or
6 post combustion stage, at a new or existing facility which
7 will achieve significant reductions in air emissions of sul-
8 fur dioxide or oxides of nitrogen associated with the utili-
9 zation of coal in the generation of electricity, process
10 steam, or industrial products, which is not in widespread
11 use as of November 15, 1990.

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

14 “(1) APPLICABILITY.—This subsection applies
15 to physical or operational changes to existing facili-
16 ties for the sole purpose of installation, operation,
17 cessation, or removal of a temporary or permanent
18 clean coal technology demonstration project. For the
19 purposes of this section, a clean coal technology
20 demonstration project shall mean a project using
21 funds appropriated under the heading ‘Department
22 of Energy—Clean Coal Technology’, up to a total
23 amount of \$2,500,000,000 for commercial dem-
24 onstration of clean coal technology, or similar
25 projects funded through appropriations for the Envi-
26 ronmental Protection Agency. The Federal contribu-

1 tion for qualifying project shall be at least twenty
2 percent of the total cost of the demonstration
3 project.

4 “(2) TEMPORARY PROJECTS.—Installation, op-
5 eration, cessation, or removal of a temporary clean
6 coal technology demonstration project that is oper-
7 ated for a period of 5 years or less, and which com-
8 plies with the State implementation plans for the
9 State in which the project is located and other re-
10 quirements necessary to attain and maintain the na-
11 tional ambient air quality standards during and
12 after the project is terminated, shall not subject
13 such facility to the requirements of section 111 or
14 part C or D of title I.

15 “(3) PERMANENT PROJECTS.—For permanent
16 clean coal technology demonstration projects that
17 constitute repowering as defined in section 411, any
18 qualifying project shall not be subject to standards
19 of performance under section 111 or to the review
20 and permitting requirements of part C for any pol-
21 lutant the potential emissions of which will not in-
22 crease as a result of the demonstration project.

23 “(4) EPA REGULATIONS.—Not later than
24 twelve months after November 15, 1990, the Admin-
25 istrator shall promulgate regulations or interpretive

1 rulings to revise requirements under section 111 and
2 parts C and D, as appropriate, to facilitate projects
3 consistent in this subsection. With respect to parts
4 C and D, such regulations or rulings shall apply to
5 all areas in which EPA is the permitting authority.
6 In those instances in which the State is the permit-
7 ting authority under part C or D, any State may
8 adopt and submit to the Administrator for approval
9 revisions to its implementation plan to apply the reg-
10 ulations or rulings promulgated under this sub-
11 section.

12 “(c) EXEMPTION FOR REACTIVATION OF VERY
13 CLEAN UNITS.—Physical changes or changes in the meth-
14 od of operation associated with the commencement of com-
15 mercial operations by a coal-fired utility unit after a pe-
16 riod of discontinued operation shall not subject the unit
17 to the requirements of section 111 or part C of the Act
18 where the unit—

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

24 “(2) was equipped prior to shut-down with a
25 continuous system of emissions control that achieves

1 a removal efficiency for sulfur dioxide of no less
2 than 85 percent and a removal efficiency for particu-
3 lates of no less than 98 percent;

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

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

8 **“SEC. 409. ELECTRICITY RELIABILITY.**

9 “(a) RELIABILITY.—

10 “(1) APPLICABILITY.—At any time prior the
11 applicability of this Act under sections 422, 432,
12 454, and 474, in order to ensure the reliability of an
13 electric utility company or system, including a sys-
14 tem cooperatively or municipally owned, for a speci-
15 fied geographic area or service territory, as deter-
16 mined by the Department of Energy in consultation
17 with the Administrator, during the installation of
18 sulfur dioxide pollution control technology or scrub-
19 bers, nitrogen oxides, mercury or particulate matter
20 control technology, or any combination thereof, the
21 owner or operator of an affected unit may meet the
22 requirements of sections 422, 434, 454, and 474 by
23 means of the compliance procedures of this sub-
24 section (a).

1 “(2) PETITION.—The owner or operator of an
2 affected unit that believes it may experience an ad-
3 verse impact on the reliability of the company or
4 system as a result, in substantial part, of the need
5 to construct sulfur dioxide pollution control equip-
6 ment or scrubbers, nitrogen oxides, mercury or par-
7 ticulate matter control technology, or any combina-
8 tion thereof, may petition the Secretary of Energy,
9 in consultation with the Administrator, for a deter-
10 mination that, to a reasonable degree of certainty,
11 reliability will likely be threatened. Upon such a de-
12 termination, the owner or operator may elect to
13 adopt a compliance method meeting the require-
14 ments of this subsection:

15 “(A) Within 12 months of enactment the
16 Secretary of Energy shall promulgate regula-
17 tions describing the requirements for a petition
18 and the petition process, which will include no-
19 tice and public comment. The Secretary of En-
20 ergy, in consultation with the Administrator,
21 shall make a final determination on a petition
22 within 180 days of the submittal of a reason-
23 ably complete petition. Failure to act within the
24 180-day period will extend the applicability by
25 12 months for all units subject to the petition.

1 “(B) The petition must contain—

2 “(i) a description of each affected
3 unit, the estimated outage time and a con-
4 struction schedule;

5 “(ii) an estimate of demand from date
6 of applicability until 2018;

7 “(iii) the impacts on reliability associ-
8 ated with constructing all of the pollution
9 control projects, including those for sulfur
10 dioxide, nitrogen oxides, mercury, or par-
11 ticulate matter, by the respective deadlines;
12 and

13 “(iv) how the proposed compliance
14 schedule would alleviate detrimental im-
15 pacts.

16 “(C) If the Secretary of Energy fails to
17 promulgate final regulations or such regulations
18 are not effective for any reason, within the pre-
19 scribed time, petitions containing reasonably
20 sufficient information for a final determination
21 may be submitted to the Secretary of Energy
22 and will be deemed complete.

23 “(3) FINAL DETERMINATION.—In making a
24 final determination the Secretary of Energy, in con-
25 sultation with the Administrator, shall consider the

1 following factors, provided that not all factors need
2 be present to make a determination that, to a rea-
3 sonable degree, reliability will be threatened:

4 “(A) The ability of vendors to supply
5 scrubbers; scrubber system equipment, mate-
6 rials and scrubber affected balance of plant
7 equipment including, but not limited to, fans,
8 pumps, electric motors, motor drives, dampers,
9 electrical power supply equipment; at fair prices
10 with meaningful guarantees or warranties as to
11 availability, delivery dates and meeting con-
12 tracted pollution control reduction requirements
13 or emissions limitations; with similar consider-
14 ations for nitrogen oxides, mercury or particu-
15 late matter control technology, or any combina-
16 tion thereof;

17 “(B) The availability and limitations of key
18 sulfur dioxide, nitrogen oxides or mercury con-
19 trols design resources and North American con-
20 struction resources. The design resources shall
21 include but not be limited to Architect Engi-
22 neering companies experienced in the design of
23 sulfur dioxide, nitrogen oxides, mercury or par-
24 ticulate matter control technology. The con-
25 struction resources shall include but not be lim-

1 ited to construction companies with experience
2 in the construction of sulfur dioxide, nitrogen
3 oxides, mercury, or particulate matter control
4 technology and trained and experienced labor
5 resources including but not limited to boiler-
6 makers, iron workers, electricians, mechanics;

7 “(C) The feasibility to complete the con-
8 struction of all pollution control technology
9 projects by the relevant applicability compliance
10 deadline;

11 “(D) The impact in terms of unit outages
12 and construction schedules on a company or
13 systems reliability and whether such impact is
14 unreasonable;

15 “(i) Unreasonable shall be presumed
16 to be an increase in the price of purchase
17 power of (10) percent over the estimated
18 cost in cents per kilowatt for the company,
19 system or State, utilized in the latest sub-
20 missions to a relevant State or Federal
21 agency; or

22 “(ii) A projected reduction in available
23 generating capacity such that adequate re-
24 serve margins for a company, system or
25 State do not exist, as determined by the

1 Secretary of Energy in coordination with
2 the relevant Federal or State utility agency
3 or reliability council; or

4 “(iii) A supply shortage of coal needed
5 to meet emissions control expectations for
6 any proposed emissions control device.

7 “(E) A company or system which submits
8 a petition to install sulfur dioxide, nitrogen ox-
9 ides, mercury, or particulate matter control
10 technology, or any combination thereof, on af-
11 fected units equaling 25 percent or more of its
12 coal-fired capacity shall be presumed to meet
13 the requirements of a positive determination
14 from the Secretary of Energy.

15 “(4) COMPLIANCE.—Upon a positive determina-
16 tion by the Secretary of Energy in accordance with
17 the paragraph (3), such affected units will be grant-
18 ed a one year extension from the relevant applica-
19 bility date under this title.

20 “(b) During any year covered by this title, an affected
21 unit may submit a petition in accordance with paragraph
22 (a)(2) to allow use of sulfur dioxide allowances, nitrogen
23 oxides allowances, and mercury allowances, as the case
24 may be, allocated for the immediate next year to meet the

1 applicable requirement to hold such allowances equal to
2 the petitioned year's emissions.

3 “(c) **PRESIDENTIAL WAIVER.**—Notwithstanding sub-
4 section (a) or any other provision of this Act, The Presi-
5 dent of the United States shall have authority to tempo-
6 rarily grant waivers from emission limitations under sec-
7 tions 412, 422, 432, 452, and 472, as the case may be,
8 if the President determines that the reliability of any por-
9 tion of national electricity supply or national security is
10 imperiled.

11 **“PART B—SULFUR DIOXIDE EMISSION**

12 **REDUCTIONS**

13 **“Subpart 1—Acid Rain Program**

14 **“SEC. 411. DEFINITIONS.**

15 “For purposes of this subpart and subpart 1 of part
16 B:

17 “(1) The term ‘actual 1985 emission rate’, for
18 electric utility units means the annual sulfur dioxide
19 or nitrogen oxides emission rate in pounds per mil-
20 lion Btu as reported in the 1985 National Acid Pre-
21 cipitation Assessment Program (NAPAP) Emissions
22 Inventory, Version 2, National Utility Reference File
23 (NURF). For nonutility units, the term ‘actual 1985
24 emission rate’ means the annual sulfur dioxide or ni-
25 trogen oxides emission rate in pounds per million

1 Btu as reported in the NAPAP Emission Inventory,
2 Version 2.

3 “(2) The term ‘allowable 1985 emissions rate’
4 means a federally enforceable emissions limitation
5 for sulfur dioxide or oxides of nitrogen, applicable to
6 the unit in 1985 or the limitation applicable in such
7 other subsequent year as determined by the Admin-
8 istrator if such a limitation for 1985 does not exist.
9 Where the emissions limitation for a unit is not ex-
10 pressed in pounds of emissions per million Btu, or
11 the averaging period of that emissions limitation is
12 not expressed on an annual basis, the Administrator
13 shall calculate the annual equivalent of that emis-
14 sions limitation.

15 “(3) The term ‘alternative method of compli-
16 ance’ means a method of compliance in accordance
17 with one or more of the following authorities—

18 “(A) a substitution plan submitted and ap-
19 proved in accordance with subsections 413(b)
20 and (c); or

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

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

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

1 strikes, disruptions of fuel supplies, failure of
2 equipment, other causes beyond the reasonable
3 control of the owner or operator of the unit that
4 caused prolonged outages.

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

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

1 trator to correct an alleged factual error in such
2 reports be subject to judicial review.

3 “(5) The term ‘basic phase II allowance alloca-
4 tions’ means:

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

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

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

22 “(7) The term ‘commenced’ as applied to con-
23 struction of any new electric utility unit means that
24 an owner or operator has undertaken a continuous
25 program of construction or that an owner or oper-

1 ator has entered into a contractual obligation to un-
2 dertake and complete, within a reasonable time, a
3 continuous program of construction.

4 “(8) The term ‘commenced commercial oper-
5 ation’ with regard to a unit means the start up of
6 the unit’s combustion chamber and commencement
7 of the generation of electricity for sale.

8 “(9) The term ‘construction’ means fabrication,
9 erection, or installation of an affected unit.

10 “(10) The term ‘existing unit’ means a unit (in-
11 cluding units subject to section 111) that com-
12 menced commercial operation before November 15,
13 1990. Any unit that commenced commercial oper-
14 ation before November 15, 1990, which is modified,
15 reconstructed, or repowered after November 15,
16 1990, shall continue to be an existing unit for the
17 purposes of this subpart. For the purposes of this
18 subpart, existing units shall not include simple com-
19 bustion turbines, or units which serve a generator
20 with a nameplate capacity of 25 MWe or less.

21 “(11) The term ‘independent power producer’
22 means any person who owns or operates, in whole or
23 in part, one or more new independent power produc-
24 tion facilities.

1 “(12) The term ‘new independent power pro-
2 duction facility’ means a facility that—

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

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

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

13 “(13) The term ‘industrial source’ means a unit
14 that does not serve a generator that produces elec-
15 tricity, a ‘nonutility unit’ as defined in this section,
16 or a process source.

17 “(14) The term ‘life-of-the-unit, firm power
18 contractual arrangement’ means a unit participation
19 power sales agreement under which a utility or in-
20 dustrial customer reserves, or is entitled to receive,
21 a specified amount or percentage of capacity and as-
22 sociated energy generated by a specified generating
23 unit (or units) and pays its proportional amount of
24 such unit’s total costs, pursuant to a contract ei-
25 ther—

1 “(A) for the life of the unit;

2 “(B) for a cumulative term of no less than
3 30 years, including contracts that permit an
4 election for early termination; or

5 “(C) for a period equal to or greater than
6 25 years or 70 percent of the economic useful
7 life of the unit determined as of the time the
8 unit was built, with option rights to purchase or
9 release some portion of the capacity and associ-
10 ated energy generated by the unit (or units) at
11 the end of the period.

12 “(15) The term ‘new unit’ means a unit that
13 commences commercial operation on or after Novem-
14 ber 15, 1990.

15 “(16) The term ‘nonutility unit’ means a unit
16 other than a utility unit.

17 “(17) The term ‘phase II bonus allowance allo-
18 cations’ means, for calendar year 2000 through
19 2009, inclusive, and only for such years, allocations
20 made by the Administrator pursuant to section 412,
21 subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as
22 otherwise provided therein), and (h)(2) of section
23 414, and section 415.

24 “(18) The term ‘qualifying phase I technology’
25 means a technological system of continuous emission

1 reduction which achieves a 90 percent reduction in
2 emissions of sulfur dioxide from the emissions that
3 would have resulted from the use of fuels which were
4 not subject to treatment prior to combustion.

5 “(19) The term ‘repowering’ means replacement
6 of an existing coal-fired boiler with one of the fol-
7 lowing clean coal technologies: atmospheric or pres-
8 surized fluidized bed combustion, integrated gasifi-
9 cation combined cycle, magneto-hydrodynamics, di-
10 rect and indirect coal-fired turbines, integrated gas-
11 ification fuel cells, or as determined by the Adminis-
12 trator, in consultation with the Secretary of Energy,
13 a derivative of one or more of these technologies,
14 and any other technology capable of controlling mul-
15 tiple combustion emissions simultaneously with im-
16 proved boiler or generation efficiency and with sig-
17 nificantly greater waste reduction relative to the per-
18 formance of technology in widespread commercial
19 use as of November 15, 1990.

20 “(20) The term ‘reserve’ means any bank of al-
21 lowances established by the Administrator under this
22 subpart.

23 “(21)(A) The term ‘utility unit’ means—

1 “(i) a unit that serves a generator lo-
2 cated in any State and that produces elec-
3 tricity for sale; or

4 “(ii) a unit that, during 1985, served
5 a generator located in any State and that
6 produced electricity for sale.

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

9 “(i) was in commercial operation dur-
10 ing 1985; but

11 “(ii) did not during 1985, serve a gen-
12 erator in any State that produced elec-
13 tricity for sale shall not be a utility unit
14 for purposes of this subpart.

15 “(C) A unit that cogenerates steam and
16 electricity is not a ‘utility unit’ for purposes of
17 this subpart unless the unit is constructed for
18 the purpose of supplying, or commences con-
19 struction after November 15, 1990 and supplies
20 more than one-third of its potential electric out-
21 put capacity of more than 25 megawatts elec-
22 trical output to any utility power distribution
23 system for sale.

1 **“SEC. 412. ALLOWANCE ALLOCATION.**

2 “(a) Except as provided in sections 414(a)(2),
3 415(a)(3), and 416, beginning January 1, 2000, the Ad-
4 ministrator shall not allocate annual emission allowances
5 for sulfur dioxide from utility units in excess of 8.90 mil-
6 lion tons except that the Administrator shall not take into
7 account unused allowances carried forward by owners and
8 operators of affected units or by other persons holding
9 such allowances, following the year for which they were
10 allocated. If necessary to meeting the restrictions imposed
11 in the preceding sentence, the Administrator shall reduce,
12 pro rata, the basic phase II allowance allocations for each
13 unit subject to the requirements of section 414. Subject
14 to the provisions of section 417, the Administrator shall
15 allocate allowances for each affected unit at an affected
16 source annually, as provided in paragraphs (2) and (3)
17 and section 404. Except as provided in sections 416, the
18 removal of an existing affected unit or source from com-
19 mercial operation at any time after November 15, 1990
20 (whether before or after January 1, 1995, or January 1,
21 2000), shall not terminate or otherwise affect the alloca-
22 tion of allowances pursuant to section 413 or 414 to which
23 the unit is entitled. Prior to June 1, 1998, the Adminis-
24 trator shall publish a revised final statement of allowance
25 allocations, subject to the provisions of section 414(a)(2).

26 “(b) NEW UTILITY UNITS.—

1 “(1) After January 1, 2000 and through De-
2 cember 31, 2007, it shall be unlawful for a new util-
3 ity unit to emit an annual tonnage of sulfur dioxide
4 in excess of the number of allowances to emit held
5 for the unit by the unit’s owner or operator.

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

9 “(3) New utility units shall not be eligible for
10 an allocation of sulfur dioxide allowances under sub-
11 section (a)(1), unless the unit is subject to the provi-
12 sions of subsection (g)(2) or (3) of section 414. New
13 utility units may obtain allowances from any person,
14 in accordance with this title. The owner or operator
15 of any new utility unit in violation of subsection
16 (b)(1) or subsection(c)(3) shall be liable for fulfilling
17 the obligations specified in section 406.

18 “(c) PROHIBITIONS.—

19 “(1) It shall be unlawful for any person to hold,
20 use, or transfer any allowance allocated under this
21 subpart, except in accordance with regulations pro-
22 mulgated by the Administrator.

23 “(2) For any year 1995 through 2007, it shall
24 be unlawful for any affected unit to emit sulfur diox-
25 ide in excess of the number of allowances held for

1 that unit for that year by the owner or operator of
2 the unit.

3 “(3) Starting January 1, 2008, it shall be un-
4 lawful for the affected units at a source to emit a
5 total amount of sulfur dioxide during the year in ex-
6 cess of the number of allowances held for the source
7 for that year by the owner or operator of the source.

8 “(4) Upon the allocation of allowances under
9 this subpart, the prohibition in paragraphs (2) and
10 (3) shall supersede any other emission limitation ap-
11 plicable under this subpart to the units for which
12 such allowances are allocated.

13 “(d) In order to ensure electricity reliability, regula-
14 tions establishing a system for issuing, recording, and
15 tracking allowances under section 403(b) and this subpart
16 shall not prohibit or affect temporary increases and de-
17 creases in emissions within utility systems, power pools,
18 or utilities entering into allowance pool agreements, that
19 result from their operations, including emergencies and
20 central dispatch, and such temporary emissions increases
21 and decreases shall not require transfer of allowances
22 among units nor shall it require recording. The owners
23 or operators of such units shall act through a designated
24 representative. Notwithstanding the preceding sentence,
25 the total tonnage of emissions in any calendar year (cal-

1 culated at the end thereof) from all units in such a utility
2 system, power pool, or allowance pool agreements shall not
3 exceed the total allowances for such units for the calendar
4 year concerned, including for calendar years after 2007,
5 allowances held for such units by the owner or operator
6 of the sources where the units are located.

7 “(e) Where there are multiple holders of a legal or
8 equitable title to, or a leasehold interest in, an affected
9 unit, or where a utility or industrial customer purchases
10 power from an affected unit (or units) under life-of-the-
11 unit, firm power contractual arrangements, the certificate
12 of representation required under section 404(f) shall
13 state—

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

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

1 A passive lessor, or a person who has an equitable interest
2 through such lessor, whose rental payments are not based,
3 either directly or indirectly, upon the revenues or income
4 from the affected unit shall not be deemed to be a holder
5 of a legal, equitable, leasehold, or contractual interest for
6 the purpose of holding or distributing allowances as pro-
7 vided in this subsection, during either the term of such
8 leasehold or thereafter, unless expressly provided for in the
9 leasehold agreement. Except as otherwise provided in this
10 subsection, where all legal or equitable title to or interest
11 in an affected unit is held by a single person, the certifi-
12 cation shall state that all allowances under this subpart
13 received by the unit are deemed to be held for that person.

