

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

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

S. 131

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

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. INHOFE

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

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

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

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

“TITLE IV—EMISSION REDUCTION PROGRAMS

2

“PART A—GENERAL PROVISIONS

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

“PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

“SUBPART 1—ACID RAIN PROGRAM

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

“SUBPART 2—CLEAR SKIES SULFUR DIOXIDE ALLOWANCE PROGRAM

- “Sec. 421. Definitions.
- “Sec. 422. Applicability.
- “Sec. 423. Limitations on total emissions.
- “Sec. 424. Egu allocations.
- “Sec. 425. Disposition of sulfur dioxide allowances allocated under subpart 1.
- “Sec. 426. Incentives for sulfur dioxide emission control technology.

“SUBPART 3—WESTERN REGIONAL AIR PARTNERSHIP

- “Sec. 431. Definitions.
- “Sec. 432. Applicability.
- “Sec. 433. Limitations on total emissions.
- “Sec. 434. EGU allocations.

“PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

“SUBPART 1—ACID RAIN PROGRAM

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

“SUBPART 2—CLEAR SKIES NITROGEN OXIDES ALLOWANCE PROGRAM

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

“SUBPART 3—OZONE SEASON NO_x BUDGET PROGRAM

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

“PART D—MERCURY EMISSIONS REDUCTIONS

- “Sec. 471. Definitions.
- “Sec. 472. Applicability.
- “Sec. 473. Limitations on total emissions.
- “Sec. 474. EGU allocations.
- “Sec. 475. Mercury early action reduction credits.
- “Sec. 476. Mercury hot spot program.

“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. 484. Gasification technology development.

Sec. 3. Other amendments.

1 SEC. 2. EMISSION REDUCTION PROGRAMS.

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

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

7 “PART A—GENERAL PROVISIONS

8 “SEC. 401. DEFINITIONS.

9 “In this title:

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

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

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

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

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

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

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

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

23 “(5) BASELINE HEAT INPUT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(A) electricity; and

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

4 “(10) COMBUSTION TURBINE.—

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

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

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

17 “(11) COMMENCE COMMERCIAL OPERATION.—

18 The term ‘commence commercial operation’ with re-
19 gard to a unit means the start up of the unit’s com-
20 bustion chamber and the commencement of the gen-
21 eration of electricity for sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(23) HEAT INPUT.—

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

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

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

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

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

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

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

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

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

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

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

5 **“SEC. 402. ALLOWANCE SYSTEM.**

6 “(a) ALLOCATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(e) PROHIBITIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 “(k) SORBENT MONITORING SYSTEM.—The term
9 “sorbent monitoring system” means the equipment re-
10 quired by section 405 used to sample on a continuous
11 basis emissions and flow and measure, analyze, and pro-
12 vide (on a frequent and periodic basis) a permanent record
13 of emissions and (on a continuous basis) a permanent
14 record of flow (as the Administrator may prescribe by reg-
15 ulations under section 405).

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

17 “(a) PERMIT PROGRAM.—The provisions of this title
18 shall be implemented, subject to section 402, by permits
19 issued to units and facilities subject to this title and en-
20 forced in accordance with the provisions of title V, as
21 modified by this title. Any such permit issued by the Ad-
22 ministrator, or by a State with an approved permit pro-
23 gram, shall prohibit—

24 “(1) annual emissions of sulfur dioxide, nitro-
25 gen oxides, and mercury in excess of the number of

1 allowances required to be held in accordance with
2 sections 412(e), 422, 432, 452, and 472;

3 “(2) exceeding applicable emissions rates under
4 section 441;

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

7 “(4) contravention of any other provision of the
8 permit.

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

11 “(b) COMPLIANCE PLAN.—

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

21 “(2) STATEMENTS.—

22 “(A) IN GENERAL.—Submission of a state-
23 ment by the owner or operator, or the des-
24 ignated representative of the owners and opera-
25 tors, of a unit subject to the emissions limita-

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

1 “(B) OTHER STATEMENTS.—Submission
2 of a statement by the owner or operator, or the
3 designated representative, of a facility that in-
4 cludes a unit subject to the emissions limitation
5 requirements of sections 422, 432, 452, and
6 472 that the owner or operator will hold sulfur
7 dioxide allowances, nitrogen oxide allowances,
8 and mercury allowances, as the case may be, in
9 the amount required by such sections shall be
10 deemed to meet the proposed and approved
11 compliance planning requirements of this sec-
12 tion and title V with regard to subparts A
13 through D.

14 “(3) RECORDING OF TRANSFERS.—Recording
15 by the Administrator of transfers of allowances shall
16 amend automatically, and will not reopen or require
17 reopening of, any or all applicable proposed or ap-
18 proved permit applications, compliance plans, and
19 permits.

20 “(c) PERMITS.—The owner or operator of each facil-
21 ity under this title that includes an affected unit subject
22 to title V shall submit a permit application and compliance
23 plan with regard to the applicable requirements under sec-
24 tions 412(c), 422, 432, 441, 452, and 472 for sulfur diox-
25 ide emissions, nitrogen oxide emissions, and mercury emis-

1 sions from such unit to the permitting authority in accord-
2 ance with the deadline for submission of permit applica-
3 tions and compliance plans under title V. The permitting
4 authority shall issue a permit to such owner or operator,
5 or the designated representative of such owner or oper-
6 ator, that satisfies the requirements of title V and this
7 title.

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

13 “(e) PROHIBITION.—

14 “(1) IN GENERAL.—It shall be unlawful for any
15 person to operate any facility subject to this title ex-
16 cept in compliance with the terms and requirements
17 of a permit application and compliance plan (includ-
18 ing amendments thereto) or permit issued by the
19 Administrator or a State with an approved permit
20 program. For purposes of this subsection, compli-
21 ance, as provided in section 504(f), with a permit
22 issued under title V which complies with this title
23 for facilities subject to this title shall be deemed
24 compliance with this subsection as well as section
25 502(a).

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

7 “(f) CERTIFICATE OF REPRESENTATION.—No per-
8 mit shall be issued under this section to an affected unit
9 or facility until the designated representative of the own-
10 ers or operators has filed a certificate of representation
11 with regard to matters under this title, including the hold-
12 ing and distribution of allowances and the proceeds of
13 transactions involving allowances.

14 “(g) MULTIPLE OWNERS.—

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

1 power contractual arrangements, the certificate shall
2 state—

3 “(A) that allowances and the proceeds or
4 transactions involving allowance will be deemed
5 to be held or distributed in proportion to each
6 holder’s legal, equitable, leasehold, or contrac-
7 tual reservation or entitlement, or

8 “(B) if such multiple holders have ex-
9 pressly provided for a different distribution of
10 allowances by contract, that allowances and the
11 proceeds of transactions involving allowances
12 will be deemed to be held or distributed in ac-
13 cordance with the contract.

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

1 cation shall state that all allowances received by the
2 unit are deemed to be held for that person.

3 **“SEC. 404. MONITORING, REPORTING, AND RECORD-**
4 **KEEPING REQUIREMENTS.**

5 “(a) REQUIREMENTS.—

6 “(1) APPLICABILITY.—

7 “(A) IN GENERAL.—The owner and oper-
8 ator of any facility subject to this title shall be
9 required to install and operate CEMS on each
10 affected unit subject to subpart 1 of part B or
11 subpart 1 of part C at the facility, and to qual-
12 ity assure the data, for sulfur dioxide, nitrogen
13 oxides, opacity, and volumetric flow at each
14 such unit.

15 “(B) SPECIFICATION OF REQUIRE-
16 MENTS.—The Administrator shall, by regula-
17 tion, specify the requirements for CEMS under
18 subparagraph (A), for any alternative moni-
19 toring system that is demonstrated as providing
20 information with the same precision, reliability,
21 accessibility, and timeliness as that provided by
22 CEMS, and for recordkeeping and reporting of
23 information from such systems. Such regula-
24 tions may include limitations on the use of al-
25 ternative compliance methods by units equipped

1 with an alternative monitoring system as may
2 be necessary to preserve the orderly functioning
3 of the allowance system, and which will ensure
4 the emissions reductions contemplated by this
5 title. Where 2 or more units utilize a single
6 stack, a separate CEMS shall not be required
7 for each unit, and for such units the regulations
8 shall require that the owner or operator collect
9 sufficient information to permit reliable compli-
10 ance determinations for each such unit.

11 “(2) INSTALLATION AND OPERATION.—

12 “(A) IN GENERAL.—The owner and oper-
13 ator of any facility subject to this title shall be
14 required to install and operate CEMS or, for
15 mercury, a sorbent media monitoring system, to
16 monitor the emissions from each affected unit
17 at the facility, and to quality assure the data
18 for sulfur dioxide, opacity, and volumetric flow
19 for all affected units subject to subpart 2 of
20 part B at the facility.

21 “(B) ALTERNATIVE MONITORING.—

22 “(i) IN GENERAL.—The Administrator
23 may specify an alternative monitoring sys-
24 tem for determining mercury emissions, if
25 the Administrator determines that the lack

1 of commercially available appropriate and
2 reasonable vendor guarantees shall con-
3 stitute a reasonable and permissible basis
4 for specifying alternative monitoring sys-
5 tems for mercury.

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

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

24 “(iv) SPECIFICATION OF REQUIRE-
25 MENTS.—The Administrator shall, by reg-

1 ulation, specify the requirements for
2 CEMS or, for mercury, a sorbent media
3 monitoring system under subparagraph
4 (A), of any alternative monitoring system
5 that is demonstrated as providing informa-
6 tion that is of the same precision, reli-
7 ability, accessibility, and timeliness as that
8 provided by CEMS or, for mercury, a sor-
9 bent media monitoring system, and for rec-
10 ordkeeping and reporting of information
11 from such systems. Such regulations may
12 include limitations on the use of alternative
13 compliance methods by units equipped with
14 an alternative monitoring system as may
15 be necessary to preserve the orderly func-
16 tioning of the allowance system, and which
17 will ensure the emissions reductions con-
18 templated by this title. If 2 or more units
19 use a single stack, a separate CEMS or,
20 for mercury, a sorbent media monitoring
21 system shall not be required for each unit,
22 and for such units the regulations shall re-
23 quire that the owner or operator collect
24 sufficient information to permit reliable

1 compliance determinations for each such
2 unit.

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 that is
11 1 year before the commencement date of the sulfur
12 dioxide allowance requirement of section 422, or the
13 date on which the unit commences commercial oper-
14 ation, the owner or operator of each affected unit
15 under subpart 2 of part B shall install and operate
16 CEMS, quality assure the data, and keep records
17 and reports in accordance with the regulations
18 issued under paragraph (a)(2) with regard to sulfur
19 dioxide, 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 later of the date that is
23 1 year before the first covered year, or the date on
24 which the unit commences commercial operation, the
25 owner or operator of each affected unit under sub-

1 part 3 of part B shall install and operate CEMS,
2 quality assure the data, and keep records and re-
3 ports in accordance with the regulations issued
4 under paragraph (a)(2) with regard to sulfur dioxide
5 and volumetric flow.

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

18 “(5) DEADLINE FOR AFFECTED UNITS UNDER
19 PART D FOR INSTALLATION AND OPERATION OF
20 CEMS.—By the later of the date that is 1 year be-
21 fore the commencement date of the mercury allow-
22 ance requirement of section 472, or the date on
23 which the unit commences commercial operation, the
24 owner or operator of each affected unit under part
25 D shall install and operate CEMS, quality assure

1 the data, and keep records and reports in accord-
2 ance with the regulations issued under paragraph
3 (a)(2) with regard to mercury.

4 “(c) UNAVAILABILITY OF EMISSIONS DATA.—If
5 CEMS data, or, for mercury, data from an in-stack sor-
6 bent media monitoring system, or data from an alternative
7 monitoring system approved by the Administrator under
8 subsection (a) is not available for any affected unit during
9 any period of a calendar year in which that data is re-
10 quired under this title, and the owner or operator cannot
11 provide information satisfactory to the Administrator on
12 emissions during that period, the Administrator shall
13 deem the unit to be operating in an uncontrolled manner
14 during the entire period for which the data was not avail-
15 able and shall by regulation prescribe means to calculate
16 emissions for that period. In calculating emissions for the
17 period, the Administrator shall take into account, for mer-
18 cury, whether for any portion of the period data was not
19 available because of widespread technological problems
20 with the CEMS, sorbent media monitoring system, or al-
21 ternative monitoring system that were outside the control
22 of the owners or operators. The owner or operator shall
23 be liable for excess emissions fees and offsets under sec-
24 tion 406 in accordance with the regulations. Any fee due
25 and payable under this subsection shall not diminish the

1 liability of the owner or operator of the unit for any fine,
2 penalty, fee, or assessment against the unit for the same
3 violation under any other section of this Act.

4 “(d) IMPLEMENTATION.—With regard to sulfur diox-
5 ide, nitrogen oxides, opacity, and volumetric flow, the Ad-
6 ministrator shall implement subsections (a) and (c) under
7 40 CFR part 75 (2002), amended, as appropriate by the
8 Administrator. With regard to mercury, the Administrator
9 shall implement subsections (a) and (c) by issuing pro-
10 posed regulations not later than 36 months before the
11 commencement date of the mercury allowance requirement
12 under section 472 and final regulations not later than 24
13 months before that commencement date.

14 “(e) PROHIBITION.—It shall be unlawful for the
15 owner or operator of any facility subject to this title to
16 operate a facility without complying with the requirements
17 of this section, and any regulations implementing this sec-
18 tion.

19 **“SEC. 405. EXCESS EMISSIONS PENALTY; GENERAL COMPLI-**
20 **ANCE WITH OTHER PROVISIONS; ENFORCE-**
21 **MENT.**

22 “(a) EXCESS EMISSIONS PENALTY.—

23 “(1) AMOUNT FOR OXIDES OF NITROGEN.—The
24 owner or operator of any unit subject to the require-
25 ments of section 441 that emits nitrogen oxides for

1 any calendar year in excess of the unit's emissions
2 limitation requirement shall be liable for the pay-
3 ment of an excess emissions penalty, except where
4 such emissions were authorized pursuant to section
5 110(f). That penalty shall be calculated on the basis
6 of the number of tons emitted in excess of the unit's
7 emissions limitation requirement multiplied by
8 \$2,000.

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

19 “(A) The product of the unit's excess emis-
20 sions (in tons) multiplied by \$2,000, if within
21 30 days after the date on which the owner or
22 operator was required to hold sulfur dioxide
23 allowances—

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

4 “(ii) the Administrator receives the
5 penalty payment required under this sub-
6 paragraph.

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

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

21 “(4) UNITS SUBJECT TO SECTIONS 422, 432, 452,
22 OR 472.—If the units at a facility that are subject
23 to the requirements of section 422, 432, 452, or 472
24 emit sulfur dioxide, nitrogen oxides, or mercury for
25 any calendar year in excess of the sulfur dioxide al-

1 lowances, nitrogen oxides allowances, or mercury al-
2 lowances, as the case may be, that the owner or op-
3 erator of the facility holds for use for the facility for
4 that calendar year, the owner or operator shall be
5 liable for the payment of an excess emissions pen-
6 alty, except where such emissions were authorized
7 pursuant to section 110(f). That penalty shall be
8 equal to—

9 “(A) the quantity of the units’ excess emis-
10 sions in tons (or, for mercury emissions, in
11 ounces) multiplied by \$2,000 (in the case of
12 sulfur dioxide), \$4,000 (in the case of nitrogen
13 oxides), or \$2187.50 (in the case of mercury) if,
14 on or before the date that is 30 days after the
15 date on which the owner or operator was re-
16 quired to hold sulfur dioxide, nitrogen oxides al-
17 lowance, or mercury allowances, as the case
18 may be—

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

23 “(ii) the Administrator receives the
24 penalty required under this subparagraph;
25 or

1 “(B) if a requirement under subparagraph
2 (A) is not met, the quantity of the units’ excess
3 emissions in tons (or, for mercury emissions, in
4 ounces) multiplied by the product obtained by
5 multiplying—

6 “(i) 1.5; and

7 “(ii) the respective amount for sulfur
8 dioxide, nitrogen oxides, or mercury speci-
9 fied in subparagraph (A).

10 “(5) PAYMENT.—Any penalty under paragraph
11 (1), (2), (3), or (4) shall be due and payable without
12 demand to the Administrator as provided in regula-
13 tions issued by the Administrator. With regard to
14 the penalty under paragraph 1, the Administrator
15 shall implement this paragraph under 40 CFR part
16 77 (2002), amended as appropriate by the Adminis-
17 trator. With regard to the penalty under paragraphs
18 2, 3, and 4, the Administrator shall implement this
19 paragraph by issuing regulations no later than 24
20 months after the date of enactment of the Clear
21 Skies Act of 2005. Any such payment shall be de-
22 posited in the Compliance Assistance Account.

23 “(b) EXCESS EMISSIONS OFFSET.—

24 “(1) IN GENERAL.—The owner or operator of
25 any unit subject to the requirements of section

1 412(c) that emits sulfur dioxide during any calendar
2 year before 2008 in excess of the sulfur dioxide al-
3 lowances held for the unit for the calendar year shall
4 be liable to offset the excess emissions by an equal
5 tonnage amount in the following calendar year, or
6 such longer period as the Administrator may pre-
7 scribe. The Administrator shall deduct sulfur dioxide
8 allowances equal to the excess tonnage from those
9 held for the facility for the calendar year, or suc-
10 ceeding years during which offsets are required, fol-
11 lowing the year in which the excess emissions oc-
12 curred.

13 “(2) EXCESS EMISSIONS OF SULFUR DIOX-
14 IDE.—If the units at a facility that are subject to
15 the requirements of section 412(c) emit sulfur diox-
16 ide for a year after 2007 in excess of the sulfur di-
17 oxide allowances that the owner or operator of the
18 facility holds for use for the facility for that calendar
19 year, the owner or operator shall be liable to offset
20 the excess emissions by an equal amount of tons in
21 the following calendar year, or such longer period as
22 the Administrator may prescribe. The Administrator
23 shall deduct sulfur dioxide allowances equal to the
24 excess emissions in tons from those held for the fa-
25 cility for the year, or succeeding years during which

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

3 “(3) EXCESS EMISSIONS OF SULFUR DIOXIDE,
4 NITROGEN OXIDES, OR MERCURY.—If the units at a
5 facility that are subject to the requirements of sec-
6 tion 422, 432, 452, or 472 emit sulfur dioxide, ni-
7 trogen oxides, or mercury for any calendar year in
8 excess of the sulfur dioxide allowances, nitrogen ox-
9 ides allowances, or mercury allowances, as the case
10 may be, that the owner or operator of the facility
11 holds for use for the facility for that calendar year,
12 the owner or operator shall be liable to offset the ex-
13 cess emissions by an equal amount of tons or, for
14 mercury, ounces in the following calendar year, or
15 such longer period as the Administrator may pre-
16 scribe. The Administrator shall deduct sulfur dioxide
17 allowances, nitrogen oxide allowances, or mercury al-
18 lowances, as the case may be, equal to the excess
19 emissions in tons or, for mercury, ounces from those
20 held for the facility for the year, or succeeding years
21 during which offsets are required, following the year
22 in which the excess emissions occurred.

23 “(c) PENALTY ADJUSTMENT.—The Administrator
24 shall, by regulation, adjust the penalty specified in sub-
25 section (a)(1) and (a)(2) for inflation, based on the Con-

1 sumer Price Index, on November 15, 1990, and annually
2 thereafter.

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

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

7 “(2) to offset excess emissions as required by
8 subsection (b).

9 “(e) SAVINGS PROVISION.—Nothing in this title shall
10 limit or otherwise affect the application of section 113,
11 114, 120, or 304 except as otherwise explicitly provided
12 in this title.

13 “(f) OTHER REQUIREMENTS.—Except as expressly
14 provided, compliance with the requirements of this title
15 shall not exempt or exclude the owner or operator of any
16 facility subject to this title from compliance with any other
17 applicable requirements of this Act. Notwithstanding any
18 other provision of this Act, no State or political subdivision
19 thereof shall restrict or interfere with the transfer, sale,
20 or purchase of allowances under this title.

21 “(g) VIOLATIONS.—Violation by any person subject
22 to this title of any prohibition of, requirement of, or regu-
23 lation promulgated pursuant to this title shall be a viola-
24 tion of this Act. In addition to the other requirements and
25 prohibitions provided for in this title, the operation of any

1 affected unit or the affected units at a facility to emit sul-
2 fur dioxide, nitrogen oxides, or mercury in violation of sec-
3 tion 412(c), 422, 432, 452, and 472, as the case may be,
4 shall be deemed a violation, with each ton or, in the case
5 of mercury, each ounce emitted in excess of allowances
6 held constituting a separate violation.

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

8 “(a) APPLICABILITY.—

9 “(1) IN GENERAL.—The owner or operator of
10 any unit that is not an affected EGU under subpart
11 2 of part B and subpart 2 of part C and whose
12 emissions of sulfur dioxide and nitrogen oxides are
13 vented only through a stack or duct may elect to
14 designate the unit as an affected unit under subpart
15 2 of part B and, if the unit is in a WRAP State (as
16 defined in section 431), subpart 3 of part B and
17 subpart 2 of part C.

18 “(2) EFFECT OF DESIGNATION.—If the owner
19 or operator elects to designate a unit that is solid
20 fuel-fired and emits mercury vented only through a
21 stack or duct, the owner or operator shall also des-
22 ignate the unit as an affected unit under part D. If
23 an elected unit fires only natural gas, the unit may
24 be designated under subpart 2 of part C only.

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

4 “(c) APPROVAL.—Subject to subsections (d) through
5 (m), if the Administrator determines that an application
6 for an election under subsection (b) meets the require-
7 ments of subsection (a), the Administrator shall approve
8 the designation as an affected unit under subpart 2 of part
9 B and subpart 2 of part C and, if applicable, under sub-
10 part 3 of parts B and D.

11 “(d) ESTABLISHMENT OF BASELINE.—

12 “(1) IN GENERAL.—After approval of a des-
13 ignation under subsection (c), an owner or operator
14 shall install and operate monitoring on the des-
15 ignated unit required under paragraph (5), except
16 that, in a case in which 2 or more units use a single
17 stack, separate monitoring shall be required for each
18 unit unless all units using the same stack are des-
19 ignated as affected units.

20 “(2) BASELINES.—

21 “(A) IN GENERAL.—Units shall have base-
22 lines established using heat input unless the
23 unit qualifies for a product output baseline
24 under paragraph (4).

1 “(B) HEAT INPUT OR PRODUCT OUT-
2 PUT.—The baselines for heat input or product
3 output and sulfur dioxide and nitrogen oxides
4 emission rates, as the case may be, for the unit
5 shall be the unit’s heat input or product output
6 and the emission rates of sulfur dioxide and ni-
7 trogen oxides in accordance with paragraphs
8 (3) and (4).

9 “(C) REGULATIONS.—The Administrator
10 shall promulgate regulations requiring the
11 unit’s baselines for heat input or product out-
12 put and for sulfur dioxide and nitrogen oxides
13 emission rates to be based on the years de-
14 scribed in paragraph (3) or (4) and specifying
15 minimum data requirements consistent with
16 paragraph (5) for baseline determination.

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

22 “(A)(i) for heat input, the average of the
23 unit’s highest heat input for 3 of the 5 years
24 before the year for which the Administrator is
25 determining the allocations; and

1 “(ii) for emissions baselines, the average of
2 the relevant emissions during those same 3
3 years; or

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

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

20 “(4) DESIGNATION FOR PRODUCT OUTPUT
21 BASIS.—

22 “(A) IN GENERAL.—The owner or operator
23 of a unit that is subject to new source perform-
24 ance standards or other measures imposed by
25 this Act on a product output basis rather than

1 a heat input basis may elect to designate the
2 unit as an affected unit under subpart 2 of part
3 B and subpart 2 of part C.

4 “(B) BASELINE PRODUCT OUTPUT AND
5 EMISSIONS BASELINES.—For the purposes of
6 this paragraph, for those units using a product
7 output basis, the baseline product output and
8 emissions baselines in this subparagraph shall
9 be calculated, at the election of the owner or
10 operator of the relevant unit, as—

11 “(i)(I) for product output, the average
12 of the unit’s highest product output for 3
13 of the 5 years preceding the year for which
14 the Administrator is determining the allo-
15 cations; and

16 “(II) for emissions baselines, the aver-
17 age of the relevant emissions for the same
18 years used to determine product output; or

19 “(B)(i) for product output, the average of
20 any period of 24 consecutive months during the
21 10-year period immediately prior to the date of
22 submission of an application under subsection
23 (b), on the condition that the product output
24 does not exceed 1.2 times the average of the
25 10-year period; and

1 “(ii) for emissions baselines, the average of
2 the relevant emissions for the 4-year period
3 prior to the date of enactment of the Clear
4 Skies Act of 2005 (for units that submit an ap-
5 plication on or before January 1, 2009), or the
6 average of the relevant emissions for the 4
7 years before the date of submission of the appli-
8 cation under that Act (for units that submit an
9 application after January 1, 2009).

10 “(5) BASELINE DETERMINATIONS.—

11 “(A) IN GENERAL.—In making baseline
12 determinations under this section, the Adminis-
13 trator may accept any reliable data on emis-
14 sions of sulfur dioxide and nitrogen oxides in
15 addition to, and other than, data collected from
16 CEMS.

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

19 “(i) alternative data that has been
20 used to determine compliance with a regu-
21 latory or monitoring requirement under
22 this Act or a comparable State law, if the
23 data establishes a reliable measure of heat
24 input or product output and sulfur dioxide

1 and nitrogen oxides emissions over a simul-
2 taneous period of time; or

3 “(ii) if that data is not available, such
4 other alternative reliable data as the Ad-
5 ministrator may prescribe.

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

8 “(i) shall not require the use of
9 CEMS for compliance monitoring by units
10 of less than 250 mmBtu heat input or
11 equivalent product output capacity subject
12 to this section unless the Administrator
13 concludes that a CEMS requirement is
14 necessary to generate reliable data for
15 compliance determinations;

16 “(ii) shall require the use of CEMS
17 for compliance monitoring by units of be-
18 tween 250 mmBtu and 750 mmBtu heat
19 input or equivalent product output capacity
20 unless the Administrator determines that a
21 CEMS requirement is not necessary to
22 generate reliable data for compliance deter-
23 minations; and

24 “(iii) shall require the use of CEMS
25 for compliance monitoring for all units

1 greater than 750 mmBtu heat input or
2 equivalent product output capacity.

3 “(D) RELIABILITY.—In determining the reli-
4 ability of data for purposes of this subsection, the
5 Administrator shall consider the cost of generating
6 more reliable data compared to the quantitative im-
7 portance of the resulting gain in quantifying emis-
8 sions.

9 “(e) EMISSION LIMITATIONS.—After approval of the
10 designation of the unit under subsection (c), the unit shall
11 become—

12 “(1) an affected unit under subpart 2 of part
13 B, and shall be allocated sulfur dioxide allowances
14 under subsection (f), beginning on the later of Janu-
15 ary 1, 2010, or January 1 of the year after approval
16 of the designation;

17 “(2) an affected unit under subpart 2 of part
18 C, and shall be allocated nitrogen oxides allowances
19 under subsection (f), beginning on the later of Janu-
20 ary 1, 2008, or January 1 of the year after approval
21 of the designation; and

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

1 “(f) ALLOCATIONS.—

2 “(1) SULFUR DIOXIDE AND NITROGEN OX-
3 IDES.—

4 “(A) IN GENERAL.—The Administrator
5 shall promulgate regulations determining the al-
6 locations of sulfur dioxide allowances and nitro-
7 gen oxides allowances for each year during
8 which a unit is an affected unit under sub-
9 section (e).

10 “(B) ALLOCATIONS.—The regulations shall
11 provide for allocations equal to 70 percent (be-
12 ginning January 1, 2010) and 50 percent (be-
13 ginning January 1, 2016) of the unit’s baseline
14 heat input or product output under subsection
15 (d) multiplied by the lesser of—

16 “(i) the unit’s baseline sulfur dioxide
17 emission rate or nitrogen oxides emission
18 rate, as the case may be; or

19 “(ii) the unit’s most stringent Federal
20 or State emission limitation for sulfur di-
21 oxide or nitrogen oxides applicable to the
22 year on which the unit’s baseline heat
23 input or product output is based under
24 subsection (d).