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

15 “(a) EMISSION LIMITATIONS.—

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

1 “(A) the emissions reduction requirements
2 applicable to such unit have been achieved pur-
3 suant to subsection (b) or (d); or

4 “(B) the owner or operator of such unit
5 holds allowances to emit not less than the unit’s
6 total annual emissions, except that, after Janu-
7 ary 1, 2000, the emissions limitations estab-
8 lished in this section shall be superseded by
9 those established in section 414. The owner or
10 operator of any unit in violation of this section
11 be fully liable for such violation including, but
12 not limited to, liability for fulfilling the obliga-
13 tions specified in section 406.

14 “(2) Not later than December 31, 1991, the
15 Administrator shall determine the total tonnage of
16 reductions in the emissions of sulfur dioxide from all
17 utility units in calendar year 1995 that will occur as
18 a result of compliance with the emissions limitation
19 requirements of this section, and shall establish a re-
20 serve of allowances equal in amount to the number
21 of tons determined thereby not to exceed a total of
22 3.50 million tons. In making such a determination,
23 the Administrator shall compute for each unit sub-
24 ject to the emissions limitation requirements of this
25 section the difference between—

1 “(A) the product of its baseline multiplied
2 by the lesser of each unit’s allowable 1985
3 emissions rate and its actual 1985 emissions
4 rate, divided by 2,000; and

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

18 “(3) In addition to allowances allocated pursu-
19 ant to paragraph (1), in each calendar year begin-
20 ning in 1995 and ending in 1999, inclusive, the Ad-
21 ministrator shall allocate for each unit on table A
22 that is located in the States of Illinois, Indiana, or
23 Ohio (other than units at Kyger Creek, Clifty Creek
24 and Joppa Steam), allowances in an amount equal
25 to 200,000 multiplied by the unit’s pro rata share

1 of the total number of allowances allocated for all
2 units on table A in the 3 States (other than units
3 at Kyger Creek, Clifty Creek, and Joppa Steam)
4 pursuant to paragraph (1). Such allowances shall be
5 excluded from the calculation of the reserve under
6 paragraph (2).

7 “(b) SUBSTITUTIONS.—The owner or operator of an
8 affected unit under subsection (a) may include in its sec-
9 tion 404 permit application and proposed compliance plan
10 a proposal to reassign, in whole or in part, the affected
11 unit’s sulfur dioxide reduction requirements to any other
12 unit(s) under the control of such owner or operator. Such
13 proposal shall specify—

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

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

23 “(3) calculation of the annual average tonnage
24 for calendar years 1985, 1986, and 1987, emitted by
25 the substitute unit or units, based on the baseline

1 for each unit, as defined in section 411(4), multi-
2 plied by the lesser of the unit's actual or allowable
3 1985 emissions rate;

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

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

14 “(6) such other information as the Adminis-
15 trator may require.

16 “(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION
17 PROPOSALS.—

18 “(1) The Administrator shall take final action
19 on such substitution proposal in accordance with
20 section 404(c) if the substitution proposal fulfills the
21 requirements of this subsection. The Administrator
22 may approve a substitution proposal in whole or in
23 part and with such modifications or conditions as
24 may be consistent with the orderly functioning of the
25 allowance system and which will ensure the emis-

1 sions reductions contemplated by this title. If a pro-
2 posal does not meet the requirements of subsection
3 (b), the Administrator shall disapprove it. The owner
4 or operator of a unit listed in table A shall not sub-
5 stitute another unit or units without the prior ap-
6 proval of the Administrator.

7 “(2) Upon approval of a substitution proposal,
8 each substitute unit, and each source with such unit,
9 shall be deemed affected under this title, and the
10 Administrator shall issue a permit to the original
11 and substitute affected source and unit in accord-
12 ance with the approved substitution plan and section
13 404. The Administrator shall allocate allowances for
14 the original and substitute affected units in accord-
15 ance with the approved substitution proposal pursu-
16 ant to section 412. It shall be unlawful for any
17 source or unit that is allocated allowances pursuant
18 to this section to emit sulfur dioxide in excess of the
19 emissions limitation provided for in the approved
20 substitution permit and plan unless the owner or op-
21 erator of each unit governed by the permit and ap-
22 proved substitution plan holds allowances to emit
23 not less than the unit’s total annual emissions. The
24 owner or operator of any original or substitute af-
25 fected unit operated in violation of this subsection

1 shall be fully liable for such violation, including li-
2 ability for fulfilling the obligations specified in sec-
3 tion 406. If a substitution proposal is disapproved,
4 the Administrator shall allocate allowances to the
5 original affected unit or units in accordance with
6 subsection (a).

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

8 “(1) The owner or operator of any affected unit
9 subject to an emissions limitation requirement under
10 this section may petition the Administrator in its
11 permit application under section 404 for an exten-
12 sion of 2 years of the deadline for meeting such re-
13 quirement, provided that the owner or operator of
14 any such unit holds allowances to emit not less than
15 the unit’s total annual emissions for each of the 2
16 years of the period of extension. To qualify for such
17 an extension, the affected unit must either employ a
18 qualifying phase I technology, or transfer its phase
19 I emissions reduction obligation to a unit employing
20 a qualifying phase I technology. Such transfer shall
21 be accomplished in accordance with a compliance
22 plan, submitted and approved under section 404,
23 that shall govern operations at all units included in
24 the transfer, and that specifies the emissions reduc-
25 tion requirements imposed pursuant to this title.

1 “(2) Such extension proposal shall—

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

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

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

17 “(D) require CEMS on both the eligible
18 phase I extension unit or units and the transfer
19 unit or units beginning no later than January
20 1, 1995; and

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

1 “(3) The Administrator shall review and take
2 final action on each extension proposal in order of
3 receipt, consistent with section 404, and for an ap-
4 proved proposal shall designate the unit or units as
5 an eligible phase I extension unit. The Administrator
6 may approve an extension proposal in whole or in
7 part, and with such modifications or conditions as
8 may be necessary, consistent with the orderly func-
9 tioning of the allowance system, and to ensure the
10 emissions reductions contemplated by the subpart.

11 “(4) In order to determine the number of pro-
12 posals eligible for allocations from the reserve under
13 subsection (a)(2) and the number of the allowances
14 remaining available after each proposal is acted
15 upon, the Administrator shall reduce the total num-
16 ber of allowances remaining available in the reserve
17 by the number of allowances calculated according to
18 subparagraph (A), (B), and (C) until either no al-
19 lowances remain available in the reserve for further
20 allocation or all approved proposals have been acted
21 upon. If no allowances remain available in the re-
22 serve for further allocation before all proposals have
23 been acted upon by the Administrator, any pending
24 proposals shall be disapproved. The Administrator
25 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) Each eligible phase I extension unit shall
24 receive allowances determined under subsection
25 (a)(1) or (c) of this section. In addition, for calendar

1 year 1995, the Administrator shall allocate to each
2 eligible phase I extension unit, from the allowance
3 reserve created pursuant to subsection (a)(2), allow-
4 ances equal to the difference between the lesser of
5 the average annual emissions in calendar years 1988
6 and 1989 or its projected emission tonnage for cal-
7 endar year 1995 and the product of the unit's base-
8 line multiplied by an emission rate of 2.50 lbs/
9 mmBtu, divided by 2,000. In calendar year 1996,
10 the Administrator shall allocate for each eligible
11 unit, from the allowance reserve created pursuant to
12 subsection (a)(2), allowances equal to the difference
13 between the lesser of the average annual emissions
14 in calendar years 1988 and 1989 or its projected
15 emissions tonnage for calendar year 1996 and the
16 product of the unit's baseline multiplied by an emis-
17 sion rate of 2.50 lbs/mmBtu, divided by 2,000. It
18 shall be unlawful for any source or unit subject to
19 an approved extension plan under this subsection to
20 emit sulfur dioxide in excess of the emissions limita-
21 tions provided for in the permit and approved exten-
22 sion plan, unless the owner or operator of each unit
23 governed by the permit and approved plan holds al-
24 lowances to emit not less than the unit's total an-
25 nual emissions.

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

14 “(7) After January 1, 1997, in addition to any
15 liability under this Act, including under section 406,
16 if any eligible phase I extension unit employing
17 qualifying phase I technology or any transfer unit
18 under this subsection emits sulfur dioxide in excess
19 of the annual tonnage limitation specified in the ex-
20 tension plan, as approved in paragraph (2) of this
21 subsection, the Administrator shall, in the calendar
22 year following such excess, deduct allowances equal
23 to the amount of such excess from such unit’s an-
24 nual allowance allocation.

25 “(e) EARLY REDUCTIONS.—

1 “(1) In the case of a unit that receives author-
2 zation from the Governor of the State in which such
3 unit is located to make reductions in the emissions
4 of sulfur dioxide prior to calendar year 1995 and
5 that is part of a utility system that meets the fol-
6 lowing requirements—

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

12 “(B) the weighted capacity factor of all
13 coal-fired units within the utility system aver-
14 aged over the period from January 1, 1985,
15 through December 31, 1987, was below 50 per-
16 cent, the Administrator shall allocate allowances
17 under this paragraph for the unit pursuant to
18 this subsection. The Administrator shall allo-
19 cate allowances for a unit that is an affected
20 unit pursuant to section 414 (but is not also an
21 affected unit under this section) and part of a
22 utility system that includes one or more af-
23 fected units under section 414 for reductions in
24 the emissions of sulfur dioxide made during the
25 period 1995–1999 if the unit meets the require-

1 ments of this subsection and the requirements
2 of the preceding sentence, except that for the
3 purposes of applying this subsection to any
4 such unit, the prior year concerned as specified
5 below, shall be any year after January 1, 1995
6 but prior to January 1, 2000.

7 “(2) In the case of an affected unit under this
8 section described in subparagraph (A), the allow-
9 ances allocated under this subsection for early reduc-
10 tions in any prior year may not exceed the amount
11 which (A) the product of the unit’s baseline multi-
12 plied by the unit’s 1985 actual sulfur dioxide emis-
13 sion rate (in lbs per mmBtu), divided by 2,000 ex-
14 ceeds (B) the allowances specified for such unit in
15 table A. In the case of an affected unit under section
16 414, the allowances awarded under this subsection
17 for early reductions in any prior year may not ex-
18 ceed the amount by which—

19 “(A) the product of—

20 “(i) the quantity of fossil fuel con-
21 sumed by the unit (in mmBtu) in the prior
22 year multiplied by—

23 “(ii) the lesser of—

24 “(I) 2.50, or

1 “(II) the most stringent emission
 2 rate (in lbs per mmBtu) applicable to
 3 the unit under the applicable imple-
 4 mentation plan—

5 divided by 2,000 exceeds

6 “(B) the unit’s actual tonnage of sulfur di-
 7 oxide emission for the prior year concerned.

8 Allowances allocated under this subsection for units
 9 may be allocated only for emission reductions
 10 achieved as a result of physical changes or changes
 11 in the method of operation made after November 15,
 12 1990, including changes in the type or quantity of
 13 fossil fuel consumed.

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

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

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310

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

State	Plant name	Generator	Phase I allowances
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150

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

State	Plant name	Generator	Phase I allowances
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E.W. Stout	5	3,880
		6	4,770
		7	23,610
	F.B. Culley	2	4,290
		3	16,970
	F.E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410

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

State	Plant name	Generator	Phase I allowances
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650

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

State	Plant name	Generator	Phase I allowances
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320

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

State	Plant name	Generator	Phase I allowances
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220

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

State	Plant name	Generator	Phase I allowances
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

1 “(f) ENERGY CONSERVATION AND RENEWABLE EN-

2 ERGY.—

3 “(1) DEFINITIONS.—As used 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) of this subsection shall provide
6 that for each ton of sulfur dioxide emissions
7 avoided by an electric utility, during the appli-
8 cable period, through the use of qualified en-
9 ergy conservation measures or qualified renew-
10 able energy, the Administrator shall allocate a
11 single allowance to such electric utility, on a
12 first-come-first-served basis from the Conserva-
13 tion and Renewable Energy Reserve established
14 under subsection (g), up to a total of 300,000
15 allowances for allocation 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 or participating in the qualified energy
22 conservation measures or qualified renew-
23 able energy.

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) In the case of electric utilities
18 subject to the jurisdiction of a State regu-
19 latory authority such plan shall have been
20 approved by such authority. For electric
21 utilities not subject to the jurisdiction of a
22 State regulatory authority such plan shall
23 have been approved by the Administrator.

24 “(iv) In the case of qualified energy
25 conservation measures undertaken by a

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

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

22 “(C) PERIOD OF APPLICABILITY.—Allow-
23 ances under this subsection shall be allocated
24 only with respect to kilowatt hours of electric
25 energy saved by qualified energy conservation

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

10 “(D) Determination of avoided emis-
11 sions.—

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

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

21 “(II) calculates, in accordance
22 with subparagraphs (F) and (G), the
23 number of tons of emissions avoided
24 by reason of the implementation of

1 such measures or the use of such re-
2 newable energy sources; and

3 “(III) demonstrates that the re-
4 quirements of subparagraph (B) have
5 been met.

6 “(ii) APPROVAL.—Such application
7 for allowances by a State-regulated electric
8 utility shall require approval by the State
9 regulatory authority with jurisdiction over
10 such electric utility. The authority shall re-
11 view the application for accuracy and com-
12 pliance with this subsection and the rules
13 under this subsection. Electric utilities
14 whose retail rates are not subject to the ju-
15 risdiction of a State regulatory authority
16 shall apply directly to the Administrator
17 for such approval.

18 “(E) AVOIDED EMISSIONS FROM QUALI-
19 FIED ENERGY CONSERVATION MEASURES.—For
20 the purposes of this subsection, the emission
21 tonnage deemed avoided by reason of the imple-
22 mentation of qualified energy conservation
23 measures for any calendar year shall be a ton-
24 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 the product
6 so derived by 2,000.

7 “(F) AVOIDED EMISSIONS FROM THE USE
8 OF QUALIFIED RENEWABLE ENERGY.—The
9 emissions tonnage deemed avoided by reason of
10 the use of qualified renewable energy by an
11 electric utility for any calendar year shall be a
12 tonnage equal to the product of multiplying—

13 “(i) the actual kilowatt hours gen-
14 erated by, or purchased from, qualified re-
15 newable energy; by

16 “(ii) 0.004, and dividing the product
17 so derived by 2,000.

18 “(G) PROHIBITIONS.—

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

23 “(ii) No allowances shall be allocated
24 for energy conservation measures or renew-

1 able energy that were operational before
2 January 1, 1992.

3 “(3) SAVINGS PROVISION.—Nothing in this sub-
4 section precludes a State or State regulatory author-
5 ity from providing additional incentives to utilities to
6 encourage investment in demand-side resources.

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

24 “(g) CONSERVATION AND RENEWABLE ENERGY RE-
25 SERVE.—The Administrator shall establish a Conservation

1 and Renewable Energy Reserve under this subsection. Be-
2 ginning on January 1, 1995, the Administrator may allo-
3 cate from the Conservation and Renewable Energy Re-
4 serve an amount equal to a total of 300,000 allowances
5 for emissions of sulfur dioxide pursuant to section 411.
6 In order to provide 300,000 allowances for such reserve,
7 in each year beginning in calendar year 2000 and until
8 calendar year 2009, inclusive, the Administrator shall re-
9 duce each unit's basic phase II allowance allocation on the
10 basis of its pro rata share of 30,000 allowances. Notwith-
11 standing the prior sentence, if allowances remain in the
12 reserve on January 1, 2010, the Administrator shall allo-
13 cate such allowances for affected units under section 414
14 on a pro rata basis. For purposes of this subsection, for
15 any unit subject to the emissions limitation requirements
16 of section 414, the term 'pro rata basis' refers to the ratio
17 which the reductions made in such unit's allowances in
18 order to establish the reserve under this subsection bears
19 to the total of such reductions for all such units.

20 “(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR
21 UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL
22 BASELINE.—

23 “(1) OPTIONAL BASELINE FOR UNITS IN CER-
24 TAIN SYSTEMS.—In the case of a unit subject to the

1 emissions limitation requirements of this section
2 which (as of November 15, 1990)—

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

5 “(B) has decreased its sulfur dioxide emis-
6 sions rate by 60 percent or greater since 1980,
7 and

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

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

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

19 “(2) ALLOWANCE ALLOCATION.—Whenever a
20 unit referred to in paragraph (1) elects to calculate
21 its baseline as provided in clause (ii) of paragraph
22 (1), the Administrator shall allocate allowances for
23 the unit pursuant to section 412(a), this section,
24 and section 414 (as basic phase II allowance alloca-
25 tions) in an amount equal to the baseline selected

1 multiplied by the lower of the average annual emis-
2 sion rate for such unit in 1989, or 1.0 lbs/mmBtu.
3 Such allowance allocation shall be in lieu of any allo-
4 cation of allowances under this section and section
5 414.

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

7 “(a) APPLICABILITY.—

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

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

1 “(3) In addition to basic phase II allowances al-
2 locations and phase II bonus allowance allocations,
3 beginning January 1, 2000, the Administrator shall
4 allocate for each unit listed on table A in section
5 413 (other than units at Kyger Creek, Clifty Creek,
6 and Joppa Stream) and located in the States of Illi-
7 nois, Indiana, Ohio, Georgia, Alabama, Missouri,
8 Pennsylvania, West Virginia, Kentucky, or Ten-
9 nessee allowances in an amount equal to 50,000
10 multiplied by the unit’s pro rata share of the total
11 number of basic allowances allocated for all units
12 listed on table A (other than units at Kyger Creek,
13 Clifty Creek, and Joppa Stream). Allowances allo-
14 cated pursuant to this paragraph shall not be sub-
15 ject to the 8,900,000 ton limitation in section
16 412(a).

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

19 “(1) Except as otherwise provided in paragraph
20 (3), after January 1, 2000, it shall be unlawful for
21 any existing utility unit that serves a generator with
22 nameplate capacity equal to, or greater, than 75
23 MWe and an actual 1985 emission rate equal to or
24 greater than 1.20 lbs/mmBtu to exceed an annual
25 sulfur dioxide tonnage emission limitation equal to

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

10 “(2) In addition to allowances allocated pursu-
11 ant to paragraph (1) and section 412(a) as basic
12 phase II allowance allocations, beginning January 1,
13 2000, and for each calendar year thereafter until
14 and including 2009, the Administrator shall allocate
15 annually for each unit subject to the emissions limi-
16 tation requirements of paragraph (1) with an actual
17 1985 emissions rate greater than 1.20 lbs/mmBtu
18 and less than 2.50 lbs/mmBtu and a baseline capac-
19 ity factor of less than 60 percent, allowances from
20 the reserve created pursuant to subsection (a)(2) in
21 an amount equal to 1.20 lbs/mmBtu multiplied by
22 50 percent of the difference, on a Btu basis, between
23 the unit's baseline and the unit's fuel consumption
24 at a 60 percent capacity factor.

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

22 “(4) After January 1, 2000, the Administrator
23 shall allocate annually for each unit, subject to the
24 emissions limitation requirements of paragraph (1),
25 which is located in a State with an installed elec-

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

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

22 “(1) Except as otherwise provided in paragraph
23 (3), after January 1, 2000, it shall be unlawful for
24 a coal or oil-fired existing utility unit that serves a
25 generator with nameplate capacity of less than 75

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

16 “(2) After January 1, 2000, it shall be unlawful
17 for a coal or oil-fired existing utility unit that serves
18 a generator with nameplate capacity of less than 75
19 MWe and an actual 1985 emission rate equal to, or
20 greater than, 1.20 lbs/mmBtu (excluding units subject
21 to section 111 of the Act or to a federally enforceable
22 emissions limitation for sulfur dioxide equivalent to an
23 annual rate of less than 1.20 lbs/mmBtu) and which is a
24 unit owned by a utility operating company whose aggregate
25 nameplate fossil fuel

1 steam-electric capacity is, as of December 31, 1989,
2 less than 250 MWe, to exceed an annual sulfur diox-
3 ide tonnage emissions limitation equal to the product
4 of the unit's baseline multiplied by the lesser of its
5 actual 1985 emissions rate or its allowable 1985
6 emissions rate, divided by 2,000, unless the owner or
7 operator of such unit holds allowances to emit not
8 less than the unit's total annual emissions, for a
9 year after 2007, or the owner or operator of the
10 source that includes such unit holds allowances to
11 emit not less than the total annual emissions of all
12 affected units at the source.