25 “(2) MERCURY.—

1 “(A) IN GENERAL.—The Administrator
2 shall promulgate regulations providing for the
3 allocation of mercury allowances to solid fuel-
4 fired units designated under this section for
5 each year after January 1, 2010, during which
6 a unit is a designated unit under this section.

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

9 “(i) the product obtained by
10 multiplying—

11 “(I) the unit’s allowable emis-
12 sions rate for mercury under the na-
13 tional emissions standards for haz-
14 ardous air pollutants for boilers and
15 process heaters, industrial furnaces,
16 kilns, or other stationary combustion
17 devices; by

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

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

22 “(I) the unit’s most stringent
23 Federal or State emission limitation
24 for mercury emissions rate; by

1 “(II) the unit’s baseline heat
2 input or product output.

3 “(3) LIMITATION.—Allowances allocated to
4 electing units under paragraphs (1) and (2) shall
5 comprise a separate limitation on emissions from
6 sections 423, 433, 453, 473, and other provisions of
7 this Act.

8 “(4) INCENTIVES FOR EARLY REDUCTIONS.—

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

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

23 “(i) pollution control equipment or
24 combustion technology improvements that
25 were operational or under construction at

1 any time prior to the date of enactment of
2 this section;

3 “(ii) fuel switching; or

4 “(iii) compliance with any Federal,
5 State, or local statute or regulations.

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

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

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

22 “(5) INCENTIVES FOR ENERGY EFFICIENCY.—
23 The Administrator shall promulgate regulations au-
24 thORIZING the allocation of sulfur dioxide or nitrogen
25 oxides allowances to units designated under this sec-

1 tion that produce electricity or thermal energy
2 through cogeneration for each year after January 1,
3 2010, or the year after the unit is designated under
4 this section, whichever is later. The allowances shall
5 be in an amount equal to the emissions of sulfur di-
6 oxide or nitrogen oxides avoided by production of
7 electricity or thermal power through cogeneration
8 relative to the sulfur dioxide or nitrogen oxides that
9 would have been emitted from a non-cogeneration
10 unit fired with a comparable fuel and having similar
11 characteristics of size, pollution control equipment,
12 and generation and combustion parameters. The al-
13 lowances allocated to any unit under this paragraph
14 shall be in addition to the allowances allocated under
15 paragraphs (1) and (2) and sections 414, 424, 434,
16 454, and 474. In no case shall these allocations ex-
17 ceed 50 percent of the required reductions in para-
18 graph (1).

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

1 “(h) REGULATIONS.—Not later than 18 months after
2 the date of enactment of the Clear Skies Act of 2005, the
3 Administrator shall promulgate regulations implementing
4 this section.

5 “(i) APPLICATION PERIOD.—

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

10 “(2) APPROVAL AND DISAPPROVAL.—Except as
11 provided in paragraph (3), not later than 270 days
12 after accepting an application under paragraph (1),
13 the Administrator shall approve or disapprove the
14 application.

15 “(3) DETERMINATION OF COMPLETION.—

16 “(A) IN GENERAL.—Not later than 90
17 days after accepting an application under para-
18 graph (1), the Administrator shall determine
19 whether the application is complete.

20 “(B) DETERMINATION OF COMPLETION.—

21 Unless an application accepted under paragraph
22 (1) is determined to be incomplete under sub-
23 paragraph (A), the application shall be subject
24 to paragraph (2).

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

9 “(j) NESHAP APPLICABILITY.—

10 “(1) APPLICABILITY.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), a unit that is designated as
13 an affected unit under this section shall not be
14 subject to the national emissions standards for
15 hazardous air pollutants (NESHAP) promul-
16 gated under section 112(d) for Industrial, Com-
17 mercial, and Institutional Boilers and Process
18 Heaters (Fed. Reg. 69–55217).

19 “(B) EXCEPTION.—Units that are boilers
20 or process heaters, industrial furnaces, kilns, or
21 other stationary combustion devices shall be
22 subject on and after January 1, 2010, to the
23 emissions limitation for mercury or the equiva-
24 lent mercury allocation under subsection (f)(2),
25 along with associated monitoring and compli-

1 ance requirements, that would be applicable to
2 such units under the NESHAP for those
3 sources promulgated pursuant to section
4 112(d).

5 “(2) REPORTS.—

6 “(A) PRELIMINARY REPORT.—Not later
7 than 18 months after the date of enactment of
8 this section, the Administrator shall publish and
9 make available for public comment a peer re-
10 viewed preliminary report characterizing the
11 emissions and public health effects that may
12 reasonably be anticipated to occur from the im-
13 plementation of subsection (j)(1) and subsection
14 (f).

15 “(B) FINAL REPORT.—Not later than 30
16 months after the date on which the preliminary
17 report is published under subparagraph (A), in
18 accordance with section 112(n)(1)(A), the Ad-
19 ministrator shall publish a final report, includ-
20 ing responses to the comments received.

21 “(C) REQUIREMENTS.—The requirements
22 of section 112(n)(1)(A), for purposes of this
23 paragraph, shall be considered to be modified to
24 ensure that the final report under subparagraph
25 (B) includes—

1 “(i) an estimate of the numbers and
2 types of sources that are expected to be
3 designated under this section;

4 “(ii) an estimate of any increase or
5 decrease in the annual emissions of criteria
6 pollutants and of those hazardous air pol-
7 lutants subject to emission limitations
8 under the NESHAPs identified in sub-
9 section (j)(1) from such sources that may
10 reasonably be expected to occur for each
11 year from 2010 through 2016;

12 “(iii) an estimate of any increase or
13 decrease in the annual emissions of criteria
14 pollutants and of those hazardous air pol-
15 lutants subject to emission limitations
16 under the NESHAPs identified in sub-
17 section (j)(1) from such sources that might
18 reasonably be expected to occur for each
19 year from 2010 through 2016, if such
20 sources estimated in clause (i) are not des-
21 ignated under this section; and

22 “(iv) a description of the public health
23 and environmental impacts associated with
24 the emissions increases and decreases de-
25 scribed in clauses (ii) and (iii).

1 “(D) ADDITIONAL AUTHORITY.—

2 “(i) IN GENERAL.—Notwithstanding
3 subsection (j)(1), the Administrator may
4 regulate emissions of hazardous air pollut-
5 ants listed under section 112(b), other
6 than mercury compounds, from sources
7 designated under this section in accordance
8 with section 112(f)(2).

9 “(ii) DETERMINATION.—Not later
10 than 2 years after the date on which the
11 final report under subparagraph (B) is
12 published, the Administrator shall make a
13 determination based on the study and
14 other information satisfying the criteria of
15 the Data Quality Act whether to establish
16 emissions limitations under section 112(f)
17 for sources designated under this section.

18 “(iii) TREATMENT OF DETERMINA-
19 TION.—The determination shall be a final
20 agency action subject to judicial review
21 under section 307 and the Administrative
22 Procedures Act.

23 “(k) EXEMPTION FROM MAJOR SOURCE
24 PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST

1 AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIRE-
2 MENTS.—

3 “(1) MAJOR SOURCE EXEMPTION.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), a unit designated as an affected unit
6 under this section shall not be considered to be
7 a major source, or a part of a major emitting
8 facility or major stationary combustion device
9 for purposes of compliance with the require-
10 ments of parts C and D of title I, for the 20-
11 year period beginning on the date of enactment
12 of the Clear Skies Act of 2005.

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

17 “(i)(I) the designated unit either
18 achieves in fact, or is subject to a regu-
19 latory requirement to achieve, a limit on
20 the emissions of particulate matter from
21 the affected unit to the level not greater
22 than the level applicable to the unit either
23 pursuant to subpart D of part 60 of title
24 40, Code of Federal Regulations, or the
25 national emissions standards for hazardous

1 air pollutants for industrial boilers and
2 process heaters issued pursuant to section
3 112; or

4 “(II) the owner or operator of the af-
5 fected unit properly operates, maintains,
6 and repairs pollution control equipment to
7 limit emissions of particulate matter; and

8 “(ii) the owner or operator of the des-
9 ignated unit uses good combustion prac-
10 tices to minimize emissions of carbon mon-
11 oxide.

12 “(2) CLASS I AREA PROTECTIONS.—Notwith-
13 standing the exemption in paragraph (1), an af-
14 fected unit located within 75 kilometers of a Class
15 I area on which construction commences after the
16 date of enactment of this section is subject to those
17 provisions under part C of title I to the review of a
18 new or modified major stationary combustion de-
19 vice’s impact on a Class I area.

20 “(1) LIMITATION.—

21 “(1) IN GENERAL.—No unit designated under
22 this section shall transfer or bank allowances pro-
23 duced as a result of reduced utilization or shutdown,
24 except that such allowances may be transferred or

1 carried forward for use in subsequent years to the
2 extent that—

3 “(A) reduced utilization or shutdown re-
4 sults from the replacement of the unit des-
5 ignated under this section, with any other unit
6 or units subject to the requirements of this sub-
7 part; and

8 “(B) the designated unit’s allowances are
9 transferred or carried forward for use at such
10 other replacement unit or units.

11 “(2) NO GREATER ALLOCATION.—In no case
12 may the Administrator allocate to a source des-
13 ignated under this section allowances in an amount
14 greater than the emissions resulting from operation
15 of the source in full compliance with the require-
16 ments of this Act.

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

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

1 **“SEC. 407. CLEAN COAL TECHNOLOGY REGULATORY INCEN-**
2 **TIVES.**

3 “(a) DEFINITION.—For purposes of this section, the
4 term ‘clean coal technology’ means any technology, includ-
5 ing technologies applied at the precombustion, combus-
6 tion, or post combustion stage, at a new or existing facility
7 which will achieve significant reductions in air emissions
8 of sulfur dioxide or oxides of nitrogen associated with the
9 utilization 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. 408. ELECTRICITY RELIABILITY.**

9 “(a) RELIABILITY.—

10 “(1) APPLICABILITY.—At any time prior the
11 applicability of this Act under sections 422, 432,
12 452, and 472, 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, 432, 452, and 472 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, as follows:

15 “(A) REGULATIONS.—Within 12 months of
16 enactment the Secretary of Energy shall pro-
17 mulgate regulations describing the requirements
18 for a petition and the petition process, which
19 will include notice and public comment. The
20 Secretary of Energy, in consultation with the
21 Administrator, shall make a final determination
22 on a petition within 180 days of the submittal
23 of a reasonably complete petition. Failure to act
24 within the 180-day period will extend the appli-

1 cability by 12 months for all units subject to
2 the petition.

3 “(B) CONTENTS OF PETITION.—The peti-
4 tion must contain—

5 “(i) a description of each affected
6 unit, the estimated outage time and a con-
7 struction schedule;

8 “(ii) an estimate of demand from date
9 of applicability until 2016;

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

16 “(iv) how the proposed compliance
17 schedule would alleviate detrimental im-
18 pacts.

19 “(C) FAILURE TO PROMULGATE REGULA-
20 TIONS.—If the Secretary of Energy fails to pro-
21 mulgate final regulations or such regulations
22 are not effective for any reason, within the pre-
23 scribed time, petitions containing reasonably
24 sufficient information for a final determination

1 may be submitted to the Secretary of Energy
2 for a final determination.

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

9 “(A) SUPPLY.—The ability of vendors to
10 supply pollution control technology at fair
11 prices with meaningful guarantees or warran-
12 ties as to availability, delivery dates and meet-
13 ing contracted pollution control reduction re-
14 quirements or emissions limitations.

15 “(B) DESIGN AND CONSTRUCTION RE-
16 SOURCE.—The availability and limitations of
17 pollution control technology design and con-
18 struction resources, including companies experi-
19 enced in the design of pollution control tech-
20 nology and construction companies with North
21 American labor resources trained and experi-
22 enced in the construction of pollution control
23 technology;

24 “(C) FEASIBILITY OF CONSTRUCTION.—
25 The feasibility to complete the construction of

1 all pollution control technology projects by the
2 relevant applicability compliance deadline;

3 “(D) IMPACT.—The impact in terms of
4 unit outages and construction schedules on a
5 company or systems reliability and whether
6 such impact is unreasonable, which term shall
7 consider factors such as—

8 “(i) an increase in the price of pur-
9 chase power for the company, system, or
10 State;

11 “(ii) a projected reduction in available
12 generating capacity unduly threatening
13 adequate reserve margins for a company,
14 system, or State; or

15 “(iii) a supply shortage of coal needed
16 to meet emissions control expectations for
17 any proposed emissions control device.

18 “(4) COMPLIANCE.—Upon a positive determina-
19 tion by the Secretary of Energy in accordance with
20 paragraph (3)(E), such affected units will be grant-
21 ed a 1-year extension from the relevant applicability
22 date under this title. No affected unit shall receive
23 more than 2 1-year extensions.

24 “(b) SUBMISSION OF PETITION.—During any year
25 covered by this title, an affected unit may submit a peti-

1 tion in accordance with paragraph (a)(2) to allow use of
2 sulfur dioxide allowances, nitrogen oxides allowances, and
3 mercury allowances, as the case may be, allocated for the
4 immediate next year to meet the applicable requirement
5 to hold such allowances equal to the petitioned year's
6 emissions.

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

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

16 **REDUCTIONS**

17 **“Subpart 1—Acid Rain Program**

18 **“SEC. 411. DEFINITIONS.**

19 “For purposes of this subpart and subpart 1 of part
20 B:

21 “(1) ACTUAL 1985 EMISSION RATE.—The term
22 ‘actual 1985 emission rate’, for electric utility units
23 means the annual sulfur dioxide or nitrogen oxides
24 emission rate in pounds per million Btu as reported
25 in the 1985 National Acid Precipitation Assessment

1 Program (NAPAP) Emissions Inventory, Version 2,
2 National Utility Reference File (NURF). For non-
3 utility units, the term ‘actual 1985 emission rate’
4 means the annual sulfur dioxide or nitrogen oxides
5 emission rate in pounds per million Btu as reported
6 in the NAPAP Emission Inventory, Version 2.

7 “(2) ALLOWABLE 1985 EMISSIONS RATE.—The
8 term ‘allowable 1985 emissions rate’ means a feder-
9 ally enforceable emissions limitation for sulfur diox-
10 ide or oxides of nitrogen, applicable to the unit in
11 1985 or the limitation applicable in such other sub-
12 sequent year as determined by the Administrator if
13 such a limitation for 1985 does not exist. Where the
14 emissions limitation for a unit is not expressed in
15 pounds of emissions per million Btu, or the aver-
16 aging period of that emissions limitation is not ex-
17 pressed on an annual basis, the Administrator shall
18 calculate the annual equivalent of that emissions
19 limitation.