13 “(3) After January 1, 2000 it shall be unlawful
14 for any existing utility unit with a nameplate capac-
15 ity below 75 MWe and an actual 1985 emissions
16 rate equal to, or greater than, 1.20 lbs/mmBtu
17 which became operational on or before December 31,
18 1965, which is owned by a utility operating company
19 with, as of December 31, 1989, a total fossil fuel
20 steam-electric generating capacity greater than 250
21 MWe, and less than 450 MWe which serves fewer
22 than 78,000 electrical customers as of November 15,
23 1990, to exceed an annual sulfur dioxide emissions
24 tonnage limitation equal to the product of its base-
25 line multiplied by the lesser of its actual or allowable

1 1985 emission rate, divided by 2,000, unless the
2 owner or operator holds allowances to emit not less
3 than the units total annual emissions or, for a year
4 after 2007, unless the owner or operator of the
5 source that includes such unit holds allowances to
6 emit not less than the total annual emissions of all
7 affected units at the source. After January 1, 2010,
8 it shall be unlawful for each unit subject to the
9 emissions limitation requirements of this paragraph
10 to exceed an annual emissions tonnage limitation
11 equal to the product of its baseline multiplied by an
12 emissions rate of 1.20 lbs/mmBtu, divided by 2,000,
13 unless the owner or operator holds allowances to
14 emit not less than the unit's total annual emissions
15 for a year after 2007, or the owner or operator of
16 the source that includes such unit holds allowances
17 to emit not less than the total annual emissions of
18 all affected units at the source.

19 “(4) In addition to allowances allocated pursu-
20 ant to paragraph (1) and section 412(a) as basic
21 phase II allowance allocations, beginning January 1,
22 2000, and for each calendar year thereafter until
23 and including 2009, inclusive, the Administrator
24 shall allocate annually for each unit subject to the
25 emissions limitation requirements of paragraph (1)

1 with an actual 1985 emissions rate equal to, or
2 greater than, 1.20 lbs/mmBtu and less than 2.50
3 lbs/mmBtu and a baseline capacity factor of less
4 than 60 percent, allowances from the reserve created
5 pursuant to subsection (a)(2) in an amount equal
6 to 1.20 lbs/mmBtu multiplied by 50 percent of the
7 difference, on a Btu basis, between the unit's base-
8 line and the unit's fuel consumption at a 60 percent
9 capacity factor.

10 “(5) After January 1, 2000, it shall be unlawful
11 for any existing unit with a nameplate capacity
12 below 75 MWe and an actual 1985 emissions rate
13 equal to, or greater than, 1.20 lbs/mmBtu which is
14 part of an electric utility system which, as of No-
15 vember 15, 1990—

16 “(A) has at least 20 percent of its fossil-
17 fuel capacity controlled by flue gas
18 desulfurization devices;

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

22 “(C) has large units (greater than 400
23 MWe) all of which have difficult or very dif-
24 ficult FGD Retrofit Cost Factors (according to
25 the Emissions and the FGD Retrofit Feasibility

1 at the 200 Top Emitting Generating Stations,
2 prepared for the United States Environmental
3 Protection Agency on January 10, 1986) to ex-
4 ceed an annual sulfur dioxide emissions tonnage
5 limitation equal to the product of its baseline
6 multiplied by an emissions rate of 2.5 lbs/
7 mmBtu, divided by 2,000, unless the owner or
8 operator holds allowances to emit not less than
9 the unit's total annual emissions, for a year
10 after 2007, or the owner or operator of the
11 source that includes such unit holds allowances
12 to emit not less than the total annual emissions
13 of all affected units at the source. After Janu-
14 ary 1, 2010, it shall be unlawful for each unit
15 subject to the emissions limitation requirements
16 of this paragraph to exceed an annual emissions
17 tonnage limitation equal to the product of its
18 baseline multiplied by an emissions rate of 1.20
19 lbs/mmBtu, divided by 2,000, unless the owner
20 or operator holds for use allowances to emit not
21 less than the unit's total annual emissions for
22 a year after 2007, or the owner or operator of
23 the source that includes such unit holds allow-
24 ances to emit not less than the total annual
25 emissions of all affected units at the source.

1 “(d) COAL-FIRED UNITS BELOW 1.20 LBS/
2 MMBTU.—

3 “(1) After January 1, 2000, it shall be unlawful
4 for any existing coal-fired utility unit the lesser of
5 whose actual or allowable 1985 sulfur dioxide emis-
6 sions rate is less than 0.60 lbs/mmBtu to exceed an
7 annual sulfur dioxide tonnage emission limitation
8 equal to the product of the unit’s baseline multiplied
9 by—

10 “(A) the lesser of 0.60 lbs/mmBtu or the
11 unit’s allowable 1985 emissions rate; and

12 “(B) a numerical factor of 120 percent, di-
13 vided by 2,000, unless the owner or operator of
14 such unit holds allowances to emit not less than
15 the unit’s total annual emissions for a year
16 after 2007, or the owner or operator of the
17 source that includes such unit holds allowances
18 to emit not less than the total annual emissions
19 of all affected units at the source.

20 “(2) After January 1, 2000, it shall be unlawful
21 for any existing coal-fired utility unit the lesser of
22 whose actual or allowable 1985 sulfur dioxide emis-
23 sions rate is equal to, or greater than, 0.60 lbs/
24 mmBtu and less than 1.20 lbs/mmBtu to exceed an
25 annual sulfur dioxide tonnage emissions limitation

1 equal to the product of the unit's baseline multiplied
2 by (A) the lesser of its actual 1985 emissions rate
3 or its allowable 1985 emissions rate, and (B) a nu-
4 merical factor of 120 percent, divided by 2,000, un-
5 less the owner or operator of such unit holds allow-
6 ances to emit not less than the unit's total annual
7 emissions for a year after 2007, or the owner or op-
8 erator of the source that includes such unit holds al-
9 lowances to emit not less than the total annual emis-
10 sions of all affected units at the source.

11 “(3)(A) In addition to allowances allocated pur-
12 suant to paragraph (1) and section 412(a) as basic
13 phase II allowance allocations, at the election of the
14 designated representative of the operating company,
15 beginning January 1, 2000, and for each calendar
16 year thereafter until and including 2009, the Admin-
17 istrator shall allocate annually for each unit subject
18 to the emissions limitation requirements of para-
19 graph (1) allowances from the reserve created pursu-
20 ant to subsection (a)(2) in an amount equal to the
21 amount by which—

22 “(i) the product of the lesser of 0.60 lbs/
23 mmBtu or the unit's allowable 1985 emissions
24 rate multiplied by the unit's baseline adjusted

1 to reflect operation at a 60 percent capacity
2 factor, divided by 2,000, exceeds

3 “(ii) the number of allowances allocated
4 for the unit pursuant to paragraph (1) and sec-
5 tion 403(a)(1) as basic phase II allowance allo-
6 cations.

7 “(B) In addition to allowances allocated pursu-
8 ant to paragraph (2) and section 412(a) as basic
9 phase II allowance allocations, at the election of the
10 designated representative of the operating company,
11 beginning January 1, 2000, and for each calendar
12 year thereafter until and including 2009, the Admin-
13 istrator shall allocate annually for each unit subject
14 to the emissions limitation requirements of para-
15 graph (2) allowances from the reserve created pursu-
16 ant to subsection (a)(2) in an amount equal to the
17 amount by which—

18 “(i) the product of the lesser of the unit’s
19 actual 1985 emissions rate or its allowable
20 1985 emissions rate multiplied by the unit’s
21 baseline adjusted to reflect operation at a 60
22 percent capacity factor, divided by 2,000; ex-
23 ceeds

24 “(ii) the number of allowances allocated
25 for the unit pursuant to paragraph (2) and sec-

1 tion 412(a) as basic phase II allowance alloca-
2 tions.

3 “(C) An operating company with units subject
4 to the emissions limitation requirements of this sub-
5 section may elect the allocation of allowances as pro-
6 vided under subparagraphs (A) and (B). Such elec-
7 tion shall apply to the annual allowance allocation
8 for each and every unit in the operating company
9 subject to the emissions limitation requirements of
10 this subsection. The Administrator shall allocate al-
11 lowances pursuant to subparagraphs (A) and (B)
12 only in accordance with this subparagraph.

13 “(4) Notwithstanding any other provision of
14 this section, at the election of the owner or operator,
15 after January 1, 2000, the Administrator shall allo-
16 cate in lieu of allocation, pursuant to paragraph (1),
17 (2), (3), (5), or (6), allowances for a unit subject to
18 the emissions limitation requirements of this sub-
19 section which commenced commercial operation on
20 or after January 1, 1981 and before December 31,
21 1985, which was subject to, and in compliance with,
22 section 111 of the Act in an amount equal to the
23 unit’s annual fuel consumption, on a Btu basis, at
24 a 65-percent-capacity factor multiplied by the unit’s
25 allowable 1985 emissions rate, divided by 2,000.

1 “(5) For the purposes of this section, in the
2 case of an oil- and gas-fired unit which has been
3 awarded a clean coal technology demonstration grant
4 as of January 1, 1991, by the United States Depart-
5 ment of Energy, beginning January 1, 2002, the Ad-
6 ministrator shall allocate for the unit allowances in
7 an amount equal to the unit’s baseline multiplied by
8 1.20 lbs/mmBtu, divided by 2,000.

9 “(e) OIL AND GAS-FIRED UNITS EQUAL TO OR
10 GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20
11 LBS/MMBTU.—After January 1, 2000, it shall be unlawful
12 for any existing oil and gas-fired utility unit the lesser of
13 whose actual or allowable 1985 sulfur dioxide emission
14 rate is equal to, or greater than, 0.60 lbs/mmBtu, but less
15 than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide
16 tonnage limitation equal to the product of the unit’s base-
17 line multiplied by (A) the lesser of the unit’s allowable
18 1985 emissions rate or its actual 1985 emissions rate and
19 (B) a numerical factor of 120 percent divided by 2,000,
20 unless the owner or operator of such unit holds allowances
21 to emit not less than the unit’s total annual emissions for
22 a year after 2007, or the owner or operator of the source
23 that includes such unit holds allowances to emit not less
24 than the total annual emissions of all affected units at
25 the source.

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

3 “(1) After January 1, 2000, it shall be unlawful
4 for any oil and gas-fired existing utility unit the less-
5 er of whose actual or allowance 1985 emission rate
6 is less than 0.60 lbs/mmBtu and whose average an-
7 nual fuel consumption during the period 1980
8 through 1989 on a Btu basis was 90 percent or less
9 in the form of natural gas to exceed an annual sul-
10 fur dioxide tonnage emissions limitation equal to the
11 product of the unit’s baseline multiplied by—

12 “(A) the lesser of 0.60 lbs/mmBtu or the
13 unit’s allowance 1985 emissions, and

14 “(B) a numerical factor of 120 percent, di-
15 vided by 2,000, unless the owner or operator of
16 such unit holds allowances to emit not less than
17 the unit’s total annual emissions, for a year
18 after 2007, or the owner or operator of the
19 source that includes such unit holds allowances
20 to emit not less than the total annual emissions
21 of all affected units at the source.

22 “(2) In addition to allowances allocated pursu-
23 ant to paragraph (1) as basic phase II allowance al-
24 locations and section 412(a), beginning January 1,
25 2000, the Administrator shall, in the case of any

1 unit operated by a utility that furnishes electricity,
2 electric energy, steam, and natural gas within an
3 area consisting of a city and 1 contiguous county,
4 and in the case of any unit owned by a State author-
5 ity, the output of which unit is furnished within that
6 same area consisting of a city and 1 contiguous
7 county, the Administrator shall allocate for each unit
8 in the utility its pro rata share of 7,000 allowances
9 and for each unit in the State authority its pro rata
10 share of 2,000 allowances.

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

13 “(1) After January 1, 2000, it shall be unlawful
14 for any utility unit that has commenced commercial
15 operation on or after January 1, 1986, but not later
16 than September 30, 1990 to exceed an annual ton-
17 nage emission limitation equal to the product of the
18 unit’s annual fuel consumption, on a Btu basis, at
19 a 65-percent-capacity factor multiplied by the unit’s
20 allowance 1985 sulfur dioxide emission rate (con-
21 verted, if necessary, to pounds per mmBtu), divided
22 by 2,000 unless the owner or operator of such unit
23 holds allowances to emit not less than the unit’s
24 total annual emissions for a year after 2007, or the
25 owner or operator of the source that includes such

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

3 “(2) After January 1, 2000, the Administrator
 4 shall allocate allowances pursuant to section 411 to
 5 each unit which is listed in table B of this paragraph
 6 in an annual amount equal to the amount specified
 7 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

8 Notwithstanding any other paragraph of this subsection,
 9 for units subject to this paragraph, the Administrator
 10 shall not allocate allowances pursuant to any other para-
 11 graph of this subsection, provided that the owner or oper-
 12 ator of a unit listed on table B may elect an allocation
 13 of allowances under another paragraph of this subsection
 14 in lieu of an allocation under this paragraph.

15 “(3) Beginning January 1, 2000, the Adminis-
 16 trator shall allocate to the owner or operator of any
 17 utility unit that commences commercial operation, or
 18 has commenced commercial operation, on or after

1 October 1, 1990, but not later than December 31,
2 1992, allowances in an amount equal to the product
3 of the unit's annual fuel consumption, on a Btu
4 basis, at a 65 percent capacity factor multiplied by
5 the lesser of 0.30 lbs/mmBtu or the unit's allowable
6 sulfur dioxide emission rate (converted, if necessary,
7 to pounds per mmBtu), divided by 2,000.

8 “(4) Beginning January 1, 2000, the Adminis-
9 trator shall allocate to the owner or operator of any
10 utility unit that has commenced construction before
11 December 31, 1990 and that commences commercial
12 operation between January 1, 1993, and December
13 31, 1995, allowances in an amount equal to the
14 product of the unit's annual fuel consumption, on a
15 Btu basis, at a 65 percent capacity factor multiplied
16 by the lesser of 0.30 lbs/mmBtu or the unit's allow-
17 able sulfur dioxide emission rate (converted, if nec-
18 essary, to pounds per mmBtu), divided by 2,000.

19 “(5) After January 1, 2000, it shall be unlawful
20 for any existing utility unit that has completed con-
21 version from predominantly gas fired existing oper-
22 ation to coal fired operation between January 1,
23 1985, and December 31, 1987, for which there has
24 been allocated a proposed or final prohibition order
25 pursuant to section 301(b) of the Powerplant and

1 Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et
2 seq., repealed 1987) to exceed an annual sulfur diox-
3 ide tonnage emissions limitation equal to the product
4 of the unit's annual fuel consumption, on a Btu
5 basis, at a 65 percent capacity factor multiplied by
6 the lesser of 1.20 lbs/mmBtu or the unit's allowable
7 1987 sulfur dioxide emissions rate, divided by 2,000,
8 unless the owner or operator of such unit has ob-
9 tained allowances equal to its actual emissions for a
10 year after 2007, or the owner or operator of the
11 source that includes such unit holds allowances to
12 emit not less than the total annual emissions of all
13 affected units at the source.

14 “(6) Unless the Administrator has approved a
15 designation of such facility under section 417, the
16 provisions of this subpart shall not apply to a ‘quali-
17 fying small power production facility’ or ‘qualifying
18 cogeneration facility’ (within the meaning of section
19 3(17)(C) or 3(18)(B) of the Federal Power Act) or
20 to a ‘new independent power production facility’ if,
21 as of November 15, 1990—

22 “(A) an applicable power sales agreement
23 has been executed;

24 “(B) the facility is the subject of a State
25 regulatory authority order requiring an electric

1 utility to enter into a power sales agreement
2 with, purchase capacity from, or (for purposes
3 of establishing terms and conditions of the elec-
4 tric utility's purchase of power) enter into arbi-
5 tration concerning, the facility;

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

12 “(D) the facility has been selected as a
13 winning bidder in a utility competitive bid solie-
14 itation.

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

17 “(1) After January 1, 2000, it shall be unlawful
18 for any oil- and gas-fired utility unit whose average
19 annual fuel consumption during the period 1980
20 through 1989 on a Btu basis exceeded 90 percent in
21 the form of natural gas to exceed an annual sulfur
22 dioxide tonnage limitation equal to the product of
23 the unit's baseline multiplied by the unit's actual
24 1985 emissions rate divided by 2,000 unless the
25 owner or operator of such unit holds allowances to

1 emit not less than the unit's total annual emissions
2 for a year after 2007, or the owner or operator of
3 the source that includes such unit holds allowances
4 to emit not less than the total annual emissions of
5 all affected units at the source.

6 “(2) In addition to allowances allocated pursu-
7 ant to paragraph (1) and section 412(a) as basic
8 phase II allowance allocations, beginning January 1,
9 2000, and for each calendar year thereafter until
10 and including 2009, the Administrator shall allocate
11 annually for each unit subject to the emissions limi-
12 tation requirements of paragraph (1) allowances
13 from the reserve created pursuant to subsection
14 (a)(2) in an amount equal to the unit's baseline mul-
15 tiplied by 0.050 lbs/mmBtu, divided by 2,000.

16 “(3) In addition to allowances allocated pursu-
17 ant to paragraph (1) and section 412(a), beginning
18 January 1, 2010, the Administrator shall allocate
19 annually for each unit subject to the emissions limi-
20 tation requirements of paragraph (1) allowances in
21 an amount equal to the unit's baseline multiplied by
22 0.050 lbs/mmBtu, divided by 2,000.

23 “(i) UNITS IN HIGH GROWTH STATES.—

24 “(1) In addition to allowances allocated pursu-
25 ant to this section and section 412(a) as basic phase

1 II allowance allocations, beginning January 1, 2000,
2 the Administrator shall allocate annually allowances
3 for each unit, subject to an emissions limitation re-
4 quirement under this section, and located in a State
5 that—

6 “(A) has experienced a growth in popu-
7 lation in excess of 25 percent between 1980 and
8 1988 according to State Population and House-
9 hold Estimates, With Age, Sex, and Compo-
10 nents of Change: 1981–1988 allocated by the
11 United States Department of Commerce, and

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

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

24 “(ii) the number of allowances allo-
25 cated for the unit pursuant to the emis-

1 sions limitation requirements of this sec-
2 tion:

3 *Provided*, That the number of allowances allo-
4 cated pursuant to this subsection shall not ex-
5 ceed an annual total of 40,000. If necessary to
6 meeting the 40,000 allowance restriction im-
7 posed under this subsection the Administrator
8 shall reduce, pro rata, the additional annual al-
9 lowances allocated to each unit under this sub-
10 section.

11 “(2) Beginning January 1, 2000, in addition to
12 allowances allocated pursuant to this section and
13 section 403(a)(1) as basic phase II allowance alloca-
14 tions, the Administrator shall allocate annually for
15 each unit subject to the emissions limitation require-
16 ments of subsection (b)(1)—

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

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

22 “(C) which commenced operation after
23 January 1, 1970;

24 “(D) which is owned by a utility company
25 whose combined commercial and industrial kilo-

1 watt-hour sales have increased by more than 20
2 percent between calendar year 1980 and No-
3 vember 15, 1990; and

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

8 “(i) the number of allowances that
9 would be allocated for the unit pursuant to
10 the emissions limitation requirements of
11 subsection (b)(1) adjusted to reflect the
12 unit’s annual average fuel consumption on
13 a Btu basis for any three consecutive years
14 between 1980 and 1989 (inclusive) as
15 elected by the owner or operator; and

16 “(ii) the number of allowances allo-
17 cated for the unit pursuant to the emis-
18 sions limitation requirements of subsection
19 (b)(1):

20 *Provided*, That the number of allowances allo-
21 cated pursuant to this paragraph shall not ex-
22 ceed an annual total of 5,000. If necessary to
23 meeting the 5,000 allowance restriction imposed
24 in the last clause of the preceding sentence the
25 Administrator shall reduce, pro rata, the addi-

1 tional allowances allocated to each unit pursu-
2 ant to this paragraph.

3 “(j) CERTAIN MUNICIPALLY OWNED POWER
4 PLANTS.—Beginning January 1, 2000, in addition to al-
5 lowances allocated pursuant to this section and section
6 412(a) as basic phase II allowance allocations, the Admin-
7 istrator shall allocate annually for each existing munici-
8 pally owned oil and gas-fired utility unit with nameplate
9 capacity equal to, or less than, 40 MWe, the lesser of
10 whose actual or allowable 1985 sulfur dioxide emission
11 rate is less than 1.20 lbs/mmBtu, allowances in an amount
12 equal to the product of the unit’s annual fuel consumption
13 on a Btu basis at a 60 percent capacity factor multiplied
14 by the lesser of its allowable 1985 emission rate or its
15 actual 1985 emission rate, divided by 2,000.