20 “(3) ALTERNATIVE METHOD OF COMPLI-
21 ANCE.—The term ‘alternative method of compliance’
22 means a method of compliance in accordance with
23 one or more of the following authorities—

1 “(A) a substitution plan submitted and ap-
2 proved in accordance with subsections 413(b)
3 and (c); or

4 “(B) a phase I extension plan approved by
5 the Administrator under section 413(d), using
6 qualifying phase I technology as determined by
7 the Administrator in accordance with that sec-
8 tion.

9 “(4) BASELINE.—The term ‘baseline’ means
10 the annual quantity of fossil fuel consumed by an af-
11 fected unit, measured in millions of British Thermal
12 Units (‘mmBtu’s’), calculated as follows:

13 “(A) For each utility unit that was in com-
14 mercial operation prior to January 1, 1985, the
15 baseline shall be the annual average quantity of
16 mmBtu’s consumed in fuel during calendar
17 years 1985, 1986, and 1987, as recorded by the
18 Department of Energy pursuant to Form 767.
19 For any utility unit for which such form was
20 not filed, the baseline shall be the level specified
21 for such unit in the 1985 (NAPAP) Emissions
22 Inventory, Version 2 (NURF), or in a corrected
23 data base as established by the Administrator
24 pursuant to paragraph (3). For nonutility units,
25 the baseline in the NAPAP Emissions Inven-

1 tory, Version 2. The Administrator, in the Ad-
2 ministrator's sole discretion, may exclude peri-
3 ods during which a unit is shutdown for a con-
4 tinuous period of 4 calendar months or longer,
5 and make appropriate adjustments under this
6 paragraph. Upon petition of the owner or oper-
7 ator of any unit, the Administrator may make
8 appropriate baseline adjustments for accidents,
9 strikes, disruptions of fuel supplies, failure of
10 equipment, other causes beyond the reasonable
11 control of the owner or operator of the unit that
12 caused prolonged outages.

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

23 “(C) The Administrator shall, upon appli-
24 cation or on his own motion, by December 31,
25 1991, supplement data needed in support of

1 this subpart and correct any factual errors in
2 data from which affected phase II units' base-
3 lines or actual 1985 emission rates have been
4 calculated. Corrected data shall be used for pur-
5 poses of issuing allowances under this subpart.
6 Such corrections shall not be subject to judicial
7 review, nor shall the failure of the Adminis-
8 trator to correct an alleged factual error in such
9 reports be subject to judicial review.

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

13 “(A) For calendar years 2000 through
14 2009 inclusive, allocations of allowances made
15 by the Administrator pursuant to section 412
16 and subsections (b)(1), (3), and (4); (c)(1), (2),
17 (3), and (5); (d)(1), (2), (4), and (5); (e); (f);
18 (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j)
19 of section 414.

20 “(B) For each calendar year beginning in
21 2010, allocations of allowances made by the Ad-
22 ministrator pursuant to section 412 and sub-
23 sections (b)(1), (3), and (4); (c)(1), (2), (3),
24 and (5); (d)(1), (2), (4), and (5); (e); (f);

1 (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i);
2 and (j) of section 414.

3 “(6) CAPACITY FACTOR.—The term ‘capacity
4 factor’ means the ratio between the actual electric
5 output from a unit and the potential electric output
6 from that unit.

7 “(7) COMMENCED.—The term ‘commenced’ as
8 applied to construction of any new electric utility
9 unit means that an owner or operator has under-
10 taken a continuous program of construction or that
11 an owner or operator has entered into a contractual
12 obligation to undertake and complete, within a rea-
13 sonable time, a continuous program of construction.

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

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

22 “(10) EXISTING UNIT.—The term ‘existing
23 unit’ means a unit (including units subject to section
24 111) that commenced commercial operation before
25 November 15, 1990. Any unit that commenced com-

1 mercial operation before November 15, 1990, which
2 is modified, reconstructed, or repowered after No-
3 vember 15, 1990, shall continue to be an existing
4 unit for the purposes of this subpart. For the pur-
5 poses of this subpart, existing units shall not include
6 simple combustion turbines, or units which serve a
7 generator with a nameplate capacity of 25 MWe or
8 less.

9 “(11) INDEPENDENT POWER PRODUCER.—The
10 term ‘independent power producer’ means any per-
11 son who owns or operates, in whole or in part, one
12 or more new independent power production facilities.

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

16 “(A) is used for the generation of electric
17 energy, 80 percent or more of which is sold at
18 wholesale;

19 “(B) in nonrecourse project-financed (as
20 such term is defined by the Secretary of Energy
21 within 3 months of the date of the enactment
22 of the Clean Air Act Amendments of 1990);
23 and

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

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

5 “(14) LIFE-OF-THE-UNIT, FIRM POWER CON-
6 TRACTUAL ARRANGEMENT.—The term ‘life-of-the-
7 unit, firm power contractual arrangement’ means a
8 unit participation power sales agreement under
9 which a utility or industrial customer reserves, or is
10 entitled to receive, a specified amount or percentage
11 of capacity and associated energy generated by a
12 specified generating unit (or units) and pays its pro-
13 portional amount of such unit’s total costs, pursuant
14 to a contract either—

15 “(A) for the life of the unit;

16 “(B) for a cumulative term of no less than
17 30 years, including contracts that permit an
18 election for early termination; or

19 “(C) for a period equal to or greater than
20 25 years or 70 percent of the economic useful
21 life of the unit determined as of the time the
22 unit was built, with option rights to purchase or
23 release some portion of the capacity and associ-
24 ated energy generated by the unit (or units) at
25 the end of the period.

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

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

6 “(17) PHASE II BONUS ALLOWANCE ALLOCA-
7 TIONS.—The term ‘phase II bonus allowance alloca-
8 tions’ means, for calendar year 2000 through 2009,
9 inclusive, and only for such years, allocations made
10 by the Administrator pursuant to section 412, sub-
11 sections (a)(2), (b)(2), (c)(4), (d)(3) (except as oth-
12 erwise provided therein), and (h)(2) of section 414,
13 and section 415.

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

21 “(19) REPOWERING.—The term ‘repowering’
22 means replacement of an existing coal-fired boiler
23 with one of the following clean coal technologies: at-
24 mospheric or pressurized fluidized bed combustion,
25 integrated gasification combined cycle, magneto-

1 hydrodynamics, direct and indirect coal-fired tur-
2 bines, integrated gasification fuel cells, or as deter-
3 mined by the Administrator, in consultation with the
4 Secretary of Energy, a derivative of one or more of
5 these technologies, and any other technology capable
6 of controlling multiple combustion emissions simulta-
7 neously with improved boiler or generation efficiency
8 and with significantly greater waste reduction rel-
9 ative to the performance of technology in widespread
10 commercial use as of November 15, 1990.

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

14 “(21) UTILITY UNIT.—

15 “(A) IN GENERAL.—The term ‘utility unit’
16 means—

17 “(i) a unit that serves a generator lo-
18 cated in any State and that produces elec-
19 tricity for sale; or

20 “(ii) a unit that, during 1985, served
21 a generator located in any State and that
22 produced electricity for sale.

23 “(B) EXCLUSIONS.—

1 “(i) IN GENERAL.—Notwithstanding
2 subparagraph (A), a unit described in sub-
3 paragraph (A) that—

4 “(I) was in commercial operation
5 during 1985; but

6 “(II) did not during 1985, serve
7 a generator in any State that pro-
8 duced electricity for sale
9 shall not be a utility unit for purposes of
10 this subpart.

11 “(i) UNITS THAT COGENERATE STEAM
12 AND ELECTRICITY.—A unit that cogen-
13 erates steam and electricity is not a ‘utility
14 unit’ for purposes of this subpart unless
15 the unit is constructed for the purpose of
16 supplying, or commences construction after
17 November 15, 1990 and supplies more
18 than one-third of its potential electric out-
19 put capacity of more than 25 megawatts
20 electrical output to any utility power dis-
21 tribution system for sale.

22 **“SEC. 412. ALLOWANCE ALLOCATION.**

23 “(a) IN GENERAL.—Except as provided in sections
24 414(a)(2), 415(a)(3), and 416, beginning January 1,
25 2000, the Administrator shall not allocate annual emission

1 allowances for sulfur dioxide from utility units in excess
2 of 8.90 million tons except that the Administrator shall
3 not take into account unused allowances carried forward
4 by owners and operators of affected units or by other per-
5 sons holding such allowances, following the year for which
6 they were allocated. If necessary to meeting the restric-
7 tions imposed in the preceding sentence, the Adminis-
8 trator shall reduce, pro rata, the basic phase II allowance
9 allocations for each unit subject to the requirements of
10 section 414. Subject to the provisions of section 417, the
11 Administrator shall allocate allowances for each affected
12 unit at an affected source annually, as provided in para-
13 graphs (2) and (3) and section 403. Except as provided
14 in sections 416, the removal of an existing affected unit
15 or source from commercial operation at any time after No-
16 vember 15, 1990 (whether before or after January 1,
17 1995, or January 1, 2000), shall not terminate or other-
18 wise affect the allocation of allowances pursuant to section
19 413 or 414 to which the unit is entitled. Prior to June
20 1, 1998, the Administrator shall publish a revised final
21 statement of allowance allocations, subject to the provi-
22 sions of section 414(a)(2).

23 “(b) NEW UTILITY UNITS.—

24 “(1) PROHIBITION OF EXCEEDING UNIT AL-
25 LOWANCES.—After January 1, 2000 and through

1 December 31, 2007, it shall be unlawful for a new
2 utility unit to emit an annual tonnage of sulfur diox-
3 ide in excess of the number of allowances to emit
4 held for the unit by the unit's owner or operator.

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

9 “(3) ELIGIBILITY FOR ALLOCATION OF SULFUR
10 DIOXIDE ALLOWANCES.—New utility units shall not
11 be eligible for an allocation of sulfur dioxide allow-
12 ances under subsection (a)(1), unless the unit is
13 subject to the provisions of subsection (g)(2) or (3)
14 of section 414. New utility units may obtain allow-
15 ances from any person, in accordance with this title.
16 The owner or operator of any new utility unit in vio-
17 lation of subsection (b)(1) or subsection(c)(3) shall
18 be liable for fulfilling the obligations specified in sec-
19 tion 405.

20 “(c) PROHIBITIONS.—

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

1 “(2) PROHIBITION OF EXCEEDING UNIT AL-
2 LOWANCES.—For any year 1995 through 2007, it
3 shall be unlawful for any affected unit to emit sulfur
4 dioxide in excess of the number of allowances held
5 for that unit for that year by the owner or operator
6 of the unit.

7 “(3) PROHIBITION OF EXCEEDING SOURCE AL-
8 LOWANCES.—Starting January 1, 2008, it shall be
9 unlawful for the affected units at a source to emit
10 a total amount of sulfur dioxide during the year in
11 excess of the number of allowances held for the
12 source for that year by the owner or operator of the
13 source.

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

20 “(d) LIMITATION ON REGULATIONS.—In order to en-
21 sure electricity reliability, regulations establishing a sys-
22 tem for issuing, recording, and tracking allowances under
23 section 402(b) and this subpart shall not prohibit or affect
24 temporary increases and decreases in emissions within
25 utility systems, power pools, or utilities entering into al-

1 lowance pool agreements, that result from their oper-
2 ations, including emergencies and central dispatch, and
3 such temporary emissions increases and decreases shall
4 not require transfer of allowances among units nor shall
5 it require recording. The owners or operators of such units
6 shall act through a designated representative. Notwith-
7 standing the preceding sentence, the total tonnage of emis-
8 sions in any calendar year (calculated at the end thereof)
9 from all units in such a utility system, power pool, or al-
10 lowance pool agreements shall not exceed the total allow-
11 ances for such units for the calendar year concerned, in-
12 cluding for calendar years after 2007, allowances held for
13 such units by the owner or operator of the sources where
14 the units are located.

15 “(e) INTEREST IN AFFECTED UNITS.—Where there
16 are multiple holders of a legal or equitable title to, or a
17 leasehold interest in, an affected unit, or where a utility
18 or industrial customer purchases power from an affected
19 unit (or units) under life-of-the-unit, firm power contrac-
20 tual arrangements, the certificate of representation re-
21 quired under section 403(f) shall state—

22 “(1) that allowances under this subpart and the
23 proceeds of transactions involving such allowances
24 will be deemed to be held or distributed in propor-

1 tion to each holder's legal, equitable, leasehold, or
2 contractual reservation or entitlement; or

3 “(2) if such multiple holders have expressly pro-
4 vided for a different distribution of allowances by
5 contract, that allowances under this subpart and the
6 proceeds of transactions involving such allowances
7 will be deemed to be held or distributed in accord-
8 ance with the contract.

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

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

23 “(a) EMISSION LIMITATIONS.—

24 “(1) ALLOCATION.—After January 1, 1995,
25 each source that includes one or more affected units

1 listed in table A is an affected source under this sec-
2 tion. After January 1, 1995, it shall be unlawful for
3 any affected unit (other than an eligible phase I unit
4 under section 413(d)(2)) to emit sulfur dioxide in
5 excess of the tonnage limitation stated as a total
6 number of allowances in table A for phase 1;
7 unless—

8 “(A) the emissions reduction requirements
9 applicable to such unit have been achieved pur-
10 suant to subsection (b) or (d); or

11 “(B) the owner or operator of such unit
12 holds allowances to emit not less than the unit’s
13 total annual emissions, except that, after Janu-
14 ary 1, 2000, the emissions limitations estab-
15 lished in this section shall be superseded by
16 those established in section 414. The owner or
17 operator of any unit in violation of this section
18 be fully liable for such violation including, but
19 not limited to, liability for fulfilling the obliga-
20 tions specified in section 405.

21 “(2) DETERMINATION.—Not later than Decem-
22 ber 31, 1991, the Administrator shall determine the
23 total tonnage of reductions in the emissions of sulfur
24 dioxide from all utility units in calendar year 1995
25 that will occur as a result of compliance with the

1 emissions limitation requirements of this section,
2 and shall establish a reserve of allowances equal in
3 amount to the number of tons determined thereby
4 not to exceed a total of 3.50 million tons. In making
5 such a determination, the Administrator shall com-
6 pute for each unit subject to the emissions limitation
7 requirements of this section the difference
8 between—

9 “(A) the product of its baseline multiplied
10 by the lesser of each unit’s allowable 1985
11 emissions rate and its actual 1985 emissions
12 rate, divided by 2,000; and

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

1 “(3) ADDITIONAL ALLOCATIONS.—In addition
2 to allowances allocated pursuant to paragraph (1),
3 in each calendar year beginning in 1995 and ending
4 in 1999, inclusive, the Administrator shall allocate
5 for each unit on table A that is located in the States
6 of Illinois, Indiana, or Ohio (other than units at
7 Kyger Creek, Clifty Creek and Joppa Steam), allow-
8 ances in an amount equal to 200,000 multiplied by
9 the unit’s pro rata share of the total number of al-
10 lowances allocated for all units on table A in the 3
11 States (other than units at Kyger Creek, Clifty
12 Creek, and Joppa Steam) pursuant to paragraph
13 (1). Such allowances shall be excluded from the cal-
14 culation of the reserve under paragraph (2).

15 “(b) SUBSTITUTIONS.—The owner or operator of an
16 affected unit under subsection (a) may include in its sec-
17 tion 403 permit application and proposed compliance plan
18 a proposal to reassign, in whole or in part, the affected
19 unit’s sulfur dioxide reduction requirements to any other
20 unit(s) under the control of such owner or operator. Such
21 proposal shall specify—

22 “(1) the designation of the substitute unit or
23 units to which any part of the reduction obligations
24 of subsection (a) shall be required, in addition to, or

1 in lieu of, any original affected units designated
2 under such subsection;

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

7 “(3) calculation of the annual average tonnage
8 for calendar years 1985, 1986, and 1987, emitted by
9 the substitute unit or units, based on the baseline
10 for each unit, as defined in section 411(4), multi-
11 plied by the lesser of the unit’s actual or allowable
12 1985 emissions rate;

13 “(4) the emissions rates and tonnage limita-
14 tions that would be applicable to the original and
15 substitute affected units under the substitution pro-
16 posal;

17 “(5) documentation, to the satisfaction of the
18 Administrator, that the reassigned tonnage limits
19 will, in total, achieve the same or greater emissions
20 reduction than would have been achieved by the
21 original affected unit and the substitute unit or
22 units without such substitution; and

23 “(6) such other information as the Adminis-
24 trator may require.

1 “(c) ADMINISTRATOR’S ACTION ON SUBSTITUTION
2 PROPOSALS.—

3 “(1) IN GENERAL.—The Administrator shall
4 take final action on such substitution proposal in ac-
5 cordance with section 403(c) if the substitution pro-
6 posal fulfills the requirements of this subsection.
7 The Administrator may approve a substitution pro-
8 posal in whole or in part and with such modifica-
9 tions or conditions as may be consistent with the or-
10 derly functioning of the allowance system and which
11 will ensure the emissions reductions contemplated by
12 this title. If a proposal does not meet the require-
13 ments of subsection (b), the Administrator shall dis-
14 approve it. The owner or operator of a unit listed in
15 table A shall not substitute another unit or units
16 without the prior approval of the Administrator.

17 “(2) ISSUANCE OF PERMITS.—Upon approval of
18 a substitution proposal, each substitute unit, and
19 each source with such unit, shall be deemed affected
20 under this title, and the Administrator shall issue a
21 permit to the original and substitute affected source
22 and unit in accordance with the approved substi-
23 tution plan and section 403. The Administrator shall
24 allocate allowances for the original and substitute af-
25 fected units in accordance with the approved substi-

1 tution proposal pursuant to section 412. It shall be
2 unlawful for any source or unit that is allocated al-
3 lowances pursuant to this section to emit sulfur di-
4 oxide in excess of the emissions limitation provided
5 for in the approved substitution permit and plan un-
6 less the owner or operator of each unit governed by
7 the permit and approved substitution plan holds al-
8 lowances to emit not less than the unit's total an-
9 nual emissions. The owner or operator of any origi-
10 nal or substitute affected unit operated in violation
11 of this subsection shall be fully liable for such viola-
12 tion, including liability for fulfilling the obligations
13 specified in section 405. If a substitution proposal is
14 disapproved, the Administrator shall allocate allow-
15 ances to the original affected unit or units in accord-
16 ance with subsection (a).

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

18 “(1) IN GENERAL.—The owner or operator of
19 any affected unit subject to an emissions limitation
20 requirement under this section may petition the Ad-
21 ministrator in its permit application under section
22 403 for an extension of 2 years of the deadline for
23 meeting such requirement, provided that the owner
24 or operator of any such unit holds allowances to
25 emit not less than the unit's total annual emissions

1 for each of the 2 years of the period of extension.
2 To qualify for such an extension, the affected unit
3 must either employ a qualifying phase I technology,
4 or transfer its phase I emissions reduction obligation
5 to a unit employing a qualifying phase I technology.
6 Such transfer shall be accomplished in accordance
7 with a compliance plan, submitted and approved
8 under section 403, that shall govern operations at all
9 units included in the transfer, and that specifies the
10 emissions reduction requirements imposed pursuant
11 to this title.

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

14 “(A) specify the unit or units proposed for
15 designation as an eligible phase I extension
16 unit;

17 “(B) provide a copy of an executed con-
18 tract, which may be contingent upon the Ad-
19 ministrators approving the proposal, for the de-
20 sign engineering, and construction of the quali-
21 fying phase I technology for the extension unit,
22 or for the unit or units to which the extension
23 unit’s emission reduction obligation is to be
24 transferred;

1 “(C) specify the unit’s or units’ baselines,
2 actual 1985 emissions rates, allowable 1985
3 emissions rates, and projected utilizations for
4 calendar years 1995 through 1999;

5 “(D) require CEMS on both the eligible
6 phase I extension unit or units and the transfer
7 unit or units beginning no later than January
8 1, 1995; and

9 “(E) specify the emission limitation and
10 number of allowances expected to be necessary
11 for annual operation after the qualifying phase
12 I technology has been installed.

13 “(3) APPROVAL OR DISAPPROVAL.—The Ad-
14 ministrators shall review and take final action on
15 each extension proposal in order of receipt, con-
16 sistent with section 403, and for an approved pro-
17 posal shall designate the unit or units as an eligible
18 phase I extension unit. The Administrator may ap-
19 prove an extension proposal in whole or in part, and
20 with such modifications or conditions as may be nec-
21 essary, consistent with the orderly functioning of the
22 allowance system, and to ensure the emissions reduc-
23 tions contemplated by the subpart.

24 “(4) DETERMINING THE AVAILABILITY OF AL-
25 LOCATIONS.—In order to determine the number of

1 proposals eligible for allocations from the reserve
2 under subsection (a)(2) and the number of the al-
3 lowances remaining available after each proposal is
4 acted upon, the Administrator shall reduce the total
5 number of allowances remaining available in the re-
6 serve by the number of allowances calculated accord-
7 ing to subparagraph (A), (B), and (C) until either
8 no allowances remain available in the reserve for fur-
9 ther allocation or all approved proposals have been
10 acted upon. If no allowances remain available in the
11 reserve for further allocation before all proposals
12 have been acted upon by the Administrator, any
13 pending proposals shall be disapproved. The Admin-
14 istrator shall calculate allowances equal to—

15 “(A) the difference between the lesser of
16 the average annual emissions in calendar years
17 1988 and 1989 or the projected emissions ton-
18 nage for calendar year 1995 of each eligible
19 phase I extension unit, as designated under
20 paragraph (3), and the product of the unit’s
21 baseline multiplied by an emission rate of 2.50
22 lbs/mmBtu, divided by 2,000;

23 “(B) the difference between the lesser of
24 the average annual emissions in calendar years
25 1988 and 1989 or the projected emissions ton-

1 nage for calendar year 1996 of each eligible
2 phase I extension unit, as designated under
3 paragraph (3), and the product of the unit's
4 baseline multiplied by an emission rate of 2.50
5 lbs/mmBtu, divided by 2,000; and

6 “(C) the amount by which (i) the product
7 of each unit's baseline multiplied by an emis-
8 sion rate of 1.20 lbs/mmBtu, divided by 2,000,
9 exceeds (ii) the tonnage level specified under
10 subparagraph (E) of paragraph (2) of this sub-
11 section multiplied by a factor of 3.

12 “(5) ALLOCATION OF INITIAL ALLOWANCES.—
13 Each eligible phase I extension unit shall receive al-
14 lowances determined under subsection (a)(1) or (c)
15 of this section. In addition, for calendar year 1995,
16 the Administrator shall allocate to each eligible
17 phase I extension unit, from the allowance reserve
18 created pursuant to subsection (a)(2), allowances
19 equal to the difference between the lesser of the av-
20 erage annual emissions in calendar years 1988 and
21 1989 or its projected emission tonnage for calendar
22 year 1995 and the product of the unit's baseline
23 multiplied by an emission rate of 2.50 lbs/mmBtu,
24 divided by 2,000. In calendar year 1996, the Admin-
25 istrator shall allocate for each eligible unit, from the

1 allowance reserve created pursuant to subsection
2 (a)(2), allowances equal to the difference between
3 the lesser of the average annual emissions in cal-
4 endar years 1988 and 1989 or its projected emis-
5 sions tonnage for calendar year 1996 and the prod-
6 uct of the unit's baseline multiplied by an emission
7 rate of 2.50 lbs/mmBtu, divided by 2,000. It shall
8 be unlawful for any source or unit subject to an ap-
9 proved extension plan under this subsection to emit
10 sulfur dioxide in excess of the emissions limitations
11 provided for in the permit and approved extension
12 plan, unless the owner or operator of each unit gov-
13 erned by the permit and approved plan holds allow-
14 ances to emit not less than the unit's total annual
15 emissions.

16 “(6) ALLOCATION OF ADDITIONAL ALLOW-
17 ANCES.—In addition to allowances specified in para-
18 graph (4), the Administrator shall allocate for each
19 eligible phase I extension unit employing qualifying
20 phase I technology, for calendar years 1997, 1998,
21 and 1999, additional allowances, from any remaining
22 allowances in the reserve created pursuant to sub-
23 section (a)(2), following the reduction in the reserve
24 provided for in paragraph (4), not to exceed the
25 amount by which (A) the product of each eligible

1 unit's baseline times an emission rate of 1.20 lbs/
2 mmBtu, divided by 2,000 exceeds (B) the tonnage
3 level specified under subparagraph (E) of paragraph
4 (2) of this subsection.

5 “(7) DEDUCTION FROM ANNUAL ALLOWANCE
6 ALLOCATIONS.—After January 1, 1997, in addition
7 to any liability under this Act, including under sec-
8 tion 405, if any eligible phase I extension unit em-
9 ploying qualifying phase I technology or any transfer
10 unit under this subsection emits sulfur dioxide in ex-
11 cess of the annual tonnage limitation specified in the
12 extension plan, as approved in paragraph (2) of this
13 subsection, the Administrator shall, in the calendar
14 year following such excess, deduct allowances equal
15 to the amount of such excess from such unit's an-
16 nual allowance allocation.

17 “(e) AUTHORIZATION.—

18 “(1) IN GENERAL.—In the case of a unit that
19 receives authorization from the Governor of the
20 State in which such unit is located to make reduc-
21 tions in the emissions of sulfur dioxide prior to cal-
22 endar year 1995 and that is part of a utility system
23 that meets the following requirements—

24 “(A) the total coal-fired generation within
25 the utility system as a percentage of total sys-

1 tem generation decreased by more than 20 per-
2 cent between January 1, 1980, and December
3 31, 1985; and

4 “(B) the weighted capacity factor of all
5 coal-fired units within the utility system aver-
6 aged over the period from January 1, 1985,
7 through December 31, 1987, was below 50 per-
8 cent, the Administrator shall allocate allowances
9 under this paragraph for the unit pursuant to
10 this subsection. The Administrator shall allo-
11 cate allowances for a unit that is an affected
12 unit pursuant to section 414 (but is not also an
13 affected unit under this section) and part of a
14 utility system that includes 1 or more affected
15 units under section 414 for reductions in the
16 emissions of sulfur dioxide made during the pe-
17 riod 1995–1999 if the unit meets the require-
18 ments of this subsection and the requirements
19 of the preceding sentence, except that for the
20 purposes of applying this subsection to any
21 such unit, the prior year concerned as specified
22 below, shall be any year after January 1, 1995
23 but prior to January 1, 2000.

24 “(2) ALLOWANCES FOR EARLY REDUCTIONS.—

25 In the case of an affected unit under this section de-

1 scribed in subparagraph (A), the allowances allo-
2 cated under this subsection for early reductions in
3 any prior year may not exceed the amount which (A)
4 the product of the unit's baseline multiplied by the
5 unit's 1985 actual sulfur dioxide emission rate (in
6 lbs. per mmBtu), divided by 2,000 exceeds (B) the
7 allowances specified for such unit in Table A. In the
8 case of an affected unit under section 414 described
9 in subparagraph (A), the allowances awarded under
10 this subsection for early reductions in any prior year
11 may not exceed the amount by which (i) the product
12 of the quality of fossil fuel consumed by the unit (in
13 mmBtu) in the prior year multiplied by the lesser of
14 2.50 or the most stringent emission rate (in lbs. per
15 mmBtu) applicable to the unit under the applicable
16 implementation plan, divided by 2,000 exceeds (ii)
17 the unit's actual tonnage of sulfur dioxide emission
18 for the prior year concerned. Allowances allocated
19 under this subsection for units referred to in sub-
20 paragraph (A) may be allocated only for emission re-
21 ductions achieved as a result of physical changes or
22 changes in the method of operation made after No-
23 vember 15, 1990, including changes in the type or
24 quality of fossil fuel consumed.

1 “(3) EFFECT OF SUBSECTION.—In no event
 2 shall the provisions of this subsection be interpreted
 3 as an event of force majeure or a commercial im-
 4 practicability or in any other way as a basis for ex-
 5 cused nonperformance by a utility system under a
 6 coal sales contract in effect before November 15,
 7 1990.