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

18 “(a) ELECTION OF GOVERNOR.—In addition to basic
19 phase II allowance allocations, upon the election of the
20 Governor of any State, with a 1985 statewide annual sul-
21 fur dioxide emissions rate equal to or less than, 0.80 lbs/
22 mmBtu, averaged over all fossil fuel-fired utility steam
23 generating units, beginning January 1, 2000, and for each
24 calendar year thereafter until and including 2009, the Ad-
25 ministrator shall allocate, in lieu of other phase 11 bonus

1 allowance allocations, allowances from the reserve created
2 pursuant to section 414(a)(2) to all such units in the State
3 in an amount equal to 125,000 multiplied by the unit's
4 pro rata share of electricity generated in calendar year
5 1985 at fossil fuel-fired utility steam units in all States
6 eligible for the election.

7 “(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant
8 to section 412(a), each Governor of a State eligible to
9 make an election under paragraph (a) shall notify the Ad-
10 ministrator of such election. In the event that the Gov-
11 ernor of any such State fails to notify the Administrator
12 of the Governor's elections, the Administrator shall allo-
13 cate allowances pursuant to section 414.

14 “(c) ALLOWANCES AFTER JANUARY 1, 2010.—After
15 January 1, 2010, the Administrator shall allocate allow-
16 ances to units subject to the provisions of this section pur-
17 suant to section 414.

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

19 “(a) APPLICABILITY.—The owner or operator of any
20 unit that is not, nor will become, an affected unit under
21 section 412(b), 413, or 414, that emits sulfur dioxide, may
22 elect to designate that unit or source to become an af-
23 fected unit and to receive allowances under this subpart.
24 An election shall be submitted to the Administrator for
25 approval, along with a permit application and proposed

1 compliance plan in accordance with section 404. The Ad-
2 ministrator shall approve a designation that meets the re-
3 quirements of this section, and such designated unit shall
4 be allocated allowances, and be an affected unit for pur-
5 poses of this subpart.

6 “(b) ESTABLISHMENT OF BASELINE.—The baseline
7 for a unit designated under this section shall be estab-
8 lished by the Administrator by regulation, based on fuel
9 consumption and operating data for the unit for calendar
10 years 1985, 1986, and 1987, or if such data is not avail-
11 able, the Administrator may prescribe a baseline based on
12 alternative representative data.

13 “(c) EMISSION LIMITATIONS.—

14 “(1) For a unit for which an election, along
15 with a permit application and compliance plan, is
16 submitted to the Administrator under paragraph (a)
17 before January 1, 2002, annual emissions limita-
18 tions for sulfur dioxide shall be equal to the product
19 of the baseline multiplied by the lesser of the unit’s
20 1985 actual or allowable emission rate in lbs/
21 mmBtu, or, if the unit did not operate in 1985, by
22 the lesser of the unit’s actual or allowable emission
23 rate for a calendar year after 1985 (as determined
24 by the Administrator); divided by 2,000.

1 “(2) For a unit for which an election, along
2 with a permit application and compliance plan, is
3 submitted to the Administrator under paragraph (a)
4 on or after January 1, 2002, annual emissions limi-
5 tations for sulfur dioxide shall be equal to the prod-
6 uct of the baseline multiplied by the lesser of the
7 unit’s 1985 actual or allowable emission rate in lbs/
8 mmBtu, or, if the unit did not operate in 1985, by
9 the lesser of the unit’s actual or allowable emission
10 rate for a calendar year after 1985 (as determined
11 by the Administrator); divided by 4,000.

12 “(d) ALLOWANCES AND PERMITS.—The Adminis-
13 trator shall issue allowances to an affected unit under this
14 section in an amount equal to the emissions limitation cal-
15 culated under subsection (c), in accordance with section
16 412. Such allowance may be used in accordance with, and
17 shall be subject to, the provisions of section 412. Affected
18 sources under this section shall be subject to the require-
19 ments of sections 404, 405, 406, and 412.

20 “(e) LIMITATION.—Any unit designated under this
21 section shall not transfer or bank allowances produced as
22 a result of reduced utilization or shutdown, except that,
23 such allowances may be transferred or carried forward for
24 use in subsequent years to the extent that the reduced
25 utilization or shutdown results from the replacement of

1 thermal energy from the unit designated under this sec-
2 tion, with thermal energy generated by any other unit or
3 units subject to the requirements of this subpart, and the
4 designated unit's allowances are transferred or carried for-
5 ward for use at such other replacement unit or units. In
6 no case may the Administrator allocate to a source des-
7 ignated under this section allowances in an amount great-
8 er than the emissions resulting from operation of the
9 source in full compliance with the requirements of this
10 Act. No such allowances shall authorize operation of a unit
11 in violation of any other requirements of this Act.

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

15 **“SEC. 417. AUCTIONS, RESERVE.**

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

19 “(1) 2.8 percent of the allocation of allowances
20 for each year from 1995 through 1999 inclusive; and

21 “(2) 2.8 percent of the basic phase 11 allow-
22 ance allocation of allowances for each year beginning
23 in the year 2000;

24 which would (but for this subsection) be issued for each
25 affected unit at an affected source. The Administrator

1 shall record such withholding for purposes of transferring
2 the proceeds of the allowance sales under this subsection.
3 The allowances so withheld shall be deposited in the Re-
4 serve under this section.

5 “(b) AUCTION SALES.—

6 “(1) SUBACCOUNT FOR AUCTIONS.—The Ad-
7 ministrator shall establish an Auction Subaccount in
8 the Special Reserve established under this section.
9 The Auction Subaccount shall contain allowances to
10 be sold at auction under this section in the amount
11 of 150,000 tons per year for each year from 1995
12 through 1999, inclusive and 250,000 tons per year
13 for each year from 2000 through 2009, inclusive.

14 “(2) ANNUAL AUCTIONS.—Commencing in
15 1993 and in each year thereafter until 2010, the Ad-
16 ministrator shall conduct auctions at which the al-
17 lowances referred to in paragraph (1) shall be of-
18 fered for sale in accordance with regulations promul-
19 gated by the Administrator. The allowances referred
20 to in paragraph (1) shall be offered for sale at auc-
21 tion in the amounts specified in table C. The auction
22 shall be open to any person. A person wishing to bid
23 for such allowances shall submit (by a date set by
24 the Administrator) to the Administrator (on a sealed
25 bid schedule provided by the Administrator) offers to

1 purchase specified numbers of allowances at speci-
 2 fied prices. Such regulations shall specify that the
 3 auctioned allowances shall be allocated and sold on
 4 the basis of bid price, starting with the highest-
 5 priced bid and continuing until all allowances for
 6 sale at such auction have been allocated. The regula-
 7 tions shall not permit that a minimum price be set
 8 for the purchase of withheld allowances. Allowances
 9 purchased at the auction may be used for any pur-
 10 pose and at any time after the auction, subject to
 11 the provisions of this subpart and subpart 2.

TABLE C—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of sale	Spot auction (same year)	Advance auction
1993	50,000	100,000
1994	50,000	100,000
1995	50,000	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000	125,000	125,000
2001	125,000	125,000
2002	125,000	125,000
2003	125,000	0
2004–2009	125,000	0

12 “(3) PROCEEDS.—

13 “(A) TRANSFER.—Notwithstanding section
 14 3302 of title 31 of the United States Code or
 15 any other provision of law, within 90 days of re-
 16 ceipt, the Administrator shall transfer the pro-

1 ceeds from the auction under this section, on a
2 pro rata basis, to the owners or operators of the
3 affected units at an affected source from whom
4 allowances were withheld under subsection (b).
5 No funds transferred from a purchaser to a
6 seller of allowances under this paragraph shall
7 be held by any officer or employee of the United
8 States or treated for any purpose as revenue to
9 the United States or the Administrator.

10 “(B) RETURN.—At the end of each year,
11 any allowances offered for sale but not sold at
12 the auction shall be returned without charge, on
13 a pro rata basis, to the owner or operator of the
14 affected units from whose allocation the allow-
15 ances were withheld. With 170 days after the
16 date of enactment of the Clear Skies Act of
17 2003, any allowance withheld under paragraph
18 (a)(2) but not offered for sale at an auction
19 shall be returned without charge, on a pro rata
20 basis, to the owner or operator of the affected
21 units from whose allocation the allowances were
22 withheld.

23 “(4) RECORDING BY EPA.—The Administrator
24 shall record and publicly report the nature, prices
25 and results of each auction under this subsection, in-

1 including the prices of successful bids, and shall
2 record the transfers of allowances as a result of each
3 auction in accordance with the requirements of this
4 section. The transfer of allowances at such auction
5 shall be recorded in accordance with the regulations
6 promulgated by the Administrator under this sub-
7 part.

8 “(c) CHANGES IN AUCTIONS AND WITHHOLDING.—
9 Pursuant to rulemaking after public notice and comment
10 the Administrator may at any time after the year 1998
11 (in the case of advance auctions) and 2005 (in the case
12 of spot auctions) decrease the number of allowances with-
13 held and sold under this section.

14 “(d) TERMINATION OF AUCTIONS.—Not later than
15 the commencement date of the sulfur dioxide allowance re-
16 quirement under section 422, the Administrator shall ter-
17 minate the withholding of allowances and the auction sales
18 under this section. Pursuant to regulations under this sec-
19 tion, the Administrator may by delegation or contract pro-
20 vide for the conduct of sales or auctions under the Admin-
21 istrator’s supervision by other departments or agencies of
22 the United States Government or by nongovernmental
23 agencies, groups, or organizations.

1 “(e) The Administrator shall implement this section
2 under 40 CFR part 73 (2002), amended as appropriate
3 by the Administrator.

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

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

16 “(b) 5.60 MILLION TON CAP.—Whenever the inven-
17 tory required by this section indicates that sulfur dioxide
18 emissions from industrial sources, including units subject
19 to section 414(g)(2), and may reasonably be expected to
20 reach levels greater than 5.60 million tons per year, the
21 Administrator shall take such actions under the Act as
22 may be appropriate to ensure that such emissions do not
23 exceed 5.60 million tons per year. Such actions may in-
24 clude the promulgation of new and revised standards of
25 performance for new sources, including units subject to

1 section 414(g)(2), under section 111(b), as well as pro-
2 mulgation of standards of performance for existing
3 sources, including units subject to section 414(g)(2),
4 under authority of this section. For an existing source reg-
5 ulated under this section, ‘standard of performance’
6 means a standard which the Administrator determines is
7 applicable to that source and which reflects the degree of
8 emission reduction achievable through the application of
9 the best system of continuous emission reduction which
10 (taking into consideration the cost of achieving such emis-
11 sion reduction, and any nonair quality health and environ-
12 mental impact and energy requirements) the Adminis-
13 trator determines has been adequately demonstrated for
14 that category of sources.

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

18 **“SEC. 419. TERMINATION.**

19 “Starting January 1, 2010, the owners or operators
20 of affected units and affected facilities under sections
21 412(b) and (c) and 416 and shall no longer be subject
22 to the requirements of sections 412 through 417.

1 meets the criteria for qualifying cogeneration
2 facilities codified in section 292.205 of title 18
3 of the Code of Federal Regulations as issued on
4 April 1, 2002, during each year starting with
5 the year the unit commences services of a gen-
6 erator.

7 Notwithstanding paragraphs (A) and (B), the term
8 ‘affected EGU’ does not include a solid waste incin-
9 eration unit subject to section 129 or a unit for the
10 treatment, storage, or disposal of hazardous waste
11 subject to section 3005 of the Solid Waste Disposal
12 Act.

13 “(2) The term ‘coal-fired’ with regard to a unit
14 means, for purposes of section 424, combusting coal
15 or any coal-derived fuel alone or in combination with
16 any amount of any other fuel in any year during
17 1998 through 2002 or, for a unit that commenced
18 operation on or after January 1, 2003, a unit de-
19 signed to combust coal or any coal derived fuel alone
20 or in combination with any other fuel.

21 “(3) The term ‘Eastern bituminous’ means bi-
22 tuminous that is from a mine located in a State east
23 of the Mississippi River.

24 “(4) The term ‘general account’ means an ac-
25 count in the Allowance Tracking System under sec-

1 tion 403(c) established by the Administrator for any
2 person under 40 CFR part 73.31(c) (2002), amend-
3 ed as appropriate by the Administrator.

4 “(5) The term ‘oil-fired’ with regard to a unit
5 means, for purposes of section 424, combusting fuel
6 oil for more than 10 percent of the unit’s total heat
7 input, and combusting no coal or coal-derived fuel,
8 in any year during 1998 through 2002 or, for a unit
9 that commenced operation on or after January 1,
10 2003, a unit designed to combust oil for more than
11 10 percent of the unit’s total heat input and not to
12 combust any coal or coal-derived fuel.

13 “(6) The term ‘unit account’ means an account
14 in the Allowance Tracking System under section
15 403(c) established by the Administrator for any unit
16 under 40 CFR section 73.31 (a) and (b) (2002),
17 amended as appropriate by the Administrator.

18 **“SEC. 422. APPLICABILITY.**

19 “(a) PROHIBITION.—Starting January 1, 2010, it
20 shall be unlawful for the affected EGUs at a facility to
21 emit a total amount of sulfur dioxide during the year in
22 excess of the number of sulfur dioxide allowances held for
23 such facility for that year by the owner or operator of the
24 facility.

1 “(b) ALLOWANCES HELD.—Only sulfur dioxide al-
 2 lowances under section 423 shall be held in order to meet
 3 the requirements of subsection (a), except as provided
 4 under section 425.

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

6 “(a) For affected EGUs for 2010 and each year
 7 thereafter, the Administrator shall allocate sulfur dioxide
 8 allowances 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.

9 **“SEC. 424. EGU ALLOCATIONS.**

10 “(a) IN GENERAL.—Not later than thrity-six months
 11 before the commencement date of the sulfur dioxide allow-
 12 ance requirement of section 422, the Administrator shall
 13 promulgate regulations determining allocations of sulfur
 14 dioxide allowances for affected EGUs for each year during
 15 2010 and thereafter. The regulations shall provide that:

16 “(1)(A) 93 percent of the total amount of sul-
 17 fur dioxide allowances allocated each year to fossil-
 18 fuel-fired affected EGUs under section 424 shall be
 19 allocated by the Administrator to individual EGUs
 20 in the proportion to which the number of allowances
 21 to emit sulfur dioxide allocated to such EGUs under
 22 sections 413, 415, and 416 or their predecessors in

1 effect prior to enactment of the Clear Skies Act of
2 2003 based on the aggregated number of allowances
3 to emit sulfur dioxide issue to all sources under sub-
4 part 1 of part B of this title or its predecessor in
5 effect prior to enactment of the Clear Skies Act of
6 2003.

7 “(B) The Administrator shall allocate sulfur di-
8 oxide allowances to each facility’s account and each
9 general account in the Allowance Tracking System
10 under section 403(c) as follows:

11 “(i) For each unit account and each gen-
12 eral account in the Allowance Tracking System,
13 the Administrator shall determine the total
14 amount of sulfur dioxide allowances allocated
15 under subpart 1 for 2010 and thereafter that
16 are recorded, as of 12:00 noon, Eastern Stand-
17 ard time, on the date 180 days after enactment
18 of the Clear Skies Act of 2003. The Adminis-
19 trator shall determine this amount in accord-
20 ance with 40 CFR part 73 (2002), amended as
21 appropriate by the Administrator, except that
22 the Administrator shall apply a discount rate of
23 7 percent for each year after 2010 to the
24 amounts of sulfur dioxide allowances allocated
25 for 2011 or later.

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

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

22 “(2)(A) 7 percent of the total amount of sulfur
23 dioxide allowances allocated each year under section
24 423 shall be allocated for units at a facility that are

1 affected EGUs, but did not receive sulfur dioxide al-
2 locations under subpart 1 of this title.

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

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

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

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

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

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

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

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

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

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

23 “(iii) If the total of the amounts for all fa-
24 cilities under clauses (i) and (ii) exceeds the al-
25 location amount under subparagraph (A), mul-

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

6 “(iv) Allocating to each facility the lesser
7 of the total of the amounts for the facility
8 under clauses (i) and (ii) or, if the total of the
9 amounts for all facilities under clauses (i) and
10 (ii) exceeds the allocation amount under sub-
11 paragraph (A), the amount under clause (iv).
12 The Administrator shall allocate to the facilities
13 under paragraphs (1) and (2) on a pro rata
14 basis (based on the allocations under those
15 paragraphs) any unallocated allowances under
16 this paragraph.

17 “(D) The Administrator shall allocate each year
18 for units under subparagraph (A) that commence
19 commercial operation on or after January 1, 2005,
20 an amount of sulfur dioxide allowances determined
21 for each such unit at the facility by multiplying the
22 applicable National Emissions Standard under sec-
23 tion 481 by the applicable “baseline heat input,”
24 considering fuel and combustion type, as defined in
25 section 402(5)(B) and converting to tons.

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

15 “(b)(1) FAILURE TO PROMULGATE.—For each year
16 2010 and thereafter, if the Administrator has not promul-
17 gated regulations, determining allocations under sub-
18 section (a), each affected EGU shall comply with section
19 422 by providing annual notice to the permitting author-
20 ity. Such notice shall indicate the amount of allowances
21 the affected EGU believes it has for the relevant year and
22 the amount of sulfur dioxide emissions for such year. The
23 amount of sulfur dioxide emissions shall be determined
24 using reasonable industry accepted methods unless the

1 Administrator has promulgated applicable monitoring and
2 alternative monitoring requirements.

3 “(2) Upon promulgation of regulations under sub-
4 section (a) determining the allocations for 2010 and there-
5 after, and promulgating regulations under section 403(b)
6 providing for the transfer of sulfur dioxides and section
7 403(c) establishing an Allowance Transfer System for sul-
8 fur dioxide allowances, each unit’s emissions shall be com-
9 pared to and reconciled to its actual allocations under the
10 promulgated regulations. Each unit will have nine (9)
11 months to purchase any allowance shortfall through allow-
12 ances purchased from other allowance holders or through
13 direct sale. Any unit with an allowance excess shall be
14 credited allowances in accordance with section 425.

15 **“SEC. 425. SULFUR DIOXIDE EARLY ACTION REDUCTION**
16 **CREDITS.**

17 “(a) The Administrator shall promulgate regulations
18 within 18 months authorizing the allocation of sulfur diox-
19 ide allowances to units designated under this section that
20 install or modify pollution control equipment or combus-
21 tion technology improvements identified in such regula-
22 tions after the date of enactment of this section and prior
23 to January 1, 2010.

24 “(b) No allowances shall be allocated under this para-
25 graph for emissions reductions: attributable to pollution

1 control equipment or combustion technology improvements
2 that were operational or under construction at any time
3 prior to the date of enactment of this section; attributable
4 to fuel switching; or required under any Federal regula-
5 tion.

6 “(c) The allowances allocated to any unit under this
7 paragraph shall be in addition to the allowances allocated
8 under section 424 and shall be allocated in an amount
9 equal to one allowance of sulfur dioxide for each 1.05 tons
10 of reduction in emissions of sulfur dioxide achieved by the
11 pollution control equipment or combustion technology im-
12 provements starting with the year in which the equipment
13 or improvement is implemented. The early compliance re-
14 duction allowances available under this section shall be
15 used and tradeable in the same manner as allowances
16 under section 424.

17 “(d) The Administrator shall promulgate regulations
18 as necessary to ensure affected units receive early compli-
19 ance allowance credit. Early compliance allowances shall
20 be allocated at the end of an early compliance year. Should
21 the Administrator fail to promulgate allocation regulations
22 by the end of a given year, early compliance allowances
23 for each year shall be allocated at the earliest possible time
24 after allocation regulations are promulgated.

1 **“SEC. 426. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES**
2 **ALLOCATED UNDER SUBPART 1.**

3 “(a) REMOVAL FROM ACCOUNTS.—After allocating
4 allowances under section 424(a)(1), the Administrator
5 shall remove from the unit accounts and general accounts
6 in the Allowance Tracking System under section 403(c)
7 and from the Special Allowances Reserve under section
8 418 all sulfur dioxide allowances allocated or deposited
9 under subpart 1 for 2010 or later.

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

17 **“SEC. 427. INCENTIVES FOR SULFUR DIOXIDE EMISSION**
18 **CONTROL TECHNOLOGY.**

19 “(a) RESERVE.—The Administrator shall establish a
20 reserve of 250,000 sulfur dioxide allowances comprising
21 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur
22 dioxide allowances for 2011, and 83,333 sulfur dioxide al-
23 lowances for 2012.

24 “(b) APPLICATION.—Not later than 18 months after
25 the enactment of the Clear Skies Act of 2003, an owner
26 or operator of an affected EGU that commenced operation

1 before 2001 and that during 2001 combusted Eastern bi-
2 tuminous may submit an application to the Administrator
3 for sulfur dioxide allowances from the reserve under sub-
4 section (a). The application shall include each of the fol-
5 lowing:

6 “(1) A statement that the owner or operator
7 will install and commence commercial operation of
8 specified sulfur dioxide control technology at the
9 unit within 24 months after approval of the applica-
10 tion under subsection (c) if the unit is allocated the
11 sulfur dioxide allowances requested under paragraph
12 (4). The owner or operator shall provide description
13 of the control technology.

14 “(2) A statement that, during the period start-
15 ing with the commencement of operation of sulfur
16 dioxide technology under paragraph (1) through
17 2009, the unit will combust Eastern bituminous at
18 a percentage of the unit’s total heat input equal to
19 or exceeding the percentage of total heat input com-
20 busted by the unit in 2001 if the unit is allocated
21 the sulfur dioxide allowances requested under para-
22 graph (4).

23 “(3) A demonstration that the unit will achieve,
24 while combusting fuel in accordance with paragraph
25 (2) and operating the sulfur dioxide control tech-

1 nology specified in paragraph (1), a specified ton-
2 nage of sulfur dioxide emission reductions during the
3 period starting with the commencement of operation
4 of sulfur dioxide control technology under subpara-
5 graph (1) through 2009. The tonnage of emission
6 reductions shall be the difference between emissions
7 monitored at a location at the unit upstream of the
8 control technology described in paragraph (1) and
9 emissions monitored at a location at the unit down-
10 stream of such control technology, while the unit is
11 combusting fuel in accordance with paragraph (2).

12 “(4) A request that the Administrator allocate
13 for the unit a specified number of sulfur dioxide al-
14 lowances from the reserve under subsection (a) for
15 the period starting with the commencement of oper-
16 ation of the sulfur dioxide technology under para-
17 graph (1) through 2009.

18 “(5) A statement of the ratio of the number of
19 sulfur dioxide allowances requested under paragraph
20 (4) to the tonnage of sulfur dioxide emissions reduc-
21 tions under paragraph (3).

22 “(c) APPROVAL OR DISAPPROVAL.—By order subject
23 to notice and opportunity for comment, the Administrator
24 shall—

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

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

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

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

17 “(5) based on the calculations in paragraph (4),
18 determine which allowance-to-emission-reduction
19 ratio on the list under paragraph (2) results in the
20 highest total amount of allowances that does not ex-
21 ceed 250,000 allowances; and

22 “(6) approve each application listed under para-
23 graph (2) with a ratio equal to or less than the al-
24 lowance-to-emission-reduction ratio determined

1 under paragraph (5) and disapprove all the other
2 applications.

3 “(d) MONITORING.—An owner or operator whose ap-
4 plication is approved under subsection (c) shall install and
5 operate a CEMS for monitoring sulfur dioxide and to
6 quality assure the data. The installation of the CEMS and
7 the quality assurance of data shall be in accordance with
8 subparagraph (a)(2)(B) and subsections (c) through (e)
9 of section 405, except that, where two or more units utilize
10 a single stack, and one or more units are not subject to
11 such standards, separate monitoring shall be required for
12 each unit.

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

18 “(1) For each unit, the Administrator shall
19 multiply the allowance-to-emission-reduction ratio of
20 the last application that the Administrator approved
21 under subsection (c) by the lesser of—

22 “(A) the total tonnage of sulfur dioxide
23 emissions reductions achieved by the unit, dur-
24 ing the period starting with the commencement
25 of operation of the sulfur dioxide control tech-

1 nology under subparagraph (b)(1) through
2 2009, through use of such control technology;
3 or

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

6 “(2) If the total amount of sulfur dioxide allow-
7 ances determined for all units under paragraph (1)
8 exceeds 250,000 sulfur dioxide allowances, the Ad-
9 ministrator shall multiply 250,000 sulfur dioxide al-
10 lowances by the ratio of the amount of sulfur dioxide
11 allowances determined for each unit under para-
12 graph (1) to the total amount of sulfur dioxide al-
13 lowances determined for all units under paragraph
14 (1).

15 “(3) The Administrator shall allocate to each
16 unit the lesser of the amount determined for that
17 unit under paragraph (1) or, if the total amount of
18 sulfur dioxide allowances determined for all units
19 under paragraph (1) exceeds 250,000 sulfur dioxide
20 allowances, under paragraph (2). The Administrator
21 shall allocate to the facilities under section 424
22 paragraphs (1) and (2) on a pro rata basis (based
23 on the allocations under those paragraphs) any
24 unallocated allowances under this paragraph.

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

2 **“SEC. 431. DEFINITIONS.**

3 “For purposes of this subpart—

4 “(1) The term ‘adjusted baseline heat input’
5 means the average annual heat input used by a unit
6 during the three years in which the unit had the
7 highest heat input for the period from the eighth
8 through the fourth year before the first covered
9 year.

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

13 “(i) on or after January 1 of the fifth
14 year before the first covered year, then ‘ad-
15 justed baseline heat input’ shall mean the
16 average annual heat input used by the unit
17 during the fifth and fourth years before
18 the first covered year; and

19 “(ii) on or after January 1 of the
20 fourth year before the first covered year,
21 then ‘adjusted baseline heat input’ shall
22 mean the annual heat input used by the
23 unit during the fourth year before the first
24 covered year.

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

1 “(i) required to be reported under sec-
2 tion 405 for the unit, if the unit was re-
3 quired to report heat input during the year
4 under that section;

5 “(ii) reported to the Energy Informa-
6 tion Administrator for the unit, if the unit
7 was not required to report heat input
8 under section 405;

9 “(iii) based on data for the unit re-
10 ported to the WRAP State where the unit
11 is located as required by State law, if the
12 unit was not required to report heat input
13 during the year under section 405 and did
14 not report to the Energy Information Ad-
15 ministration; or

16 “(iv) based on fuel use and fuel heat
17 content data for the unit from fuel pur-
18 chase or use records, if the unit was not
19 required to report heat input during the
20 year under section 405 and did not report
21 to the Energy Information Administration
22 and the WRAP State.

23 “(2) The term ‘affected EGU’ means an af-
24 fected EGU under subpart 2 that is in a WRAP
25 State and that—

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

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

7 “(3) The term ‘coal-fired’ with regard to a unit
8 means, for purposes of section 434, a unit com-
9 busting coal or any coal-derived fuel alone or in com-
10 bination with any amount of any other fuel in any
11 year during the period from the eighth through the
12 fourth year before the first covered year.

13 “(4) The term ‘covered year’ means—

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

18 “(ii) the third year after the year 2013 or
19 later when the Administrator determines by
20 regulation that the total annual sulfur dioxide
21 emissions of all affected EGUs in the WRAP
22 States are reasonably projected to exceed
23 271,000 tons in 2018 or any year thereafter.
24 The Administrator may make such determina-
25 tion only if all the WRAP States submit to the

1 Administrator a petition requesting that the
2 Administrator issue such determination and
3 make all affected EGUs in the WRAP States
4 subject to the requirements of sections 432
5 through 434; and

6 “(B) each year after the ‘covered year’
7 under subparagraph (A).

8 “(5) The term ‘oil-fired’ with regard to a unit
9 means, for purposes of section 434, a unit com-
10 busting fuel oil for more than 10 percent of the
11 unit’s total heat input, and combusting no coal or
12 coal-derived fuel, and any year during the period
13 from the eighth through the fourth year before the
14 first covered year.

15 “(6) The term ‘WRAP State’ means Arizona,
16 California, Colorado, Idaho, Nevada, New Mexico,
17 Oregon, Utah, and Wyoming.

18 **“SEC. 432. APPLICABILITY.**

19 “(a) PROHIBITION.—Starting January 1 of the first
20 covered year, it shall be unlawful for the affected EGUs
21 at a facility to emit a total amount of sulfur dioxide during
22 the year in excess of the number of sulfur dioxide allow-
23 ances held for such facility for that year by the owner or
24 operator of the facility.

1 “(b) ALLOWANCES HELD.—Only sulfur dioxide al-
2 allowances under section 433 shall be held in order to meet
3 the requirements of subsection (a).

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

5 For affected EGUs, the total amount of sulfur diox-
6 ide allowances that the Administrator shall allocate for
7 each covered year under section 434 shall equal 271,000
8 tons.

9 **“SEC. 434. EGU ALLOCATIONS.**

10 “(a) IN GENERAL.—By January 1 of the year before
11 the first covered year, the Administrator shall promulgate
12 regulations determining, for each covered year, the alloca-
13 tions of sulfur dioxide allowances for the units at a facility
14 that are affected EGUs as of December 31 of the fourth
15 year before the covered year by—

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

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

24 “(3) for all such other units at the facility that
25 are not covered by paragraph (1) or (2) multiplying

1 0.05 lb/mmBtu by the total adjusted baseline heat
2 input of such units and converting to tons; and

3 “(4) multiplying by 0.95 the allocation amount
4 under section 433 by the ratio of the total of the
5 amounts for the facility under paragraphs (1), (2),
6 and (3) to the total of the amounts for all facilities
7 under paragraphs (1), (2), and (3); and

8 “(5)(A) 5 percent of the total amount of sulfur
9 dioxide allowances allocated each year under section
10 433 shall be allocated for units at a facility that are
11 affected EGUs, but did not receive sulfur dioxide al-
12 locations under paragraph (4). These units shall be
13 allocated allowances in accordance with paragraphs
14 (1), (2), and (3).

15 “(B) Allowances allocated under subparagraph
16 (A) shall be allocated to units on a first come basis
17 determined by date of unit commencement of con-
18 struction, provided that such unit actually com-
19 mences operation. As such, allocations to units
20 under paragraph (A) will not be reduced as a result
21 of new units commencing commercial operation.

22 “(C) Allowances not allocated under subpara-
23 graph (B) shall be allocated to units in paragraphs
24 (A) and (B) on a pro rata basis.

1 “(b)(1) FAILURE TO PROMULGATE.—For each year
2 2010 and thereafter, if the Administrator has not promul-
3 gated regulations, determining allocations under para-
4 graph (a), each affected EGU shall comply with section
5 422 by provided annual notice to the permitting authority.
6 Such notice shall indicate the amount of allowances the
7 affected EGU believes it has for the relevant year and the
8 amount of sulfur dioxide emissions for such year. The
9 amount of sulfur dioxide emissions shall be determined
10 using reasonable industry accepted methods unless the
11 Administrator has promulgated applicable monitoring and
12 alternative monitoring requirements.

13 “(2) Upon promulgation of regulations under sub-
14 section (a) determining the allocations for 2010 and there-
15 after, and promulgating regulations under section 403(b)
16 providing for the transfer of sulfur dioxides and section
17 403(c) establishing an Allowance Transfer System for sul-
18 fur dioxide allowances, each unit’s emissions shall be com-
19 pared to and reconciled to its actual allocations under the
20 promulgated regulations. Each unit will have nine (9)
21 months to purchase any allowance shortfall through allow-
22 ances purchased from other allowance holders or through
23 direct sale. Any unit with an allowance excess shall be
24 credited allowances in accordance with section 435.

1 **“SEC. 435. WRAP EARLY ACTION REDUCTION CREDITS.**

2 “(a) The Administrator shall promulgate regulations
3 within 18 months authorizing the allocation of sulfur diox-
4 ide allowances to units designated under this section that
5 install or modify pollution control equipment or combus-
6 tion technology improvements identified in such regula-
7 tions after the date of enactment of this section and prior
8 to January 1, 2010.

9 “(b) No allowances shall be allocated under this para-
10 graph for emissions reductions: attributable to pollution
11 control equipment or combustion technology improvements
12 that were operational or under construction at any time
13 prior to the date of enactment of this section; attributable
14 to fuel switching; or required under any Federal regula-
15 tion.

16 “(c) The allowances allocated to any unit under this
17 paragraph shall be in addition to the allowances allocated
18 under section 434 and shall be allocated in an amount
19 equal to one allowance of sulfur dioxide for each 1.05 tons
20 of reduction in emissions of sulfur dioxide achieved by the
21 pollution control equipment or combustion technology im-
22 provements starting with the year in which the equipment
23 or improvement is implemented. The early compliance re-
24 duction allowances available under this section shall be
25 used and tradeable in the same manner as allowances
26 under section 434.

1 “(d) The Administrator shall promulgate regulations
 2 as necessary to ensure affected units receive early compli-
 3 ance allowance credit. Early compliance allowances shall
 4 be allocated at the end of an early compliance year. Should
 5 the Administrator fail to promulgate allocation regulations
 6 by the end of a given year, early compliance allowances
 7 for each year shall be allocated at the earliest possible time
 8 after allocation regulations are promulgated.

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

10 **EMISSION REDUCTIONS**

11 **“Subpart 1—Acid Rain Program**

12 **“SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PRO-**
 13 **GRAM.**

14 “(a) **APPLICABILITY.**—On the date that a coal-fired
 15 utility unit becomes an affected unit pursuant to sections
 16 413 or 414, or on the date a unit subject to the provisions
 17 of section 413(d), must meet the NO_x reduction require-
 18 ments, each such unit shall become an affected unit for
 19 purposes of this section and shall be subject to the emis-
 20 sion limitations for nitrogen oxides set forth herein.

21 “(b) **EMISSION LIMITATIONS.**—(1) The Adminis-
 22 trator shall by regulation establish annual allowable emis-
 23 sion limitations for nitrogen oxides for the types of utility
 24 boilers listed below, which limitations shall not exceed the
 25 rates listed below: *Provided*, That the Administrator may

1 set a rate higher than that listed for any type of utility
2 boiler if the Administrator finds that the maximum listed
3 rate for that boiler type cannot be achieved using low NO_x
4 burner technology. The Administrator shall implement
5 this paragraph under 40 CFR part 76.5 (2002). The max-
6 imum allowable emission rates are as follows:

7 “(A) for tangentially fired boilers, 0.45 lb/
8 mmBtu; and

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

16 “(2) The Administrator shall, by regulation, establish
17 allowable emission limitations on a lb/mmBtu, annual av-
18 erage basis, for nitrogen oxides for the following types of
19 utility boilers:

20 “(A) wet bottom wall-fired boilers;

21 “(B) cyclones;

22 “(C) units applying cell burner technology; and

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

24 The Administrator shall base such rates on the degree of
25 reduction achievable through the retrofit application of the

1 best system of continuous emission reduction, taking into
2 account available technology, costs and energy and envi-
3 ronmental impacts; and which is comparable to the costs
4 of nitrogen oxides controls set pursuant to subsection
5 (b)(1). The Administrator may revise the applicable emis-
6 sion limitations for tangentially fired and dry bottom,
7 wall-fired boilers (other than cell burners) to be more
8 stringent if the Administrator determines that more effec-
9 tive low NO_x burned technology is available: *Provided*,
10 That, no unit that is an affected unit pursuant to section
11 413 and that is subject to the requirements of subsection
12 (b)(1), shall be subject to the revised emission limitations,
13 if any. The Administrator shall implement that paragraph
14 under 40 CFR parts 76.6 and 76.7 (2002).

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

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

24 “(B) a unit subject to subsection (b)(2) cannot
25 meet the applicable rate using the technology on

1 which the Administrator based the applicable emis-
2 sion limitation.

3 “(2) The permitting authority shall base such deter-
4 mination upon a reasonable showing satisfactory to the
5 permitting authority, in accordance with regulations es-
6 tablished by the Administrator, that the owner or oper-
7 ator—

8 “(A) has properly installed appropriate control
9 equipment designed to meet the applicable emission
10 rate;

11 “(B) has properly operated such equipment for
12 a period of 15 months (or such other period of time
13 as the Administrator determines through the regula-
14 tions), and provides operating and monitoring data
15 for such period demonstrating that the unit cannot
16 meet the applicable emission rate; and

17 “(C) has specified an emission rate that such
18 unit can meet on an annual average basis. The per-
19 mitting authority shall issue an operating permit for
20 the unit in question, in accordance with section 404
21 and title V—

22 “(i) that permits the unit during the dem-
23 onstration period referred to in subparagraph
24 (B), to emit at a rate in excess of the applicable
25 emission rate;

1 “(ii) at the conclusion of the demonstra-
2 tion period to revise the operating permit to re-
3 flect the alternative emission rate demonstrated
4 in subparagraphs (B) and (C).

5 “(3) Units subject to subsection (b)(1) for which an
6 alternative emission limitation is established shall not be
7 required to install any additional control technology be-
8 yond low NO_x burners. Nothing in this section shall pre-
9 clude an owner or operator from installing and operating
10 an alternative NO_x control technology capable of achiev-
11 ing the applicable emission limitation. The Administrator
12 shall implement this subsection under 40 CFR part 76
13 (2002), amended as appropriate by the Administrator.

14 “(d) EMISSIONS AVERAGING.—

15 “(1) In lieu of complying with the applicable
16 emission limitations under subsection (b)(1), (2), or
17 (c), the owner or operator of two or more units sub-
18 ject to one or more of the applicable emission limita-
19 tions set pursuant to these sections, may petition the
20 permitting authority for alternative contempora-
21 neous annual emission limitations for such units
22 that ensure that—

23 “(A) the actual annual emission rate in
24 pounds of nitrogen oxides per million Btu aver-

1 aged over the units in question is a rate that
2 is less than; or equal to

3 “(B) the Btu-weighted average annual
4 emission rate for the same units if they had
5 been operated, during the same period of time,
6 in compliance with limitations set in accordance
7 with the applicable emission rates set pursuant
8 to subsections (b)(1) and (2).

9 “(2) If the permitting authority determines, in
10 accordance with regulations issued by the Adminis-
11 trator that the conditions in paragraph (1) can be
12 met, the permitting authority shall issue operating
13 permits for such units, in accordance with section
14 404 and title V, that allow alternative contempora-
15 neous annual emission limitations. Such emission
16 limitations shall only remain in effect while both
17 units continue operation under the conditions speci-
18 fied in their respective operating permits. The Ad-
19 ministrator shall implement this subsection under 40
20 CFR part 76 (2002), amended as appropriate by the
21 Administrator.

22 **“SEC. 442. TERMINATION.**

23 “Starting January 1, 2008, the owner or operator of
24 affected units and affected facilities under section 441

1 shall no longer be subject to the requirements of that sec-
2 tion.

3 **“Subpart 2—Clear Skies Nitrogen Oxides Allowance**
4 **Program**

5 **“SEC. 451. DEFINITIONS.**

6 “For purposes of this subpart:

7 “(1) The term ‘affected EGU’ means—

8 “(A) for a unit serving a generator before
9 the date of enactment of the Clear Skies Act of
10 2003, a unit in a State serving a generator with
11 a nameplate capacity of greater than 25
12 megawatts that produced or produces electricity
13 for sale during 2002 or any year thereafter, ex-
14 cept for a cogeneration unit that meets the cri-
15 teria for qualifying for a cogeneration facilities
16 codified in section 292.205 of title 18 of the
17 Code of Federal Regulations as issued on April
18 1, 2002 during 2002 and each year thereafter;
19 and

20 “(B) for a unit commencing service of a
21 generator on or after the date of enactment of
22 the Clear Skies Act of 2003, a unit in a State
23 serving a generator that produces electricity for
24 sale during any year starting with the year the
25 unit commences service of a generator, except

1 for a gas-fired unit serving one or more genera-
2 tors with total nameplate capacity of 25
3 megawatts or less, or a cogeneration unit that
4 meets the criteria for qualifying for a cogenera-
5 tion facilities codified in section 292.205 of title
6 18 of the Code of Federal Regulations as issued
7 on April 1, 2002, during each year starting
8 with the unit commences service of a generator.

9 “(C) Notwithstanding paragraphs (A) and
10 (B), the term ‘affected EGU’ does not include
11 a solid waste incineration unit subject to section
12 129 or a unit for the treatment, storage, or dis-
13 posal of hazardous waste subject to section
14 3005 of the Solid Waste Disposal Act.

15 “(2) The term ‘adjusted baseline heat input’
16 with regard to a unit means, for purposes of allo-
17 cating nitrogen oxides allowances in a particular
18 year under this subpart, the units baseline multi-
19 plied by—

20 “(A) 1.0 for affected coal-fired units for
21 2008 and each year thereafter;

22 “(B) 0.55 for affected oil- and gas-fired
23 units located in a Zone 1 State for years 2008
24 through 2017 inclusive;

1 “(C) 0.8 for affected oil- and gas-fired
2 units located in a Zone 1 State for 2018 and
3 each year thereafter; and

4 “(D) 0.4 for affected oil- and gas-fired
5 units located in a Zone 2 State for 2008 and
6 each year thereafter.