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

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
Georgia	Bowen	7	31,680
		1	56,320
		2	54,770
		3	71,750
	Hammond	4	71,740
		1	8,780
		2	9,220
		3	8,910
	J. McDonough	4	37,640
		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	

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

State	Plant name	Generator	Phase I allowances	
Illinois	Baldwin	1	42,010	
		2	44,420	
		3	42,550	
	Coffeen	1	11,790	
		2	35,670	
		4	5,910	
		2	18,410	
		1	12,590	
		2	10,770	
		3	12,270	
	Indiana	Joppa Steam	4	11,360
			5	11,420
			6	10,620
			1	31,530
			2	33,810
			3	13,890
		Kincaid	2	8,880
7			11,180	
Indiana		Meredosia	8	15,630
			1	18,500
	Vermilion	1	33,370	
		2	34,130	
	Bailly	1	20,150	
		2	19,810	
		3	20,410	
		4	20,080	
		5	19,360	
		6	20,380	
	E. W. Stout	5	3,880	
		6	4,770	
		7	23,610	
	F. B. Culley	2	4,290	
		3	16,970	
F. E. Ratts	1	8,330		
	2	8,480		
Gibson	1	40,400		
	2	41,010		
	3	41,080		
	4	40,320		
H.T. Pritchard	6	5,770		
Michigan City	12	23,310		
Petersburg	1	16,430		
	2	32,380		
R. Gallagher	1	6,490		
	2	7,280		
	3	6,530		
	4	7,650		
Tanners Creek	4	24,820		
Wabash River	1	4,000		

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

State	Plant name	Generator	Phase I allowances
	.....	2	2,860
	.....	3	3,750
	.....	5	3,670
	.....	6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
	.....	2	12,840
	.....	3	12,340
	Cooper	1	7,450
	.....	2	15,320
	E.W. Brown	1	7,110
	.....	2	10,910
	.....	3	26,100
	Elmer Smith	1	6,520
	.....	2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
	.....	2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
	.....	2	24,330
	C.P. Crane	1	10,330
	.....	2	9,230
	Morgantown	1	35,260
	.....	2	38,480
Michigan	J.H. Campbell	1	19,280
	.....	2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
	.....	5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
	.....	2	37,710
	.....	3	40,310
	.....	4	35,940
	Montrose	1	7,390
	.....	2	8,200
	.....	3	10,090

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

State	Plant name	Generator	Phase I allowances
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950

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

State	Plant name	Generator	Phase I allowances
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890

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

State	Plant name	Generator	Phase I allowances
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

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

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

4 “(A) QUALIFIED ENERGY CONSERVATION
 5 MEASURE.—The term ‘qualified energy con-
 6 servation measure’ means a cost effective meas-
 7 ure, as identified by the Administrator in con-

1 sultation with the Secretary of Energy, that in-
2 creases the efficiency of the use of electricity
3 provided by an electric utility to its customers.

4 “(B) QUALIFIED RENEWABLE ENERGY.—
5 The term ‘qualified renewable energy’ means
6 energy derived from biomass, solar, geothermal,
7 or wind as identified by the Administrator in
8 consultation with the Secretary of Energy.

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

12 “(2) ALLOWANCES FOR EMISSIONS AVOIDED
13 THROUGH ENERGY CONSERVATION AND RENEWABLE
14 ENERGY.—

15 “(A) IN GENERAL.—The regulations under
16 paragraph (4) shall provide that for each ton of
17 sulfur dioxide emissions avoided by an electric
18 utility, during the applicable period, through
19 the use of qualified energy conservation meas-
20 ures or qualified renewable energy, the Admin-
21 istrator shall allocate a single allowance to such
22 electric utility, on a first-come-first-served basis
23 from the Conservation and Renewable Energy
24 Reserve established under subsection (g), up to

1 a total of 300,000 allowances for allocation
2 from such Reserve.

3 “(B) REQUIREMENTS FOR ISSUANCE.—
4 The Administrator shall allocate allowances to
5 an electric utility under this subsection only if
6 all of the following requirements are met:

7 “(i) Such electric utility is paying for
8 the qualified energy conservation measures
9 or qualified renewable energy directly or
10 through purchase from another person.

11 “(ii) The emissions of sulfur dioxide
12 avoided through the use of qualified energy
13 conservation measures or qualified renew-
14 able energy are quantified in accordance
15 with regulations promulgated by the Ad-
16 ministrator under this subsection.

17 “(iii)(I) Such electric utility has
18 adopted and is implementing a least cost
19 energy conservation and electric power
20 plan which evaluates a range of resources,
21 including new power supplies, energy con-
22 servation, and renewable energy resources,
23 in order to meet expected future demand
24 at the lowest system cost.

1 “(II) The qualified energy conserva-
2 tion measures or qualified renewable en-
3 ergy, or both, are consistent with that
4 plan.

5 “(III) Electric utilities subject to the
6 jurisdiction of a State regulatory authority
7 must have such plan approved by such au-
8 thority. For electric utilities not subject to
9 the jurisdiction of a State regulatory au-
10 thority such plan shall be approved by the
11 entity with rate-making authority for such
12 utility.

13 “(iv) In the case of qualified energy
14 conservation measures undertaken by a
15 State regulated electric utility, the Sec-
16 retary of Energy certifies that the State
17 regulatory authority with jurisdiction over
18 the electric rates of such electric utility has
19 established rates and charges which ensure
20 that the net income of such electric utility
21 after implementation of specific cost effec-
22 tive energy conservation measures is at
23 least as high as such net income would
24 have been if the energy conservation meas-
25 ures had not been implemented. Upon the

1 date of any such certification by the Sec-
2 retary of Energy, all allowances which, but
3 for this paragraph, would have been allo-
4 cated under subparagraph (B) before such
5 date, shall be allocated to the electric util-
6 ity. This clause is not a requirement for
7 qualified renewable energy.

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

11 “(C) PERIOD OF APPLICABILITY.—Allow-
12 ances under this subsection shall be allocated
13 only with respect to kilowatt hours of electric
14 energy saved by qualified energy conservation
15 measures or generated by qualified renewable
16 energy after January 1, 1992, and before the
17 earlier of (i) December 31, 2000, or (ii) the
18 date on which any electric utility steam gener-
19 ating unit owned or operated by the electric
20 utility to which the allowances are allocated be-
21 comes subject to this subpart (including those
22 sources that elect to become affected by this
23 title, pursuant to section 417).

24 “(D) DETERMINATION OF AVOIDED EMIS-
25 SIONS.—

1 “(i) APPLICATION.—In order to re-
2 ceive allowances under this subsection, an
3 electric utility shall make an application
4 which—

5 “(I) designates the qualified en-
6 ergy conservation measures imple-
7 mented and the qualified renewable
8 energy sources used for purposes of
9 avoiding emissions;

10 “(II) calculates, in accordance
11 with subparagraphs (F) and (G), the
12 number of tons of emissions avoided
13 by reason of the implementation of
14 such measures or the use of such re-
15 newable energy sources; and

16 “(III) demonstrates that the re-
17 quirements of subparagraph (B) have
18 been met. Such application for allow-
19 ances by a State-regulated electric
20 utility shall require approval by the
21 State regulatory authority with juris-
22 diction over such electric utility. The
23 authority shall review the application
24 for accuracy and compliance with this
25 subsection and the rules under this

1 subsection. Electric utilities whose re-
2 tail rates are not subject to the juris-
3 diction of a State regulatory authority
4 shall apply directly to the Adminis-
5 trator for such approval.

6 “(E) AVOIDED EMISSIONS FROM QUALI-
7 FIED ENERGY CONSERVATION MEASURES.—For
8 the purposes of this subsection, the emission
9 tonnage deemed avoided by reason of the imple-
10 mentation of qualified energy conservation
11 measures for any calendar year shall be a ton-
12 nage equal to the product of multiplying—

13 “(i) the kilowatt hours that would
14 otherwise have been supplied by the utility
15 during such year in the absence of such
16 qualified energy conservation measures, by

17 “(ii) 0.004, and dividing by 2,000.

18 “(F) AVOIDED EMISSIONS FROM THE USE
19 OF QUALIFIED RENEWABLE ENERGY.—The
20 emissions tonnage deemed avoided by reason of
21 the use of qualified renewable energy by an
22 electric utility for any calendar year shall be a
23 tonnage equal to the product of multiplying—
24 (i) the actual kilowatt hours generated by, or

1 purchased from, qualified renewable energy, by
2 (ii) 0.004, and dividing by 2,000.

3 “(G) PROHIBITIONS.—

4 “(i) No allowances shall be allocated
5 under this subsection for the implementa-
6 tion of programs that are exclusively infor-
7 mational or educational in nature.

8 “(ii) No allowances shall be allocated
9 for energy conservation measures or renew-
10 able energy that were operational before
11 January 1, 1992.

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

16 “(4) REGULATIONS.—The Administrator shall
17 implement this subsection under 40 CFR part 73
18 (2002), amended as appropriate by the Adminis-
19 trator. Such regulations shall list energy conserva-
20 tion measures and renewable energy sources which
21 may be treated as qualified energy conservation
22 measures and qualified renewable energy for pur-
23 poses of this subsection. Allowances shall only be al-
24 located if all requirements of this subsection and the
25 rules promulgated to implement this subsection are

1 complied with. The Administrator shall review the
2 determinations of each State regulatory authority
3 under this subsection to encourage consistency from
4 electric utility and from State-to-State in accordance
5 with the Administrator's rules. The Administrator
6 shall publish the findings of this review no less than
7 annually.

8 “(g) CONSERVATION AND RENEWABLE ENERGY RE-
9 SERVE.—The Administrator shall establish a Conservation
10 and Renewable Energy Reserve under this subsection. Be-
11 ginning on January 1, 1995, the Administrator may allo-
12 cate from the Conservation and Renewable Energy Re-
13 serve an amount equal to a total of 300,000 allowances
14 for emissions of sulfur dioxide pursuant to section 411.
15 In order to provide 300,000 allowances for such reserve,
16 in each year beginning in calendar year 2000 and until
17 calendar year 2009, inclusive, the Administrator shall re-
18 duce each unit's basic phase II allowance allocation on the
19 basis of its pro rata share of 30,000 allowances. Notwith-
20 standing the prior sentence, if allowances remain in the
21 reserve on January 1, 2010, the Administrator shall allo-
22 cate such allowances for affected units under section 414
23 on a pro rata basis. For purposes of this subsection, for
24 any unit subject to the emissions limitation requirements
25 of section 414, the term ‘pro rata basis’ refers to the ratio

1 which the reductions made in such unit's allowances in
2 order to establish the reserve under this subsection bears
3 to the total of such reductions for all such units.

4 “(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR
5 UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL
6 BASELINE.—

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

11 “(A) has an emission rate below 1.0 lbs/
12 mmBtu,

13 “(B) has decreased its sulfur dioxide emis-
14 sions rate by 60 percent or greater since 1980,
15 and

16 “(C) is part of a utility system which has
17 a weighted average sulfur dioxide emissions rate
18 for all fossil fueled-fired units below 1.0 lbs/
19 mmBtu, at the election to the owner or oper-
20 ator of such unit, the unit's baseline may be
21 calculated—

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

23 “(ii) by utilizing the unit's average
24 annual fuel consumption at a 60 percent

1 capacity factor. Such election shall be
2 made no later than March 1, 1991.

3 “(2) ALLOWANCE ALLOCATION.—Whenever a
4 unit referred to in paragraph (1) elects to calculate
5 its baseline as provided in clause (ii) of paragraph
6 (1), the Administrator shall allocate allowances for
7 the unit pursuant to section 412(a), this section,
8 and section 414 (as basic phase II allowance alloca-
9 tions) in an amount equal to the baseline selected
10 multiplied by the lower of the average annual emis-
11 sion rate for such unit in 1989, or 1.0 lbs/mmBtu.
12 Such allowance allocation shall be in lieu of any allo-
13 cation of allowances under this section and section
14 414.

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

16 “(a) APPLICABILITY.—

17 “(1) BASIC PHASE II ALLOWANCE ALLOCA-
18 TIONS.—After January 1, 2000, each existing utility
19 unit as provided below is subject to the limitations
20 or requirements of this section. Each utility unit
21 subject to an annual sulfur dioxide tonnage emission
22 limitation under this section is an affected unit
23 under this subpart. Each source that includes one or
24 more affected units is an affected source. In the case
25 of an existing unit that was not in operation during

1 calendar year 1985, the emission rate for a calendar
2 year after 1985, as determined by the Adminis-
3 trator, shall be used in lieu of the 1985 rate.

4 “(2) BASIC PHASE II BONUS ALLOWANCE ALLO-
5 CATIONS.—In addition to basic phase II allowance
6 allocations, in each year beginning in calendar year
7 2000 and ending in calendar year 2009, inclusive,
8 the Administrator shall allocate up to 530,000 phase
9 II bonus allowances pursuant to subsections (b)(2),
10 (c)(4), (d)(3) (A) and (B), and (h)(2) of this section
11 and section 415.

12 “(3) ADDITIONAL ALLOWANCE ALLOCATIONS
13 FOR CERTAIN AFFECTED SOURCES AND UNITS.—In
14 addition to basic phase II allowances allocations and
15 phase II bonus allowance allocations, beginning Jan-
16 uary 1, 2000, the Administrator shall allocate for
17 each unit listed on table A in section 413 (other
18 than units at Kyger Creek, Clifty Creek, and Joppa
19 Stream) and located in the States of Illinois, Indi-
20 ana, Ohio, Georgia, Alabama, Missouri, Pennsyl-
21 vania, West Virginia, Kentucky, or Tennessee allow-
22 ances in an amount equal to 50,000 multiplied by
23 the unit’s pro rata share of the total number of
24 basic allowances allocated for all units listed on table
25 A (other than units at Kyger Creek, Clifty Creek,

1 and Joppa Stream). Allowances allocated pursuant
2 to this paragraph shall not be subject to the
3 8,900,000 ton limitation in section 412(a).

4 “(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND
5 1.20 LBS/MMBTU.—

6 “(1) BASIC PHASE II ALLOWANCE ALLOCA-
7 TIONS.—Except as otherwise provided in paragraph
8 (3), after January 1, 2000, it shall be unlawful for
9 any existing utility unit that serves a generator with
10 nameplate capacity equal to, or greater, than 75
11 MWe and an actual 1985 emission rate equal to or
12 greater than 1.20 lbs/mmBtu to exceed an annual
13 sulfur dioxide tonnage emission limitation equal to
14 the product of the unit’s baseline multiplied by an
15 emission rate equal to 1.20 lbs/mmBtu, divided by
16 2,000, unless the owner or operator of such unit
17 holds allowances to emit not less than the unit’s
18 total annual emissions or, for a year after 2007, un-
19 less the owner or operator of the source that in-
20 cludes such unit holds allowances to emit not less
21 than the total annual emissions of all affected units
22 at the source.