7 “(3) The term ‘allowable nitrogen oxides emis-
8 sions rate’ means the most stringent federally en-
9 forceable emissions limitation for nitrogen oxides
10 that applies to the unit as of date of enactment of
11 this subpart. If the emissions limitation for a unit
12 is not expressed in pounds of emissions per million
13 Btu, or the averaging period of that emissions limi-
14 tation is not expressed on an annual basis, the Ad-
15 ministrator shall calculate the annual equivalent of
16 that emissions limitation to establish the allowable
17 rate. Such limitation shall not include any require-
18 ment to hold nitrogen oxides allowances under the
19 federal NO_x Budget Trading Program as codified at
20 40 CFR part 97 (2002), or any State program
21 adopted to meet the requirements of the NO_x SIP
22 Call as codified at 40 CFR 51.121 (2002).

23 “(4) The term ‘Zone 1 State’ means Alabama,
24 Arkansas, Connecticut, Delaware, the District of Co-
25 lumbia, Florida, Georgia, Illinois, Indiana, Iowa,

1 Kentucky, Louisiana, Maine, Maryland, Massachu-
2 setts, Michigan, Mississippi, the fine grid portion of
3 Missouri, New Hampshire, New Jersey, New York,
4 North Carolina, Ohio, Pennsylvania, Rhode Island,
5 South Carolina, Tennessee, Texas east of Interstate
6 35, Vermont, Virginia, West Virginia, and Wis-
7 consin.

8 “(5) The term ‘Zone 2 State’ means Alaska,
9 American Samoa, Arizona, California, Colorado, the
10 Commonwealth of the Northern Mariana Islands,
11 the Commonwealth of Puerto Rico, Guam, Hawaii,
12 Idaho, Kansas, Minnesota, the coarse grid portion of
13 Missouri, Montana, Nebraska, North Dakota, New
14 Mexico, Nevada, Oklahoma, Oregon, South Dakota,
15 Texas west of Interstate 35, Utah, the Virgin Is-
16 lands, Washington, and Wyoming.

17 **“SEC. 452. APPLICABILITY.**

18 “(a) ZONE 1 PROHIBITION.—(1) Starting January 1,
19 2008, it shall be unlawful for the affected EGUs at a facil-
20 ity in a Zone 1 State to emit a total amount of nitrogen
21 oxides during a year in excess of the number of nitrogen
22 oxides allowances held for such facility for that year by
23 the owner or operator of the facility.

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

4 “(b) ZONE 2 PROHIBITION.—(1) Starting January 1,
 5 2008, it shall be unlawful for the affected EGUs at a facil-
 6 ity in a Zone 2 State to emit a total amount of nitrogen
 7 oxides during a year in excess of the number of nitrogen
 8 oxides allowances held for such facility for that year by
 9 the owner or operator of the facility.

10 “(2) Only nitrogen oxides allowances under section
 11 453(b) shall be held in order to meet the requirements
 12 of paragraph (1).

13 **“SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.**

14 “(a) ZONE 1 ALLOCATIONS.—For affected EGUs in
 15 the Zone 1 States for 2008 and each year thereafter, the
 16 Administrator shall allocate nitrogen oxides allowances
 17 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

18 “(b) ZONE 2 ALLOCATIONS.—For affected EGUs in
 19 the Zone 2 States for 2008 and each year thereafter, the
 20 Administrator shall allocate nitrogen oxides allowances
 21 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

1 **“SEC. 454. EGU ALLOCATIONS.**

2 “(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—

3 “(1) EPA REGULATIONS.—Not later than 18
 4 months before commencement date of the nitrogen
 5 oxides allowance requirement of section 452, the Ad-
 6 ministrator shall promulgate regulations determining
 7 the allocation of nitrogen oxides allowances for 2008
 8 and each subsequent year for units at a facility in
 9 a Zone 1 State that are affected EGUs as of the
 10 date of enactment of this section.

11 “(A) The regulations shall determine the
 12 allocation for such units for each year and fu-
 13 ture year by multiplying by 0.95 the allocation
 14 amount under section 453(a) by the ratio of the
 15 total amount of the adjusted baseline heat input
 16 of such units at the facility to the total amount
 17 of adjusted baseline heat input to all affected
 18 EGUs in the Zone 1 States. However, the regu-
 19 lations shall not allocate allowances to any af-
 20 fected unit in excess of the product of the unit’s
 21 baseline heat input multiplied by the unit’s al-
 22 lowable nitrogen oxides emissions rate, divided
 23 by 2000.

1 “(B) 5 percent of the total amount of ni-
2 trogen oxides allowances allocated each year
3 under section 453 shall be allocated for units at
4 a facility that are affected EGUs, but did not
5 receive nitrogen oxides allocations under para-
6 graph (A). These units shall be allocated allow-
7 ances for each year by multiplying the alloca-
8 tion amount under section 453(a) by the ratio
9 of the total amount of the adjusted baseline
10 heat input of such units at the facility to the
11 total amount of adjusted baseline heat input to
12 all affected EGUs in the Zone 1 States, includ-
13 ing those covered in (A). However, the regula-
14 tions shall not allocate allowances to any af-
15 fected unit in excess of the product of the unit’s
16 baseline heat input multiplied by the unit’s al-
17 lowable nitrogen oxides emissions rate, divided
18 by 2000.

19 “(C) Allowances allocated under subpara-
20 graph (B) shall be allocated to units on a first
21 come basis determined by date of unit com-
22 mencement of construction, provided that such
23 unit actually commences operation. As such, al-
24 locations to units under paragraph (B) will not

1 be reduced as a result of new units commencing
2 commercial operation.

3 “(D) Allowances not allocated under sub-
4 paragraph (B) shall be allocated to units in
5 paragraphs (A) and (B) on a pro rata basis.

6 “(E) For each year 2008 and thereafter, if
7 the Administrator has not promulgated the reg-
8 ulations determining allocation under subsection
9 (a):

10 “(i) each affected unit shall comply
11 with section 452 by providing annual no-
12 tice to the permitting authority. Such no-
13 tice shall indicate the amount of allowances
14 the affected unit believes it has for the rel-
15 evant year and the amount of nitrogen
16 oxide emissions for such year. The amount
17 of nitrogen oxide emissions shall be deter-
18 mined using reasonable industry accepted
19 methods unless the Administrator has pro-
20 mulgated applicable monitoring and alter-
21 native monitoring requirements; and

22 “(ii) Upon promulgation of regula-
23 tions under subsection (a) for Zone 1 de-
24 termining the allocations for 2008 and
25 thereafter, and promulgating regulations

1 under section 403(b) providing for the
2 transfer of nitrogen oxides and section
3 403(c) establishing an Allowance Transfer
4 System for nitrogen oxide allowances, each
5 unit's emissions shall be compared to and
6 reconcile its actual allocations under the
7 promulgated regulations. Each unit will
8 have nine (9) months to submit allowances
9 to the Administrator, without recompense,
10 for any allowances shortfall. The submitted
11 allowances may have been obtained and
12 held by any mechanism consistent with
13 this Act including, but not limited to, di-
14 rect sale. Any unit with an allowance ex-
15 cess shall be credited allowances in accord-
16 ance with section 455.

17 “(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.—

18 “(1) EPA REGULATIONS.—Not later than 18
19 months before the commencement date of the nitro-
20 gen oxides allowance requirement of section 452, the
21 Administrator shall promulgate regulations deter-
22 mining the allocation of nitrogen oxides allowances
23 for 2008 and each subsequent year for units at a fa-
24 cility in a Zone 2 State that are affected EGUs as
25 of the date of enactment of this section.

1 “(A) The regulations shall determine the
2 allocation for such units for each year by multi-
3 plying by 0.95 the allocation amount under sec-
4 tion 453(b) by the ratio of the total amount of
5 the adjusted baseline heat input of such units
6 at the facility to the total amount of the ad-
7 justed baseline heat input to all affected EGUs
8 in the Zone 2 States. However, the regulations
9 shall not allocate allowances to any affected
10 unit in excess of the product of the unit’s base-
11 line heat input multiplied by the unit’s allow-
12 able nitrogen oxides emissions rate, divided by
13 2000.

14 “(B) 5 percent of the total amount of ni-
15 trogen oxides allowances allocated each year
16 under section 453 shall be allocated for units at
17 a facility that are affected EGUs, but did not
18 receive nitrogen oxides allocations under para-
19 graph (A). These units shall be allocated allow-
20 ances for each year by multiplying the alloca-
21 tion amount under section 453(a) by the ratio
22 of the total amount of the adjusted baseline
23 heat input of such units at the facility to the
24 total amount of adjusted baseline heat input to
25 all affected EGUs in the Zone 2 States, includ-

1 ing those covered in (A). However, the regula-
2 tions shall not allocate allowances to any af-
3 fected unit in excess of the product of the unit's
4 baseline heat input multiplied by the unit's al-
5 lowable nitrogen oxides emissions rate, divided
6 by 2000.

7 “(C) Allowances allocated under subpara-
8 graph (B) shall be allocated to units on a first
9 come basis determined by date of unit com-
10 mencement of construction, provided that such
11 unit actually commences operation. As such, al-
12 locations to units under subparagraph (B) will
13 not be reduced as a result of new units com-
14 mencing commercial operation.

15 “(D) Allowances not allocated under sub-
16 paragraph (B) shall be allocated to units in
17 paragraphs (A) and (B) on a pro rata basis.

18 “(E) For each year 2008 and thereafter, if
19 the Administrator has not promulgated the reg-
20 ulations determining allocation under subsection
21 (a):

22 “(i) each affected unit shall comply
23 with section 452 by providing annual no-
24 tice to the permitting authority. Such no-
25 tice shall indicate the amount of allowances

1 the affected unit believes it has for the rel-
2 evant year and the amount of nitrogen
3 oxide emissions for such year. The amount
4 of nitrogen oxide emissions shall be deter-
5 mined using reasonable industry accepted
6 methods unless the Administrator has pro-
7 mulgated applicable monitoring and alter-
8 native monitoring requirements; and

9 “(ii) Upon promulgation of regula-
10 tions under subsection (b) for Zone 2 de-
11 termining the allocations for 2008 and
12 thereafter, and promulgating regulations
13 under section 403(b) providing for the
14 transfer of nitrogen oxides and section
15 403(c) establishing an Allowance Transfer
16 System for nitrogen oxide allowances, each
17 unit’s emissions shall be compared to and
18 reconcile with its actual allocations under
19 the promulgated regulations. Each unit
20 will have nine (9) months to submit allow-
21 ances to the Administrator, without rec-
22 ompense, for any allowance shortfall. The
23 submitted allowances may have been ob-
24 tained and held by any mechanism con-
25 sistent with this Act including, but not lim-

1 ited to, direct sale. Any unit with an allow-
2 ance excess shall be credited allowances in
3 accordance with section 455.

4 **“SEC. 455 NITROGEN OXIDES EARLY ACTION REDUCTION**
5 **CREDITS.**

6 “(a) The Administrator shall promulgate regulations
7 within 18 months authorizing the allocation of nitrogen
8 oxides allowances to units designated under this section
9 that install or modify pollution control equipment or com-
10 bustion technology improvements identified in such regu-
11 lations after the date of enactment of this section and
12 prior to January 1, 2010.

13 “(b) No allowances shall be allocated under this para-
14 graph for emissions reductions: attributable to pollution
15 control equipment or combustion technology improvements
16 that were operational or under construction at any time
17 prior to the date of enactment of this section; attributable
18 to fuel switching; or required under any Federal regula-
19 tion.

20 “(c) The allowances allocated to any unit under this
21 paragraph shall be in addition to the allowances allocated
22 under section 454 and shall be allocated in an amount
23 equal to one allowance of nitrogen oxides for each 1.05
24 tons of reduction in emissions of nitrogen oxides achieved
25 by the pollution control equipment or combustion tech-

1 nology improvements starting with the year in which the
2 equipment or improvement is implemented. The early com-
3 pliance reduction allowances available under this section
4 shall be used and tradeable in the same manner as allow-
5 ances under section 454.

6 “(d) The Administrator shall promulgate regulations
7 as necessary to ensure affected units receive early compli-
8 ance allowance credit. Early compliance allowances shall
9 be allocated at the end of an early compliance year. Should
10 the Administrator fail to promulgate allocation regulations
11 by the end of a given year, early compliance allowances
12 for each year shall be allocated at the earliest possible time
13 after allocation regulations are promulgated.

14 **“Subpart 3—Ozone Season NO_x Budget Program**

15 **“SEC. 461. DEFINITIONS.**

16 “For purposes of this subpart:

17 “(1) The term ‘ozone season’ means—

18 “(A) with regard to Connecticut, Delaware,
19 the District of Columbia, Maryland, Massachu-
20 setts, New Jersey, New York, Pennsylvania,
21 and Rhode Island, the period May 1 through
22 September 30 for each year starting in 2003;
23 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) The term ‘non-ozone season’ means—

5 “(A) with regard to Connecticut, Delaware,
6 the District of Columbia, Maryland, Massachu-
7 setts, New Jersey, New York, Pennsylvania,
8 and Rhode Island, the period October 1 through
9 April 30; and

10 “(B) with regard to all other States, the
11 period October 1, 2003, through May 29, 2004
12 and the period October 1 through April 30 be-
13 ginning in the year 2004 and for each year
14 thereafter.

15 “(3) The term ‘NO_x SIP Call State’ means
16 Connecticut, Delaware, the District of Columbia, Il-
17 linois, Indiana, Kentucky, Maryland, Massachusetts,
18 New Jersey, New York, North Carolina, Ohio, Penn-
19 sylvania, Rhode Island, South Carolina, Tennessee,
20 Virginia, and West Virginia and the fine grid por-
21 tions of Alabama, Georgia, Michigan, and Missouri.

22 “(4) The term ‘fine grid portions of Alabama,
23 Georgia, Michigan, and Missouri’ means the areas in
24 Alabama, Georgia, Michigan, and Missouri subject
25 to 40 CFR part 51.121 (2001).

1 **“SEC. 462. GENERAL PROVISIONS.**

2 “The provisions of sections 402 through 406 shall not
3 apply to this subpart.

4 **“SEC. 463. APPLICABLE IMPLEMENTATION PLAN.**

5 “(a) SIPS.—Except as provided in subsection (b),
6 the applicable implementation plan for each NO_x SIP Call
7 State shall be consistent with the requirements, including
8 the NO_x SIP Call State’s nitrogen oxides budget and com-
9 pliance supplement pool, in 40 CFR part 51.121 and
10 51.122 (2001);

11 “(b) REQUIREMENTS.—Notwithstanding any provi-
12 sion to the contrary in 40 CFR part 51.121 and 51.122
13 (2001)—

14 “(1) the applicable implementation plan for
15 each NO_x SIP Call State shall require full imple-
16 mentation of the required emission control measures
17 starting no later than the first ozone season; and

18 “(2) starting January 1, 2008—

19 “(A) the owners and operators of a boiler,
20 combustion turbine, or integrated gasification
21 combined cycle plant subject to emission reduc-
22 tion requirements or limitations under part B,
23 C, or D shall no longer be subject to the re-
24 quirements in a NO_x SIP Call State’s applica-
25 ble implementation plan that meet the require-
26 ments of subsection (a) and paragraph (1); and

1 “(B) notwithstanding subparagraph (A), if
2 the Administrator determines, by December 31,
3 2007, that a NO_x SIP Call State’s applicable
4 implementation plan meets the requirements of
5 subsection (a) and paragraph (1), such applica-
6 ble implementation plan shall be deemed to con-
7 tinue to meet such requirements; and

8 “(3)(A) The owner or operator or designated
9 representative of a boiler, combustion turbine, or
10 combined cycle system may submit to the Adminis-
11 trator a petition to allow use of nitrogen oxides al-
12 lowances allocated for 2005 to meet the applicable
13 requirement to hold nitrogen oxides allowances at
14 least equal to 2004 ozone season emissions of such
15 boiler, combustion turbine, or combined cycle sys-
16 tem.

17 “(B) A petition under this paragraph shall be
18 submitted to the Administrator by February 1,
19 2004.

20 “(C) The petition shall demonstrate that the
21 owner or operator made reasonable efforts to install,
22 at the boiler, combustion turbine, or combined cycle
23 system, nitrogen oxides control technology designed
24 to allow the owner or operator to meet such require-
25 ment to hold nitrogen oxides allowances.

1 “(D) The petition shall demonstrate that there
2 is an undue risk for the reliability of electricity sup-
3 ply (taking into account the feasibility of purchasing
4 electricity or nitrogen oxides allowances) because—

5 “(i) the owner or operator is not likely to
6 be able to install and operate the technology
7 under subparagraph (C) on a timely basis; or

8 “(ii) the technology under subparagraph
9 (C) is not likely to be able to achieve its design
10 control level on a timely basis.

11 “(E) The petition shall include a statement by
12 the NO_x SIP Call State where the boiler, combus-
13 tion turbine, or combined cycle system is located
14 that the NO_x SIP Call State does not object to the
15 petition.

16 “(F) By May 30, 2004, by order, the Adminis-
17 trator shall approve the petition if it meets the re-
18 quirements of subparagraphs (B) through (E).

19 “(c) SAVINGS PROVISION.—Nothing in this section or
20 section 464 shall preclude or deny the right of any State
21 or political subdivision thereof to adopt or enforce any reg-
22 ulation, requirement, limitation, or standard, relating to
23 a boiler, combustion turbine, or integrated gasification
24 combined cycle plant subject to emission reduction re-
25 quirements or limitations under part B, C, or D, that is

1 more stringent than a regulation, requirement, limitation,
2 or standard in effect under this section or under any other
3 provision of this Act.

4 **“SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION**
5 **OF NO_x TRADING PROGRAM FOR EGUS.**

6 “Starting January 1, 2008, with regard to any boiler,
7 combustion turbine, or integrated gasification combined
8 cycle plant subject to emission reduction requirements or
9 limitations under part B, C, or D, the Administrator shall
10 not administer any nitrogen oxides trading program in-
11 cluded in any NO_x SIP Call State’s applicable implemen-
12 tation plan and meeting the requirements of section
13 463(a) and (b)(1).

14 **“SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OX-**
15 **IDES ALLOWANCES.**

16 “The Administrator shall promulgate regulations as
17 necessary to assure that the requirement to hold allow-
18 ances under section 452(a)(1) may be met using nitrogen
19 oxides allowances allocated for an ozone season before
20 2008 under a nitrogen oxides trading program that the
21 Administrator administers, is included in a NO_x SIP Call
22 State’s applicable implementation plan, and meets the re-
23 quirements of section 463 (a) and (b)(1).

1 **“SEC. 466. NON-OZONE SEASON VOLUNTARY ACTION**
2 **CREDITS.**

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) The term ‘adjusted baseline heat input’
8 with regard to a unit means the unit’s baseline heat
9 input multiplied by—

10 “(A) 1.0, for the portion of the baseline
11 heat input that is the unit’s average annual
12 combustion of bituminous during the years on
13 which the unit’s baseline heat input is based;

14 “(B) 3.0, for the portion of the baseline
15 heat input that is the unit’s average annual
16 combustion of lignite during the years on which
17 the unit’s baseline heat input is based;

18 “(C) 1.25, for the portion of the baseline
19 heat input that is the unit’s average annual
20 combustion of subbituminous during the years
21 on which the unit’s baseline heat input is based;
22 and

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

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

3 “(2) The term ‘affected EGU’ means—

4 “(A) for a unit serving a generator before
5 the date of enactment of the Clear Skies Act of
6 2003, a coal-fired unit in a State serving a gen-
7 erator with a nameplate capacity of greater
8 than 25 megawatts that produced or produces
9 electricity for sale during 2002 or any year
10 thereafter, except for a cogeneration unit meets
11 the criteria for qualifying for a cogeneration fa-
12 cilities codified in section 292.205 of title 18 of
13 the Code of Federal Regulations as issued on
14 April 1, 2002, during 2002 and each year
15 thereafter; and

16 “(B) for a unit commencing service of a
17 generator on or after the date of enactment of
18 the Clear Skies Act of 2003, a coal-fired unit
19 in a State serving a generator that produces
20 electricity for sale during any year starting with
21 the year the unit commences service of a gener-
22 ator, except for a cogeneration unit that meets
23 the criteria for qualifying for a cogeneration fa-
24 cilities codified in section 292.205 of title 18 of
25 the Code of Federal Regulations as issued on

1 April 1, 2002, during each year starting with
 2 the year the unit commences service of a gener-
 3 ator.

4 “(C) Notwithstanding paragraphs (A) and
 5 (B), the term ‘affected EGU’ does not include
 6 a solid waste incineration unit subject to section
 7 129, a unit for the treatment, storage, or dis-
 8 posal of hazardous waste subject to section
 9 3005 of the Solid Waste Disposal Act, or a unit
 10 with de minimus emissions equal to or less than
 11 50 pounds on an annual basis.

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)(1) IN GENERAL.—Not later than 24 months be-
3 fore the commencement date of the mercury allowance re-
4 quirement of section 472, the Administrator shall promul-
5 gate regulations determining allocations of mercury allow-
6 ances for 2010 and thereafter for units at a facility that
7 commence commercial operation by and are affected
8 EGUs as of date of enactment. The regulations shall pro-
9 vide that the Administrator shall allocate each year for
10 such units an amount determined by multiplying by 0.95
11 the allocation amount in section 473 by the ratio of the
12 total amount of the adjusted baseline heat input of such
13 units at the facility to the total amount of adjusted base-
14 line heat input of all affected EGUs.

15 “(2) 5 percent of the total amount of nitrogen oxides
16 allowances allocated each year under section 473 shall be
17 allocated for units at a facility that commence commercial
18 operation and are affected EGUs after the date of enact-
19 ment. These units shall be allocated allowances for each
20 year by multiplying the allocation amount under section
21 473 by the ratio of the total amount of the adjusted base-
22 line heat input of such units at the facility to the total
23 amount of adjusted baseline heat input to all affected
24 EGUs, including those covered in paragraph (1). However,
25 the regulations shall not allocate allowances to any af-
26 fected unit in excess of the product of the unit’s baseline

1 heat input multiplied by the unit's allowable mercury
2 emissions rate, divided by 2000.

3 “(3) Allowances allocated under paragraph (2) shall
4 be allocated to units on a first come basis determined by
5 date of unit commencement of construction, provided that
6 such unit actually commences commercial operation. As
7 such, allocations to units under paragraph (2) will not be
8 reduced as a result of new units commencing commercial
9 operation.

10 “(4) Allowances not allocated under paragraph (2)
11 shall be allocated to units in paragraphs (1) and (2) on
12 a pro rata basis.

13 “(5) For each year 2010 and thereafter, if the Ad-
14 ministrator has not promulgated the regulations deter-
15 mining allocation under subsection (a)—

16 “(A) each affected unit shall comply with sec-
17 tion 472 by providing annual notice to the permit-
18 ting authority. Such notice shall indicate the amount
19 of allowances the affected unit believes it has for the
20 relevant year and the amount of mercury emissions
21 for such year. The amount of mercury emissions
22 shall be determined using reasonable industry ac-
23 cepted methods unless the Administrator has pro-
24 mulgated applicable monitoring and alternative mon-
25 itoring requirements; and

1 “(B) upon promulgation of regulations under
2 subsection (a) determining the allocations for 2010
3 and thereafter, and promulgating regulations under
4 section 403(b) providing for the transfer of mercury
5 allowances and section 403(c) establishing an Allow-
6 ance Transfer System for mercury allowances, each
7 unit’s emissions shall be compared to and reconcile
8 with its actual allocations under the promulgated
9 regulation. Each unit will have nine (9) months to
10 submit allowances to the Administrator, without rec-
11 ompense, for any allowances shortfall. The sub-
12 mitted allowances may have been obtained and held
13 by any mechanism consistent with the Act including,
14 but not limited to, direct sale. Any unit with an al-
15 lowance excess shall be credited allowances in ac-
16 cordance with section 475.

17 **“SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS.**

18 “(a) The Administrator shall promulgate regulations
19 within 18 months authorizing the allocation of nitrogen
20 oxides allowances to units designated under this section
21 that install or modify pollution control equipment or com-
22 bustion technology improvements identified in such regu-
23 lations after the date of enactment of this section and
24 prior to January 1, 2010.

1 “(b) No allowances shall be allocated under this para-
2 graph for emissions reductions: attributable to pollution
3 control equipment or combustion technology improvements
4 that were operational or under construction at any time
5 prior to the date of enactment of this section; attributable
6 to fuel switching; or required under any Federal regula-
7 tion.

8 “(c) The allowances allocated to any unit under this
9 paragraph shall be in addition to the allowances allocated
10 under section 474 and shall be allocated in an amount
11 equal to one allowance of mercury for each 1.05 tons of
12 reduction in emissions of mercury achieved by the pollu-
13 tion control equipment or combustion technology improve-
14 ments starting with the year in which the equipment or
15 improvement is implemented. The early compliance reduc-
16 tion allowances available under this section shall be used
17 and tradeable in the same manner as allowances under
18 section 474.

19 “(d) The Administrator shall promulgate regulations
20 as necessary to ensure affected units receive early compli-
21 ance allowance credit. Early compliance allowances shall
22 be allocated at the end of an early compliance year. Should
23 the Administrator fail to promulgate allocation regulations
24 by the end of a given year, early compliance allowances

1 for each year shall be allocated at the earliest possible time
2 after allocation regulations are promulgated.

3 **“PART E—NATIONAL EMISSION STANDARDS; RE-**
4 **SEARCH, ENVIRONMENTAL ACCOUNT-**
5 **ABILITY; MAJOR SOURCE PRECONSTRUC-**
6 **TION REVIEW AND BEST AVAILABLE RET-**
7 **ROFIT CONTROL TECHNOLOGY REQUIRE-**
8 **MENTS**

9 **“SEC. 481. NATIONAL EMISSION STANDARDS FOR AF-**
10 **FECTED UNITS.**

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

12 “(1) The term ‘commenced’, with regard to con-
13 struction, means that an owner or operator has ei-
14 ther undertaken a continuous program of construc-
15 tion or has entered into a contractual obligation to
16 undertake and complete, within a reasonable time, a
17 continuous program of construction. For boilers and
18 integrated gasification combined cycle plants, this
19 term does not include undertaking such a program
20 or entering into such an obligation more than 36
21 months prior to the date on which the unit begins
22 operation. For combustion turbines, this term does
23 not include undertaking such a program or entering
24 into such an obligation more than 18 months prior
25 to the date on which the unit begins operation.

1 “(2) The term ‘construction’ means fabrication,
2 erection, or installation of an affected unit.

3 “(3) The term ‘affected unit’ means any unit
4 that is subject to emission limitations under subpart
5 2 of part B, subpart 2 of part C, or part D.

6 “(4) The term ‘existing affected unit’ means
7 any affected unit that is not a new affected unit.

8 “(5) The term ‘new affected unit;’ means any
9 affected unit, the construction or reconstruction of
10 which is commenced after the date of enactment of
11 the Clear Skies Act of 2003, except that for the pur-
12 pose of any revision of a standard pursuant to sub-
13 section (e), ‘new affected unit’ means any affected
14 unit, the construction or reconstruction of which is
15 commenced after the publication of regulations (or,
16 if earlier, proposed regulations) prescribing a stand-
17 ard under this section that will apply to such unit.

18 “(6) The term ‘reconstruction’ means the re-
19 placement of components of a unit to such an extent
20 that—

21 “(A) the fixed capital cost of the new com-
22 ponents exceeds 50 percent of the fixed capital
23 cost that would be required to construct a com-
24 parable entirely new unit; and

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

4 “(b) EMISSION STANDARDS.—

5 “(1) IN GENERAL.—No later than 12 months
6 after the date of enactment of the Clear Skies Act
7 of 2003, the Administrator shall promulgate regula-
8 tions prescribing the standards in subsections (c)
9 through (d) for the specified affected units and es-
10 tablishing requirements to ensure compliance with
11 these standards, including monitoring, record-
12 keeping, and reporting requirements.

13 “(2) MONITORING.—(A) The owner or operator
14 of any affected unit subject to the standards for sul-
15 fur dioxide, nitrogen oxides, or mercury under this
16 section shall meet the requirements of section 405,
17 except that, where two or more units utilize a single
18 stack, separate monitoring shall be required for each
19 affected unit for the pollutants for which the unit is
20 subject to such standards.

21 “(B) The Administrator shall, by regulation, re-
22 quire—

23 “(i) the owner or operator of any affected
24 unit subject to the standards for sulfur dioxide,

1 nitrogen oxides, or mercury under this section
2 to—

3 “(I) install and operate CEMS for
4 monitoring output, including electricity and
5 useful thermal energy, on the affected unit
6 and to quality assure the data; and

7 “(II) comply with recordkeeping and
8 reporting requirements, including provi-
9 sions for reporting output data in mega-
10 watt hours.

11 “(ii) the owner or operator of any affected
12 unit subject to the standards for particulate
13 matter under this section to—

14 “(I) install and operate CEMS for
15 monitoring particulate matter on the af-
16 fected unit and to quality assure the data;

17 “(II) comply with recordkeeping and
18 reporting requirements; and

19 “(III) comply with alternative moni-
20 toring, quality assurance, recordkeeping,
21 and reporting requirements for any period
22 of time for which the Administrator deter-
23 mines that CEMS with appropriate vendor
24 guarantees are not commercially available
25 for particulate matter.

1 “(3) COMPLIANCE.—For boilers, integrated
2 gasification combined cycle plants, and coal fired or
3 gas-fired combustion turbines the Administrator
4 shall require that the owner or operator demonstrate
5 compliance with the standards daily, using a 30-day
6 rolling average, except that in the case of mercury,
7 the compliance period shall be the calendar year.
8 For combustion turbines that are oil-fired the Ad-
9 ministrators shall require that the owner or operator
10 demonstrate compliance with the standards hourly,
11 using a 4-hour rolling average.

12 “(c) BOILERS AND INTEGRATED GASIFICATION COM-
13 BINED CYCLE PLANTS.—

14 “(1) After the effective date of standards pro-
15 mulgated under subsection (b), no owner or operator
16 shall cause any boiler or integrated gasification com-
17 bined cycle plant that is a new affected unit to dis-
18 charge into the atmosphere any gases which con-
19 tain—

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

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

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

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

3 “(i) mercury emissions from the unit,
4 determined assuming no use of on-site or
5 off-site pre-combustion treatment of coal
6 and no use of technology that captures
7 mercury, are reduced by 80 percent;

8 “(ii) flue gas desulfurization (FGD)
9 and selective catalytic reduction (SCR) are
10 applied to the unit; or

11 “(iii) a technology is applied to the
12 unit and the permitting authority deter-
13 mines that the technology is equivalent in
14 terms of mercury capture to the applica-
15 tion of FGD and SCR.

16 “(2) Notwithstanding subparagraph (1)(D), in-
17 tegrated gasification combined cycle plants with a
18 combined capacity of less than 5 GW are exempt
19 from the mercury requirement under subparagraph
20 (1)(D) if they are constructed as part of a dem-
21 onstration project under the Secretary of Energy
22 that will include a demonstration of removal of sig-
23 nificant amounts of mercury as determined by the
24 Secretary of Energy in conjunction with the Admin-
25 istrator as part of the solicitation process.

1 “(3) After the effective date of standards pro-
2 mulgated under subsection (b), no owner or operator
3 shall cause any oil-fired boiler that is an existing af-
4 fected unit to discharge into the atmosphere any
5 gases which contain particulate matter in excess of
6 0.30 lb/MWh.

7 “(d) COMBUSTION TURBINES.—

8 “(1) After the effective date of standards pro-
9 mulgated under subsection (b), no owner or operator
10 shall cause any gas-fired combustion turbine that is
11 a new affected unit to discharge into the atmosphere
12 any gases which contain nitrogen oxides in excess
13 of—

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

17 “(B) 0.084 lb/MWh (3.5 ppm at 15 per-
18 cent oxygen), if the unit is not a simple cycle
19 combustion turbine and either uses add-on con-
20 trols or is located within 50 km of a class I
21 area; or

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

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

9 “(3) After the effective date of standards pro-
10 mulgated under subsection (b), no owner or operator
11 shall cause any combustion turbine that is not gas-
12 fired or coal-fired and that is a new affected unit to
13 discharge into the atmosphere any gases which con-
14 tain—

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

17 “(B) nitrogen oxides in excess of—

18 “(i) 0.289 lb/MWh (12 ppm at 15
19 percent oxygen), if the unit is not a simple
20 cycle combustion turbine, is dual-fuel capa-
21 ble, and uses add-on controls; or is not a
22 simple cycle combustion turbine and is lo-
23 cated within 50 km of a class I area; and

24 “(ii) 1.01 lb/MWh (42 ppm at 15 per-
25 cent oxygen), if the unit is a simple cycle

1 combustion turbine; is not a simple cycle
2 combustion turbine and is not dual-fuel ca-
3 pable; or is not a simple cycle combustion
4 turbine, is dual-fuel capable, and does not
5 use add-on controls.

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

8 “(e) PERIODIC REVIEW AND REVISION.—

9 “(1) The Administrator shall, at least every
10 eight years following the promulgation of standards
11 under subsection (b), review and, if appropriate, re-
12 vise such standards to reflect the degree of emission
13 limitation demonstrated by substantial evidence to
14 be achievable through the application of the best sys-
15 tem of emission reduction which (taking into ac-
16 count the cost of achieving such reduction and any
17 nonair quality health and environmental impacts and
18 energy requirements). When implementation and en-
19 forcement of any requirement of this Act indicate
20 that emission limitations and percent reductions be-
21 yond those required by the standards promulgated
22 under this section are achieved in practice, the Ad-
23 ministrator shall, when revising standards promul-
24 gated under this section, consider the emission limi-
25 tations and percent reductions achieved in practice.

1 “(2) Notwithstanding the requirements of para-
2 graph (1) the Administrator need not review any
3 standard promulgated under subsection (b) if the
4 Administrator determines that such review is not ap-
5 propriate in light of readily available information on
6 the efficacy of such standard.

7 “(f) EFFECTIVE DATE.—The standard promulgated
8 pursuant to this section shall become effective upon pro-
9 mulgation.

10 “(g) DELEGATION.—

11 “(1) Each State may develop and submit to the
12 Administration a procedure for implementing and
13 enforcing standards promulgated under this section
14 for affected units located in such State. If the Ad-
15 ministrator finds the State procedure is adequate,
16 the Administrator shall delegate to such State any
17 authority the Administrator has under this Act to
18 implement and enforce such standards.

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

22 “(h) VIOLATIONS.—After the effective date of stand-
23 ards promulgated under this section, it shall be unlawful
24 for any owner or operator of any affected unit to operate

1 such unit in violation of any standard, established by this
2 section applicable to such unit.

3 “(i) COORDINATION WITH OTHER AUTHORITIES.—
4 For purposes of sections III(e), 113, 114, 116, 120, 303,
5 304, 307, and other provisions for the enforcement of this
6 Act, each standard established pursuant to this section
7 shall be treated in the same manner as a standard of per-
8 formance under section 111, and each affected unit sub-
9 ject to standards under this section shall be treated in the
10 same manner as a stationary source under section 111.

11 “(j) STATE AUTHORITY.—Nothing in this section
12 shall preclude or deny the right of any State or political
13 subdivision thereof to adopt or enforce any regulation, re-
14 quirement, limitation, or standard relating to affected
15 units, or other EGUs, that is more stringent than a regu-
16 lation, requirement, limitation, or standard in effect under
17 this section or under any other provision of this Act.

18 “(k) OTHER AUTHORITY UNDER THIS ACT.—Noth-
19 ing in this section shall diminish the authority of the Ad-
20 ministrator or a State to establish any other requirements
21 applicable to affected units under any other authority of
22 law, including the authority to establish for any air pollut-
23 ant a national ambient air quality standard, except that
24 no new affected unit subject to standards under this sec-

1 tion shall be subject to standards under section 111 of
2 this Act.

3 **“SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND**
4 **ASSESSMENT.**

5 “(a) PURPOSES.—The Administrator, in collabora-
6 tion with the Secretary of Energy and the Secretary of
7 the Interior, shall conduct a comprehensive program of re-
8 search, environmental monitoring, and assessment to en-
9 hance scientific understanding of the human health and
10 environmental effects of particulate matter and mercury
11 and to demonstrate the efficacy of emission reductions
12 under this title for purposes of reporting to Congress
13 under (e)(2). The purposes of such a program are to—

14 “(1) expand current research and knowledge of
15 the contribution of emissions from electricity genera-
16 tion to exposure and health effects associated with
17 particulate matter and mercury;

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

21 “(3) produce peer-reviewed scientific and tech-
22 nology information;

23 “(4) improve environmental monitoring and as-
24 sessment of sulfur dioxide, nitrogen oxides and mer-
25 cury, and their transformation products, to track

1 changes in human health and the environment at-
2 tributable to emission reductions under this title;
3 and

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

7 “(b) RESEARCH.—The Administrator shall enhance
8 planned and ongoing laboratory and field research and
9 modeling analyses, and conduct new research and analyses
10 to produce peer-reviewed information concerning the
11 human health and environmental effects of mercury and
12 particulate matter and the contribution of United States
13 electrical generating units to those effects. Such informa-
14 tion shall be included in the report under subsection (d).
15 In addition, such research and analyses shall—

16 “(1) improve understanding of the rates and
17 processes governing chemical and physical trans-
18 formations of mercury in the atmosphere, including
19 speciation of emissions from electricity generation
20 and the transport of these species;

21 “(2) improve understanding of the contribution
22 of mercury emissions from electricity generation to
23 mercury in fish and other biota, including—

24 “(A) the response of and contribution to
25 mercury in the biota owing to atmospheric dep-

1 osition of mercury from U.S. electricity genera-
2 tion on both local and regional scales;

3 “(B) long-term contributions of mercury
4 from U.S. electricity generation on mercury ac-
5 cumulations in ecosystems, and the effects of
6 mercury reductions in that sector on the envi-
7 ronment and public health;

8 “(C) the role and contribution of mercury,
9 from U.S. electricity generating facilities and
10 anthropogenic and natural sources to fish con-
11 tamination and to human exposure, particularly
12 with respect to sensitive populations;

13 “(D) the contribution of U.S. electricity
14 generation to population exposure to mercury in
15 freshwater fish and seafood and quantification
16 of linkages between U.S. mercury emissions and
17 domestic mercury exposure and its health ef-
18 fects; and

19 “(E) the contribution of mercury from
20 U.S. electricity generation in the context of
21 other domestic and international sources of
22 mercury, including transport of global anthro-
23 pogenic and natural background levels;

24 “(3) improve understanding of the health ef-
25 fects of fine particulate matter components related

1 to electricity generation emissions (as distinct from
2 other fine particle fractions and indoor air expo-
3 sures) and the contribution of U.S. electrical gener-
4 ating units to those effects including—

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

8 “(B) personal exposure to fine particulate
9 matter from electricity generation; and

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

14 “(c) INNOVATIVE CONTROL TECHNOLOGIES.—The
15 Administrator shall collaborate with the Secretary of En-
16 ergy to enhance research and development, and conduct
17 new research that facilitates research into and develop-
18 ment of innovative technologies to control sulfur dioxide,
19 nitrogen oxides, mercury, and particulate matter at a
20 lower cost than existing technologies. Such research and
21 development shall provide updated information on the cost
22 and feasibility of technologies. Such information shall be
23 included in the report under subsection (d). In addition,
24 the research and development shall—

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

5 “(2) evaluate the overall environmental implica-
6 tions of the various technologies tested including the
7 impact on the characteristics of coal combustion res-
8 idues;

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

12 “(4) evaluate the potential of integrated gasifi-
13 cation combined cycle to adequately control mercury;

14 “(5) expand current programs by the Adminis-
15 trator to conduct research and promote, lower cost
16 CEMS capable of providing real-time measurements
17 of both speciated and total mercury and integrated
18 compact CEMS that provide cost-effective real-time
19 measurements of sulfur dioxide, nitrogen oxides, and
20 mercury;

21 “(6) expand lab- and pilot-scale mercury and
22 multi-pollutant control programs by the Secretary of
23 Energy and the Administrator, including develop-
24 ment of enhanced sorbents and scrubbers for use on
25 all coal types;

1 “(7) characterize mercury emissions from low-
2 rank coals, for a range of traditional control tech-
3 nologies, like scrubbers and selective catalytic reduc-
4 tion; and

5 “(8) improve low cost combustion modifications
6 and controls for dry-bottom boilers.