23 “(2) RESERVE ALLOWANCES.—In addition to
24 allowances allocated pursuant to paragraph (1) and
25 section 412(a) as basic phase II allowance alloca-

1 tions, beginning January 1, 2000, and for each cal-
2 endar year thereafter until and including 2009, the
3 Administrator shall allocate annually for each unit
4 subject to the emissions limitation requirements of
5 paragraph (1) with an actual 1985 emissions rate
6 greater than 1.20 lbs/mmBtu and less than 2.50 lbs/
7 mmBtu and a baseline capacity factor of less than
8 60 percent, allowances from the reserve created pur-
9 suant to subsection (a)(2) in an amount equal to
10 1.20 lbs/mmBtu multiplied by 50 percent of the dif-
11 ference, on a Btu basis, between the unit's baseline
12 and the unit's fuel consumption at a 60 percent ca-
13 pacity factor.

14 “(3) PROHIBITION.—After January 1, 2000, it
15 shall be unlawful for any existing utility unit with an
16 actual 1985 emissions rate equal to or greater than
17 1.20 lbs/mmBtu whose annual average fuel con-
18 sumption during 1985, 1986, and 1987 on a Btu
19 basis exceeded 90 percent in the form of lignite coal
20 which is located in a State in which, as of July 1,
21 1989, no county or portion of a county was des-
22 ignated nonattainment under section 107 of this Act
23 for any pollutant subject to the requirements of sec-
24 tion 109 of this Act to exceed an annual sulfur diox-
25 ide tonnage limitation equal to the product of the

1 unit's baseline multiplied by the lesser of the unit's
2 actual 1985 emissions rate or its allowable 1985
3 emissions rate, divided by 2,000, unless the owner or
4 operator of such unit holds allowances to emit not
5 less than the unit's total annual emissions or, for a
6 year after 2007, unless the owner or operator of the
7 source that includes such unit holds allowances to
8 emit not less than the total annual emissions of all
9 affected units at the source.

10 “(4) ANNUAL ALLOWANCE ALLOCATIONS.—
11 After January 1, 2000, the Administrator shall allo-
12 cate annually for each unit, subject to the emissions
13 limitation requirements of paragraph (1), which is
14 located in a State with an installed electrical gener-
15 ating capacity of more than 30,000,000 kw in 1988
16 and for which was issued a prohibition order or a
17 proposed prohibition order (from burning oil), which
18 unit subsequently converted to coal between January
19 1, 1980, and December 31, 1985, allowances equal
20 to the difference between (A) the product of the
21 unit's annual fuel consumption, on a Btu basis, at
22 a 65 percent capacity factor multiplied by the lesser
23 of its actual or allowable emissions rate during the
24 first full calendar year after conversion, divided by
25 2,000, and (B) the number of allowances allocated

1 for the unit pursuant to paragraph (1): *Provided*,
2 That the number of allowances allocated pursuant to
3 this paragraph shall not exceed an annual total of
4 five thousand. If necessary to meeting the restriction
5 imposed in the preceding sentence the Administrator
6 shall reduce, pro rata, the annual allowances allo-
7 cated for each unit under this paragraph.

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

10 “(1) STEAM-ELECTRIC CAPACITY EQUAL TO OR
11 GREATER THAN 250 MWE.—Except as otherwise pro-
12 vided in paragraph (3), after January 1, 2000, it
13 shall be unlawful for a coal or oil-fired existing util-
14 ity unit that serves a generator with nameplate ca-
15 pacity of less than 75 MWe and an actual 1985
16 emission rate equal to, or greater than, 1.20 lbs/
17 mmBtu and which is a unit owned by a utility oper-
18 ating company whose aggregate nameplate fossil fuel
19 steam-electric capacity is, as of December 31, 1989,
20 equal to, or greater than, 250 MWe to exceed an an-
21 nual sulfur dioxide emissions limitation equal to the
22 product of the unit’s baseline multiplied by an emis-
23 sion rate equal to 1.20 lbs/mmBtu, divided by 2,000
24 unless the owner or operator of such unit holds al-
25 lowances to emit not less than the unit’s total an-

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

5 “(2) STEAM-ELECTRIC CAPACITY LESS THAN
6 250 MWE.—After January 1, 2000, it shall be unlaw-
7 ful for a coal or oil-fired existing utility unit that
8 serves a generator with nameplate capacity of less
9 than 75 MWe and an actual 1985 emission rate
10 equal to, or greater than, 1.20 lbs/mmBtu (excluding
11 units subject to section 111 of the Act or to a feder-
12 ally enforceable emissions limitation for sulfur diox-
13 ide equivalent to an annual rate of less than 1.20
14 lbs/mmBtu) and which is a unit owned by a utility
15 operating company whose aggregate nameplate fossil
16 fuel steam-electric capacity is, as of December 31,
17 1989, less than 250 MWe, to exceed an annual sul-
18 fur dioxide tonnage emissions limitation equal to the
19 product of the unit’s baseline multiplied by the less-
20 er of its actual 1985 emissions rate or its allowable
21 1985 emissions rate, divided by 2,000, unless the
22 owner or operator of such unit holds allowances to
23 emit not less than the unit’s total annual emissions,
24 or for a year after 2007, unless the owner or oper-
25 ator of the source that includes such unit holds al-

1 lowances to emit not less than the total annual emis-
2 sions of all affected units at the source.

3 “(3) STEAM-ELECTRIC CAPACITY BETWEEN 250
4 AND 450 MWE.—After January 1, 2000 it shall be
5 unlawful for any existing utility unit with a name-
6 plate capacity below 75 MWe and an actual 1985
7 emissions rate equal to, or greater than, 1.20 lbs/
8 mmBtu which became operational on or before De-
9 cember 31, 1965, which is owned by a utility oper-
10 ating company with, as of December 31, 1989, a
11 total fossil fuel steam-electric generating capacity
12 greater than 250 MWe, and less than 450 MWe
13 which serves fewer than 78,000 electrical customers
14 as of November 15, 1990, to exceed an annual sul-
15 fur dioxide emissions tonnage limitation equal to the
16 product of its baseline multiplied by the lesser of its
17 actual or allowable 1985 emission rate, divided by
18 2,000, unless the owner or operator holds allowances
19 to emit not less than the units total annual emis-
20 sions, or for a year after 2007, unless the owner or
21 operator of the source that includes such unit holds
22 allowances to emit not less than the total annual
23 emissions of all affected units at the source. After
24 January 1, 2010, it shall be unlawful for each unit
25 subject to the emissions limitation requirements of

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

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

1 “(5) CERTAIN ELECTRIC UTILITY SYSTEMS.—
2 After January 1, 2000, it shall be unlawful for any
3 existing unit with a nameplate capacity below 75
4 MWe and an actual 1985 emissions rate equal to, or
5 greater than, 1.20 lbs/mmBtu which is part of an
6 electric utility system which, as of November 15,
7 1990—

8 “(A) has at least 20 percent of its fossil-
9 fuel capacity controlled by flue gas
10 desulfurization devices;

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

14 “(C) has large units (greater than 400
15 MWe) all of which have difficult or very dif-
16 ficult FGD Retrofit Cost Factors (according to
17 the Emissions and the FGD Retrofit Feasibility
18 at the 200 Top Emitting Generating Stations,
19 prepared for the United States Environmental
20 Protection Agency on January 10, 1986) to ex-
21 ceed an annual sulfur dioxide emissions tonnage
22 limitation equal to the product of its baseline
23 multiplied by an emissions rate of 2.5 lbs/
24 mmBtu, divided by 2,000, unless the owner or
25 operator holds allowances to emit not less than

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

18 “(d) COAL-FIRED UNITS BELOW 1.20 LBS/
19 MMBTU.—

20 “(1) RATE LESS THAN 0.60 LBS/MMBTU.—After
21 January 1, 2000, it shall be unlawful for any exist-
22 ing coal-fired utility unit the lesser of whose actual
23 or allowable 1985 sulfur dioxide emissions rate is
24 less than 0.60 lbs/mmBtu to exceed an annual sulfur

1 dioxide tonnage emission limitation equal to the
2 product of the unit's baseline multiplied by—

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

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

13 “(2) RATE BETWEEN 0.60 AND 1.20 LBS/
14 MMBTU.—After January 1, 2000, it shall be unlaw-
15 ful for any existing coal-fired utility unit the lesser
16 of whose actual or allowable 1985 sulfur dioxide
17 emissions rate is equal to, or greater than, 0.60 lbs/
18 mmBtu and less than 1.20 lbs/mmBtu to exceed an
19 annual sulfur dioxide tonnage emissions limitation
20 equal to the product of the unit's baseline multiplied
21 by (A) the lesser of its actual 1985 emissions rate
22 or its allowable 1985 emissions rate, and (B) a nu-
23 merical factor of 120 percent, divided by 2,000, un-
24 less the owner or operator of such unit holds allow-
25 ances to emit not less than the unit's total annual

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

5 “(3) RESERVE ALLOWANCE.—

6 “(A) IN GENERAL.—In addition to allow-
7 ances allocated pursuant to paragraph (1) and
8 section 412(a) as basic phase II allowance allo-
9 cations, at the election of the designated rep-
10 resentative of the operating company, beginning
11 January 1, 2000, and for each calendar year
12 thereafter until and including 2009, the Admin-
13 istrator shall allocate annually for each unit
14 subject to the emissions limitation requirements
15 of paragraph (1) allowances from the reserve
16 created pursuant to subsection (a)(2) in an
17 amount equal to the amount by which—

18 “(i) the product of the lesser of 0.60 lbs/
19 mmBtu or the unit’s allowable 1985 emissions
20 rate multiplied by the unit’s baseline adjusted
21 to reflect operation at a 60 percent capacity
22 factor, divided by 2,000, exceeds

23 “(ii) the number of allowances allocated
24 for the unit pursuant to paragraph (1) and sec-

1 tion 402(a)(1) as basic phase II allowance allo-
2 cations.

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

15 “(i) the product of the lesser of the unit’s
16 actual 1985 emissions rate or its allowable
17 1985 emissions rate multiplied by the unit’s
18 baseline adjusted to reflect operation at a 60
19 percent capacity factor, divided by 2,000; ex-
20 ceeds

21 “(ii) the number of allowances allocated
22 for the unit pursuant to paragraph (2) and sec-
23 tion 412(a) as basic phase II allowance alloca-
24 tions.

1 “(C) ELECTION BY OPERATING COMPANY.—An
2 operating company with units subject to the emis-
3 sions limitation requirements of this subsection may
4 elect the allocation of allowances as provided under
5 subparagraphs (A) and (B). Such election shall
6 apply to the annual allowance allocation for each
7 and every unit in the operating company subject to
8 the emissions limitation requirements of this sub-
9 section. The Administrator shall allocate allowances
10 pursuant to subparagraphs (A) and (B) only in ac-
11 cordance with this subparagraph.

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

1 “(5) CLEAN COAL TECHNOLOGY DEMONSTRA-
2 TION GRANT.—For the purposes of this section, in
3 the case of an oil- and gas-fired unit which has been
4 awarded a clean coal technology demonstration grant
5 as of January 1, 1991, by the United States Depart-
6 ment of Energy, beginning January 1, 2002, the Ad-
7 ministrator shall allocate for the unit allowances in
8 an amount equal to the unit’s baseline multiplied by
9 1.20 lbs/mmBtu, divided by 2,000.

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

1 emit not less than the total annual emissions of all af-
2 fected units at the source.

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

5 “(1) IN GENERAL.—After January 1, 2000, it
6 shall be unlawful for any oil and gas-fired existing
7 utility unit the lesser of whose actual or allowance
8 1985 emission rate is less than 0.60 lbs/mmBtu and
9 whose average annual fuel consumption during the
10 period 1980 through 1989 on a Btu basis was 90
11 percent or less in the form of natural gas to exceed
12 an annual sulfur dioxide tonnage emissions limita-
13 tion equal to the product of the unit’s baseline mul-
14 tiplied by—

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

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

1 “(2) ADDITIONAL ALLOCATION.—In addition to
2 allowances allocated pursuant to paragraph (1) as
3 basic phase II allowance allocations and section
4 412(a), beginning January 1, 2000, the Adminis-
5 trator shall, in the case of any unit operated by a
6 utility that furnishes electricity, electric energy,
7 steam, and natural gas within an area consisting of
8 a city and 1 contiguous county, and in the case of
9 any unit owned by a State authority, the output of
10 which unit is furnished within that same area con-
11 sisting of a city and 1 contiguous county, the Ad-
12 ministrator shall allocate for each unit in the utility
13 its pro rata share of 7,000 allowances and for each
14 unit in the State authority its pro rata share of
15 2,000 allowances.

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

18 “(1) IN GENERAL.—After January 1, 2000, it
19 shall be unlawful for any utility unit that has com-
20 menced commercial operation on or after January 1,
21 1986, but not later than September 30, 1990 to ex-
22 ceed an annual tonnage emission limitation equal to
23 the product of the unit’s annual fuel consumption,
24 on a Btu basis, at a 65-percent-capacity factor mul-
25 tiplied by the unit’s allowance 1985 sulfur dioxide

1 emission rate (converted, if necessary, to pounds per
 2 mmBtu), divided by 2,000 unless the owner or oper-
 3 ator of such unit holds allowances to emit not less
 4 than the unit's total annual emissions, or for a year
 5 after 2007, unless the owner or operator of the
 6 source that includes such unit holds allowances to
 7 emit not less than the total annual emissions of all
 8 affected units at the source.

9 “(2) UNIT ALLOWANCES.—After January 1,
 10 2000, the Administrator shall allocate allowances
 11 pursuant to section 411 to each unit which is listed
 12 in table B of this paragraph in an annual amount
 13 equal to the amount specified in table B.

“TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

14 Notwithstanding any other paragraph of this subsection,
 15 for units subject to this paragraph, the Administrator
 16 shall not allocate allowances pursuant to any other para-
 17 graph of this subsection, provided that the owner or oper-
 18 ator of a unit listed on table B may elect an allocation

1 of allowances under another paragraph of this subsection
2 in lieu of an allocation under this paragraph.