7 “(d) ENVIRONMENTAL ACCOUNTABILITY.—

8 “(1) MONITORING AND ASSESSMENT.—The Ad-
9 ministrator shall conduct a program of environ-
10 mental monitoring and assessment to track on a
11 continuing basis, changes in human health and the
12 environment attributable to the emission reductions
13 required under this title. Such a program shall—

14 “(A) develop and employ methods to rou-
15 tinely monitor, collect, and compile data on the
16 status and trends of mercury and its trans-
17 formation products in emissions from affected
18 facilities, atmospheric deposition, surface water
19 quality, and biological systems. Emphasis shall
20 be placed on those methods that—

21 “(i) improve the ability to routinely
22 measure mercury in dry deposition proc-
23 esses;

24 “(ii) improve understanding of the
25 spatial and temporal distribution of mer-

1 cury deposition in order to determine
2 source-receptor relationships and patterns
3 of long-range, regional, and local deposi-
4 tion;

5 “(iii) improve understanding of aggre-
6 gate exposures and additive effects of
7 methylmercury and other pollutants; and

8 “(iv) improve understanding of the ef-
9 fectiveness and cost of mercury emissions
10 controls;

11 “(B) modernize and enhance the national
12 air quality and atmospheric deposition moni-
13 toring networks in order to cost-effectively ex-
14 pand and integrate, where appropriate, moni-
15 toring capabilities for sulfur, nitrogen, and mer-
16 cury to meet the assessment and reporting re-
17 quirements of this section;

18 “(C) perform and enhance long-term moni-
19 toring of sulfur, nitrogen, and mercury, and pa-
20 rameters related to acidification, nutrient en-
21 richment, and mercury bioaccumulation in
22 freshwater and marine biota;

23 “(D) maintain and upgrade models that
24 describe the interactions of emissions with the
25 atmosphere and resulting air quality implica-

1 tions and models that describe the response of
2 ecosystems to atmospheric deposition; and

3 “(E) assess indicators of ecosystems health
4 related to sulfur, nitrogen, and mercury, includ-
5 ing characterization of the causes and effects of
6 episodic exposure to air pollutants and evalua-
7 tion of recovery.

8 “(2) REPORTING REQUIREMENTS.—Not later
9 than January 1, 2008, and not later than every 4
10 years thereafter, the Administrator shall provide a
11 peer reviewed report to the Congress on the costs,
12 benefits, and effectiveness of emission reduction pro-
13 grams under this title.

14 “(A) The report under this subparagraph
15 shall address the relative contribution of emis-
16 sion reductions from U.S. electricity generation
17 under this title compared to the emission reduc-
18 tions achieved under other titles of the Clean
19 Air Act with respect to—

20 “(i) actual and projected emissions of
21 sulfur dioxide, nitrogen oxides, and mer-
22 cury;

23 “(ii) average ambient concentrations
24 of sulfur dioxide and nitrogen oxides trans-
25 formation products, related air quality pa-

1 parameters, and indicators of reductions in
2 human exposure;

3 “(iii) status and trends in total at-
4 mospheric deposition of sulfur, nitrogen,
5 and mercury, including regional estimates
6 of total atmospheric deposition;

7 “(iv) status and trends in visibility;

8 “(v) status of terrestrial and aquatic
9 ecosystems (including forests and forested
10 watersheds, streams, lakes, rivers, estu-
11 aries, and nearcoastal waters);

12 “(vi) status of mercury and its trans-
13 formation products in fish;

14 “(vii) causes and effects of atmos-
15 pheric deposition, including changes in sur-
16 face water quality, forest and soil condi-
17 tions;

18 “(viii) occurrence and effects of coast-
19 al eutrophication and episodic acidification,
20 particularly with respect to high elevation
21 watersheds; and

22 “(ix) reduction in atmospheric deposi-
23 tion rates that should be achieved to pre-
24 vent or reduce adverse ecological effects.

1 “(B) The report under this subparagraph
2 shall address the relative contribution of the
3 United States to world-wide emissions as well
4 as a comparison of the stringency of fossil fuel-
5 fired requirements under the Act to other coun-
6 tries.

7 **“SEC. 483. MAJOR SOURCE PRECONSTRUCTION REVIEW RE-**
8 **QUIREMENTS AND BEST AVAILABLE RET-**
9 **ROFIT CONTROL TECHNOLOGY REQUIRE-**
10 **MENTS; APPLICABILITY TO AFFECTED UNITS.**

11 “(a) MAJOR SOURCE EXEMPTION.—An affected unit
12 shall not be considered a major emitting facility or major
13 stationary source, or a part of a major emitting facility
14 or major stationary source for purposes of compliance with
15 the requirements of parts C and part D of title I nor shall
16 it otherwise be subject to the requirements of section 169A
17 or 169B. This applicability provision only applies to af-
18 fected units that are either subject to the performance
19 standards of section 481 or meet the following require-
20 ments within 3 years after the date of enactment of the
21 Clear Skies Act of 2003:

22 “(1) The owner or operator of the affected unit
23 properly operates, maintains and repairs pollution
24 control equipment to limit emissions of particulate
25 matter, or the owner or operator of the affected unit

1 is subject to an enforceable permit issued pursuant
2 to title V or a permit program approved or promul-
3 gated as part of an applicable implementation plan
4 to limit the emissions of particulate matter from the
5 affected unit to 0.03 lb/mmBtu within eight years
6 after the date of enactment of the Clear Skies Act
7 of 2003, and

8 “(2) The owner or operator of the affected unit
9 uses good combustion practices to minimize emis-
10 sions of carbon monoxide. Good combustion prac-
11 tices may be accomplished through control tech-
12 nology, combustion technology improvements, or
13 workplace practices.

14 “(b) CLASS I AREA PROTECTIONS.—Notwith-
15 standing the provisions of subsection (a), an affected unit
16 located within 50 km of a Class I area on which construc-
17 tion commences after the date of enactment of the Clear
18 Skies Act of 2003 is subject to those provisions under part
19 C of title I pertaining to the review of a new or recon-
20 structed major stationary source’s impact on a Class I
21 area.

22 “(c) PRECONSTRUCTION REQUIREMENTS.—Each
23 State shall include in its plan under section 110, as pro-
24 gram to provide for the regulation of the construction of
25 an affected unit that ensures that the following require-

1 ments are met prior to the commencement of construction
2 of an affected unit—

3 “(1) in an area designated as attainment or
4 unclassifiable under section 107(d), the owner or op-
5 erator of the affected unit must demonstrate to the
6 State that the emissions increase from the construc-
7 tion or operation of such unit will not cause, or con-
8 tribute to, air pollution in excess of any national am-
9 bient air quality standard;

10 “(2) in an area designated as nonattainment
11 under section 107(d), the State must determine that
12 the emissions increase from the construction or oper-
13 ation of such unit will not interfere with any pro-
14 gram to assure that the national ambient air quality
15 standards are achieved provided that interference
16 with any program will be deemed not to occur, with
17 respect to each nonattainment area located wholly or
18 partially within the State, if on the date of submis-
19 sion of a complete permit application and through-
20 out a continuous period of three years immediately
21 preceding such date, the nonattainment area was in
22 full compliance with all requirements of this Act, in-
23 cluding but not limited to requirements for State
24 Implementation Plans;

1 “(3) for a reconstructed unit, prior to beginning
2 operation, the unit must comply with either the per-
3 formance standards of section 481 or best available
4 control technology as defined in part C of title I for
5 the pollutants whose hourly emissions will increase
6 at the unit’s maximum capacity; and

7 “(4) the State must provide for an opportunity
8 for interested persons to comment on the Class I
9 area protections and preconstruction requirements
10 as set forth in this section.

11 “(d) DEFINITIONS.—For purposes of this section:

12 “(1) The term ‘affected unit’ means any unit
13 that is subject to emission limitations under subpart
14 2 of part B, subpart 2 of part C, or part D.

15 “(2) The term ‘construction’ includes the con-
16 struction of a new affected unit and the modification
17 of any affected unit.

18 “(3) The term ‘modification’ means any phys-
19 ical change in, or change in the method of operation
20 of, an affected unit that increases the maximum
21 hourly emissions of any pollutant regulated under
22 this Act above the maximum hourly emissions
23 achievable at that unit during the five years prior to
24 the change or that results in the emission of any

1 pollutant regulated under this Act and not pre-
2 viously emitted.

3 “(e) SAVINGS CLAUSE.—Nothing in this section shall
4 preclude or deny the right of any State or political subdivi-
5 sion thereof to adopt to enforce any regulation, require-
6 ment, limitation, or standard relating to affected units
7 that is more stringent than a regulation, requirement, lim-
8 itation, or standard in effect under this section or under
9 any other provision of this Act.”

10 **SEC. 3. OTHER AMENDMENTS.**

11 (a) Title I of the Clean Air Act is amended as follows:

12 (1) In section 103 by repealing subparagraphs
13 (E) and (F).

14 (2) In section 107:

15 (A) By amending subparagraph (A) of
16 subsection (d)(1) as follows:

17 (i) strike “or” at the end of clause

18 (ii);

19 (ii) strike the period at the end of
20 clause (iii) and insert “, or”;

21 (iii) add the following clause (iv) after
22 clause (iii):

23 “(iv) notwithstanding clauses (i)
24 through (iii), an area may be designated
25 transitional for the PM 2.5 national pri-

1 mary or secondary ambient air quality
2 standards or the 8-hour ozone national pri-
3 mary or secondary ambient air quality
4 standard if the Administrator has per-
5 formed air quality modeling and, in the
6 case of an area that needs additional local
7 control measures, the State has performed
8 supplemental air quality modeling, dem-
9 onstrating that the area will attain the ap-
10 plicable standard or standards no later
11 than December 31, 2015, and such mod-
12 eling demonstration and all necessary local
13 controls have been approved into the State
14 implementation plan no later than Decem-
15 ber 31, 2004.”; and

16 (iv) add at the end a sentence to read
17 as follows: “For purposes of the PM 2.5
18 national primary or secondary ambient air
19 quality standards, the time period for the
20 State to submit the designations shall be
21 extended to no later than December 31,
22 2003.”.

23 (B) By amending clause (i) of subsection
24 (d)(1)(B) by adding at the end a sentence to
25 read as follows: “The Administrator shall not

1 be required to designate areas for the revised
2 PM 2.5 national primary or secondary ambient
3 air quality standards prior to six months after
4 the States are required to submit recommenda-
5 tions under section 107(d)(1)(A), but in no
6 event shall the period for designating such
7 areas be extended beyond December 31, 2004.

8 (3) In section 110 as follows:

9 (A) By amending clause (i) of subsection
10 (a)(2)(D) by inserting “except as provided in
11 subsection (q),” before the word “prohibiting”.

12 (B) By adding the following new sub-
13 sections at the end thereof:

14 “(q) REVIEW OF CERTAIN PLANS.—(1) The Admin-
15 istrator shall, in reviewing, under clause (i) of subsection
16 (a)(2)(D), any plan with respect to affected units, within
17 the meaning of section 126(d)(l)—

18 “(A) consider, among other relevant factors,
19 emissions reductions required to occur by the attain-
20 ment date or dates of any relevant nonattainment
21 areas in the other State or States;

22 “(B) not require submission of plan provisions
23 mandating emissions reductions from such affected
24 units, unless the Administrator determines that—

1 “(i) emissions from such units may be re-
2 duced at least as cost-effectively as emissions
3 from each other principal category of sources of
4 the relevant pollutant, pollutants, or pre-cursors
5 thereof, including industrial boilers, on-road
6 mobile sources, and off-road mobile sources,
7 and any other category of sources that the Ad-
8 ministrator may identify, and

9 “(ii) reductions in such emissions will im-
10 prove air quality in the other State’s or States’
11 nonattainment areas at least as cost-effectively
12 as reductions in emissions from each other prin-
13 cipal category of sources of the relevant pollut-
14 ant, pollutants, or pre-cursors thereof, to the
15 maximum extent that a methodology is reason-
16 ably available to make such a determination;

17 “(C) develop an appropriate peer reviewed
18 methodology for making determinations under sub-
19 paragraph (B) by December 31, 2006; and

20 “(D) not require submission of plan provisions
21 subjecting affected units, within the meaning of sec-
22 tion 126(d)(1), to requirements with an effective
23 date prior to December 31, 2014.

24 “(2) In making the determination under clause (ii)
25 of subparagraph (B) of paragraph (1), the Administrator

1 will use the best available peer-reviewed models and meth-
2 odology that consider the proximity of the source or
3 sources to the other State or States and incorporate other
4 source characteristics.

5 “(3) Nothing in paragraph (1) shall be interpreted
6 to require revisions to the provisions of 40 CFR parts
7 51.121 and 51.122 (2001).

8 “(r) TRANSITIONAL AREAS.—

9 “(1) MAINTENANCE.—(A) By December 31,
10 2011, each area designated as transitional pursuant
11 to section 107(d)(1) shall submit an updated emis-
12 sion inventory and an analysis of whether growth in
13 emissions, including growth in vehicle miles traveled,
14 will interfere with attainment by December 31,
15 2014.

16 “(B) No later than December 31, 2011, the Ad-
17 ministrator shall review each transitional area’s
18 maintenance analysis, and, if the Administrator de-
19 termines that growth in emissions will interfere with
20 attainment by December 31, 2014, the Adminis-
21 trator shall consult with the State and determine
22 what action, if any, is necessary to assure that at-
23 tainment will be achieved by December 31, 2014.

24 “(2) PREVENTION OF SIGNIFICANT DETERIORA-
25 TION.—Each area designated as transitional pursu-

1 ant to section 107(d)(1) shall be treated as an at-
2 tainment or unclassifiable area for purposes of the
3 prevention of significant deterioration provisions of
4 part C of this title.

5 “(3) CONSEQUENCES OF FAILURE TO ATTAIN
6 BY 2015.—No later than June 30, 2016, the Admin-
7 istrator shall determine whether each area des-
8 igned as transitional for the 8-hour ozone stand-
9 ard or for the PM 2.5 standard has attained that
10 standard. If the Administrator determines that a
11 transitional area has not attained the standard, the
12 area shall be redesignated as nonattainment within
13 one year of the determination and the State shall be
14 required to submit a State implementation plan revi-
15 sion satisfying the provisions of section 172 within
16 three years of redesignation as nonattainment.”.

17 (4) In section 111(b)(1) by adding the following
18 new subparagraph (C) after subparagraph (B):

19 “(C) No standards of performance promul-
20 gated under this section shall apply to units
21 subject to regulations promulgated pursuant to
22 section 481.”.

23 (5) In section 112:

24 (A) By amending paragraph (1) of sub-
25 section (c) to read as follows:

1 “(1) IN GENERAL.—Not later than 12 months
2 after November 15, 1990, the Administrator shall
3 publish, and shall from time to time, but not less
4 often than every eight years, revise, if appropriate,
5 in response to public comment or new information,
6 a list of all categories and subcategories of major
7 sources and area sources (listed under paragraph
8 (3)) of the air pollutants listed pursuant to sub-
9 section (b). Electric utility steam generating units
10 not subject to section 3005 of the Solid Waste Dis-
11 posal Act shall not be included in any category or
12 subcategory listed under this subsection. The Ad-
13 ministrator shall have the authority to regulate the
14 emission of hazardous air pollutants listed under
15 section 112(b), other than mercury compounds, by
16 electric utility steam generating units, provided that
17 any determination shall be based on public health
18 concerns and, on an individual source basis shall:
19 consider the effects of emissions controls installed or
20 anticipated to be installed in order to meet other
21 emission reduction requirements under this Act by
22 2018; and, be based on a peer reviewed study with
23 notice and opportunity to comment, to be completed
24 not before January 2015. Any such regulations shall
25 be promulgated within, and shall not take effect be-

1 fore, the date eight years after the commencement
2 date of the requirements set forth in section 472. To
3 the extent practicable, the categories and subcat-
4 egories listed under this subsection shall be con-
5 sistent with the list of source categories established
6 pursuant to section 111 and part C. Nothing in the
7 preceding sentence limits the Administrator's au-
8 thority to establish subcategories under this section,
9 as appropriate.”.

10 (B) By amending subparagraph (A) of
11 subsection (n)(1) to read as follows:

12 “(A) The Administrator shall perform a
13 study of the hazards to public health reasonably
14 anticipated to occur as a result of emissions by
15 electric utility steam generating units of pollut-
16 ants listed under subsection (b) after imposition
17 of the requirements of this Act. The Adminis-
18 trator shall report the results of this study to
19 the Congress within three years after November
20 15, 1990.”

21 (6) Section 126 is amended as follows:

22 (A) By replacing “section 110(a)(2)(D)(ii)
23 or this section” in subsection (b) with “section
24 110(a)(2)(D)(i)”.

1 (B) By replacing “this section and the pro-
2 hibition of section 110(a)(2)(D)(ii)” in sub-
3 section (e)(1) with “the prohibition of section
4 110(a)(2)(D)(i)”.

5 (C) In the language at end of subsection
6 (c) by striking “section 110(a)(2)(D)(ii)” and
7 inserting “section 110(a)(2)(D)(i)” and deleting
8 the last sentence.

9 (D) By amending subsection (d) to read as
10 follows:

11 “(d)(1) For purposes of this subsection, the term ‘af-
12 fected unit’ means any unit that is subject to emission
13 limitations under subpart 2 of part B, subpart 2 of part
14 C, or part D, or is a designated unit under section 407.

15 “(2) To the extent that any petition submitted under
16 subsection (b) after the date of enactment of the Clear
17 Skies Act of 2003 seeks a finding for any affected unit,
18 then, notwithstanding any provision in subsections (a)
19 through (c) to the contrary:

20 “(A) In determining whether to make a finding
21 under subsection (b) for any affected unit, the Ad-
22 ministrators shall consider, among other relevant fac-
23 tors, emissions reductions required to occur by the
24 attainment date or dates of any relevant nonattain-

1 ment areas in the petitioning State or political sub-
2 division.

3 “(B) The Administrator may not determine
4 that affected units emit, or would emit, any air pol-
5 lutant in violation of the prohibition of section
6 110(a)(2)(D)(i) unless that Administrator deter-
7 mines that—

8 “(i) such emissions may be reduced at
9 least as cost-effectively as emissions from each
10 other principal category of sources of sulfur di-
11 oxide or nitrogen oxides, including industrial
12 boilers, on-road mobile sources, and off-road
13 mobile sources, and any other category of
14 sources that the Administrator may identify;
15 and

16 “(ii) reductions in such emissions will im-
17 prove air quality in the petitioning State’s non-
18 attainment area or areas at least as cost-effec-
19 tively as reductions in emissions from each
20 other principal category of sources of sulfur di-
21 oxide or nitrogen oxides to the maximum extent
22 that a methodology is reasonably available to
23 make such a determination.

24 In making the determination under clause (ii), the
25 Administrator shall use the best available peer-re-

1 viewed models and methodology that consider the
2 proximity of the source or sources to the petitioning
3 State or political subdivision and incorporate other
4 sources characteristics.

5 “(C) The Administrator shall develop an appro-
6 priate peer reviewed methodology for making deter-
7 minations under subparagraph (B) by December 31,
8 2006.

9 “(D) The Administrator shall not make any
10 findings with respect to an affected unit under this
11 section prior to December 1, 2011. For any petition
12 submitted prior to January 1, 2010, the Adminis-
13 trator shall make a finding or deny the petition by
14 the December 31, 2011.

15 “(E) The Administrator, by rulemaking, shall
16 extend the compliance and implementation deadlines
17 in subsection (c) to the extent necessary to assure
18 that no affected unit shall be subject to any such
19 deadline prior to January 1, 2014.”.

20 (b) TITLE III.—Section 307(d)(1)(G) of title III of
21 the Clean Air Act is amended to read as follows:

22 “(G) the promulgation or revision of any
23 regulation under title IV,”.

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

1 is redesignated as title VII and amended by renumbering
2 sections 401 through 403 as sections 701 through 703,
3 respectively, and conforming all cross-references thereto
4 accordingly.

5 (d) SECTION 406.—Title IV of the Clean Air Act
6 Amendments of 1990 (relating to acid deposition control)
7 is amended by repealing section 406 (industrial sulfur di-
8 oxide emissions).

9 (e) MONITORING.—Section 821 (a) of title VIII of
10 the Clean Air Act Amendments of 1990 (miscellaneous
11 provisions) is amended to read as follows:

12 “(a) MONITORING.—The Administrator shall promul-
13 gate regulations within eighteen months after November
14 15, 1990, to require that all affected sources subject to
15 subpart 1 of part B of title IV of the Clean Air Act as
16 of December 31, 2009, shall also monitor carbon dioxide
17 emissions according to the same timetable as in section
18 405(b). The required monitoring may be no more strin-
19 gent than that required by any two of the four most popu-
20 lous countries for units comparable to the affected units
21 in the United States. The regulations shall require that
22 such data be reported to the Administrator. The provi-
23 sions of section 405(e) of title IV of the Clean Air Act
24 shall apply for purposes of this section in the same manner
25 and to the same extent as such provision applies to the

1 monitoring and data referred to in section 405. The Ad-
2 ministrator shall implement this subsection under 40 CFR
3 part 75 (2002), amended as appropriate by the Adminis-
4 trator.”.

○