3 “(3) UNITS THAT COMMENCED COMMERCIAL
4 OPERATION BETWEEN OCTOBER 1, 1990, AND DE-
5 CEMBER 31, 1992.—Beginning January 1, 2000, the
6 Administrator shall allocate to the owner or operator
7 of any utility unit that commences commercial oper-
8 ation, or has commenced commercial operation, on
9 or after October 1, 1990, but not later than Decem-
10 ber 31, 1992, allowances in an amount equal to the
11 product of the unit’s annual fuel consumption, on a
12 Btu basis, at a 65 percent capacity factor multiplied
13 by the lesser of 0.30 lbs/mmBtu or the unit’s allow-
14 able sulfur dioxide emission rate (converted, if nec-
15 essary, to pounds per mmBtu), divided by 2,000.

16 “(4) UNITS THAT COMMENCED COMMERCIAL
17 OPERATION BETWEEN JANUARY 1, 1993, AND DE-
18 CEMBER 31, 1995.—Beginning January 1, 2000, the
19 Administrator shall allocate to the owner or operator
20 of any utility unit that has commenced construction
21 before December 31, 1990 and that commences com-
22 mercial operation between January 1, 1993, and De-
23 cember 31, 1995, allowances in an amount equal to
24 the product of the unit’s annual fuel consumption,
25 on a Btu basis, at a 65 percent capacity factor mul-

1 multiplied by the lesser of 0.30 lbs/mmBtu or the unit's
2 allowable sulfur dioxide emission rate (converted, if
3 necessary, to pounds per mmBtu), divided by 2,000.

4 “(5) UNITS THAT CONVERTED TO COAL FIRED
5 OPERATION BETWEEN JANUARY 1, 1985, AND DE-
6 CEMBER 31, 1987.—After January 1, 2000, it shall
7 be unlawful for any existing utility unit that has
8 completed conversion from predominantly gas fired
9 existing operation to coal fired operation between
10 January 1, 1985, and December 31, 1987, for which
11 there has been allocated a proposed or final prohibi-
12 tion order pursuant to section 301(b) of the Power-
13 plant and Industrial Fuel Use Act of 1978 (42
14 U.S.C. 8301 et seq., repealed 1987) to exceed an an-
15 nual sulfur dioxide tonnage emissions limitation
16 equal to the product of the unit's annual fuel con-
17 sumption, on a Btu basis, at a 65 percent capacity
18 factor multiplied by the lesser of 1.20 lbs/mmBtu or
19 the unit's allowable 1987 sulfur dioxide emissions
20 rate, divided by 2,000, unless the owner or operator
21 of such unit has obtained allowances equal to its
22 total annual emissions, or for a year after 2007, un-
23 less the owner or operator of the source that in-
24 cludes such unit holds allowances to emit not less

1 than the total annual emissions of all affected units
2 at the source.

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

15 “(A) an applicable power sales agreement
16 has been executed;

17 “(B) the facility is the subject of a State
18 regulatory authority order requiring an electric
19 utility to enter into a power sales agreement
20 with, purchase capacity from, or (for purposes
21 of establishing terms and conditions of the elec-
22 tric utility’s purchase of power) enter into arbi-
23 tration concerning, the facility;

24 “(C) an electric utility has issued a letter
25 of intent or similar instrument committing to

1 purchase power from the facility at a previously
2 offered or lower price and a power sales agree-
3 ment is executed within a reasonable period of
4 time; or

5 “(D) the facility has been selected as a
6 winning bidder in a utility competitive bid solici-
7 tation.

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

10 “(1) IN GENERAL.—After January 1, 2000, it
11 shall be unlawful for any oil- and gas-fired utility
12 unit whose average annual fuel consumption during
13 the period 1980 through 1989 on a Btu basis ex-
14 ceeded 90 percent in the form of natural gas to ex-
15 ceed an annual sulfur dioxide tonnage limitation
16 equal to the product of the unit’s baseline multiplied
17 by the unit’s actual 1985 emissions rate divided by
18 2,000 unless the owner or operator of such unit
19 holds allowances to emit not less than the unit’s
20 total annual emissions, or for a year after 2007, un-
21 less the owner or operator of the source that in-
22 cludes such unit holds allowances to emit not less
23 than the total annual emissions of all affected units
24 at the source.

1 “(2) RESERVE ALLOWANCES.—In addition to
2 allowances allocated pursuant to paragraph (1) and
3 section 412(a) as basic phase II allowance alloca-
4 tions, beginning January 1, 2000, and for each cal-
5 endar year thereafter until and including 2009, the
6 Administrator shall allocate annually for each unit
7 subject to the emissions limitation requirements of
8 paragraph (1) allowances from the reserve created
9 pursuant to subsection (a)(2) in an amount equal to
10 the unit’s baseline multiplied by 0.050 lbs/mmBtu,
11 divided by 2,000.

12 “(3) ADDITIONAL ALLOWANCES.—In addition
13 to allowances allocated pursuant to paragraph (1)
14 and section 412(a), beginning January 1, 2010, the
15 Administrator shall allocate annually for each unit
16 subject to the emissions limitation requirements of
17 paragraph (1) allowances in an amount equal to the
18 unit’s baseline multiplied by 0.050 lbs/mmBtu, di-
19 vided by 2,000.

20 “(i) UNITS IN HIGH GROWTH STATES.—

21 “(1) ANNUAL ALLOCATIONS.—In addition to al-
22 lowances allocated pursuant to this section and sec-
23 tion 412(a) as basic phase II allowance allocations,
24 beginning January 1, 2000, the Administrator shall
25 allocate annually allowances for each unit, subject to

1 an emissions limitation requirement under this sec-
2 tion, and located in a State that—

3 “(A) has experienced a growth in popu-
4 lation in excess of 25 percent between 1980 and
5 1988 according to State Population and House-
6 hold Estimates, With Age, Sex, and Compo-
7 nents of Change: 1981–1988 allocated by the
8 United States Department of Commerce, and

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

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

21 “(ii) the number of allowances allo-
22 cated for the unit pursuant to the emis-
23 sions limitation requirements of this sec-
24 tion:

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

9 “(2) ADDITIONAL ALLOCATIONS.—Beginning
10 January 1, 2000, in addition to allowances allocated
11 pursuant to this section and section 402(a)(1) as
12 basic phase II allowance allocations, the Adminis-
13 trator shall allocate annually for each unit subject to
14 the emissions limitation requirements of subsection
15 (b)(1)—

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

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

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

23 “(D) which is owned by a utility company
24 whose combined commercial and industrial kilo-
25 watt-hour sales have increased by more than 20

1 percent between calendar year 1980 and No-
2 vember 15, 1990; and

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

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

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

19 *Provided*, That the number of allowances allo-
20 cated pursuant to this paragraph shall not ex-
21 ceed an annual total of 5,000. If necessary to
22 meeting the 5,000 allowance restriction imposed
23 in the last clause of the preceding sentence the
24 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 403. 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) ELECTIONS SUBMITTED BEFORE JANUARY
15 1, 2002.—For a unit for which an election, along
16 with a permit application and compliance plan, is
17 submitted to the Administrator under paragraph (a)
18 before January 1, 2002, annual emissions limita-
19 tions for sulfur dioxide shall be equal to the product
20 of the baseline multiplied by the lesser of the unit’s
21 1985 actual or allowable emission rate in lbs/
22 mmBtu, or, if the unit did not operate in 1985, by
23 the lesser of the unit’s actual or allowable emission
24 rate for a calendar year after 1985 (as determined
25 by the Administrator); divided by 2,000.

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

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

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

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

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

16 **“SEC. 417. AUCTIONS, RESERVE.**

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

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

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

1 which would (but for this subsection) be issued for each
2 affected unit at an affected source. The Administrator
3 shall record such withholding for purposes of transferring
4 the proceeds of the allowance sales under this subsection.
5 The allowances so withheld shall be deposited in the Re-
6 serve under this section.

7 “(b) AUCTION SALES.—

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

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

1 the Administrator) to the Administrator (on a sealed
 2 bid schedule provided by the Administrator) offers to
 3 purchase specified numbers of allowances at speci-
 4 fied prices. Such regulations shall specify that the
 5 auctioned allowances shall be allocated and sold on
 6 the basis of bid price, starting with the highest-
 7 priced bid and continuing until all allowances for
 8 sale at such auction have been allocated. The regula-
 9 tions shall not permit that a minimum price be set
 10 for the purchase of withheld allowances. Allowances
 11 purchased at the auction may be used for any pur-
 12 pose and at any time after the auction, subject to
 13 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	125,000
2004	125,000	125,000
2005	125,000	125,000
2006–2009	125,000	0

14 “(3) PROCEEDS.—
 15 “(A) TRANSFER.—Notwithstanding section
 16 3302 of title 31 of the United States Code or

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

12 “(B) RETURN.—At the end of each year,
13 any allowances offered for sale but not sold at
14 the auction shall be returned without charge, on
15 a pro rata basis, to the owner or operator of the
16 affected units from whose allocation the allow-
17 ances were withheld. With 170 days after the
18 date of enactment of the Clear Skies Act of
19 2005, any allowance withheld under paragraph
20 (a)(2) but not offered for sale at an auction
21 shall be returned without charge, on a pro rata
22 basis, to the owner or operator of the affected
23 units from whose allocation the allowances were
24 withheld.

1 “(4) RECORDING BY EPA.—The Administrator
2 shall record and publicly report the nature, prices
3 and results of each auction under this subsection, in-
4 cluding the prices of successful bids, and shall
5 record the transfers of allowances as a result of each
6 auction in accordance with the requirements of this
7 section. The transfer of allowances at such auction
8 shall be recorded in accordance with the regulations
9 promulgated by the Administrator under this sub-
10 part.

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

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

1 the United States Government or by nongovernmental
2 agencies, groups, or organizations.

3 “(e) APPLICABLE LAW.—The Administrator shall
4 implement this section under 40 CFR part 73 (2002),
5 amended as appropriate by the Administrator.

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

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

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

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

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

20 **“SEC. 419. TERMINATION.**

21 “Starting January 1, 2010, the owners or operators
22 of affected units and affected facilities under sections
23 412(b) and (c) and 416 and shall no longer be subject
24 to the requirements of sections 412 through 417.

1 megawatts or less, or a cogeneration unit that
2 meets the criteria for qualifying for a cogenera-
3 tion facilities codified in section 292.205 of title
4 18 of the Code of Federal Regulations as issued
5 on April 1, 2002, during each year starting
6 with the unit commences service of a generator.

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

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

1 “(4) GENERAL ACCOUNT.—The term ‘general
2 account’ means an account in the Allowance Track-
3 ing System under section 402(c) established by the
4 Administrator for any person under 40 CFR part
5 73.31(c) (2002), amended as appropriate by the Ad-
6 ministrator.

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

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

23 **“SEC. 422. APPLICABILITY.**

24 “(a) PROHIBITION.—Starting January 1, 2010, it
25 shall be unlawful for the affected EGUs at a facility to

1 emit a total amount of sulfur dioxide during the year in
 2 excess of the number of sulfur dioxide allowances held for
 3 such facility for that year by the owner or operator of the
 4 facility.

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

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

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

“TABLE A—TOTAL SO₂ ALLOWANCES ALLOCATED FOR EGUS

Year	SO ₂ allowances allocated
2010	4,416,666
2011–2012	4,416,667
2013–2015	4,500,000
2016 and thereafter	3,000,000.

12 **“SEC. 424. EGU ALLOCATIONS.**

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

19 “(1) 88 percent of the total amount of sulfur
 20 dioxide allowances shall be allocated to fossil-fuel-
 21 fired affected EGUs under this section shall be allo-

1 cated by the Administrator to individual EGUs as
2 follows:

3 “(A) For each unit account and each gen-
4 eral account in the Allowance Tracking System,
5 the Administrator shall determine the total
6 amount of sulfur dioxide allowances allocated
7 under subpart 1 for 2010 and thereafter that
8 are recorded, as of 12:00 noon, Eastern Stand-
9 ard time, on the date 180 days after enactment
10 of the Clear Skies Act of 2005. The Adminis-
11 trator shall determine this amount in accord-
12 ance with 40 CFR part 73 (2002), amended as
13 appropriate by the Administrator, except that
14 the Administrator shall apply a discount rate of
15 7 percent for each year after 2010 to the
16 amounts of sulfur dioxide allowances allocated
17 for 2011 or later.

18 “(B) For each unit account and each gen-
19 eral account in the Allowance Tracking System,
20 the Administrator shall determine an amount of
21 sulfur dioxide allowances equal to the allocation
22 amount under subparagraph (A) multiplied by
23 the ratio of the amount of sulfur dioxide allow-
24 ances determined to be recorded in that account
25 under clause (i) to the total amount of sulfur

1 dioxide allowances determined to be recorded in
2 all unit accounts and general accounts in the
3 Allowance Tracking System under clause (i).

4 “(C) The Administrator shall allocate to
5 each facility’s account in the Allowance Track-
6 ing System an amount of sulfur dioxide allow-
7 ances equal to the total amount of sulfur diox-
8 ide allowances determined under clause (ii) for
9 the unit accounts of the units at the facility and
10 shall allocate to each general account in the Al-
11 lowance Tracking System the amount of sulfur
12 dioxide allowances determined under clause (ii)
13 for that general account.

14 “(D) Notwithstanding subparagraphs (A)
15 through (C), 10,800 of the total amount of sul-
16 fur dioxide allowances shall be allocated for
17 units at a facility or facilities that purchase coal
18 from the Absaloka Mine and subsequently use
19 the coal for the generation of electricity. The
20 amount of allowances allocated to any facility or
21 facilities under this subparagraph shall be cal-
22 culated so that 1,800 allowances shall be allo-
23 cated for each 1,000,000 tons of coal purchased
24 from the Absaloka Mine. Allowances shall be al-
25 located to a facility only upon certification to

1 the administrator that the conditions of this
2 subparagraph have been met. If a facility pur-
3 chases less than 1,000,000 tons of coal or pur-
4 chases coal in quantities not equivalent to
5 1,000,000-ton increments, the Administrator
6 shall adjust the amount of allowances allocated
7 to the facility to reflect the ratio of 1,800 allow-
8 ances for each 1,000,000 tons of coal pur-
9 chased.

10 “(2)(A) 7 percent of the total amount of sulfur
11 dioxide allowances allocated each year under section
12 423 shall be allocated for units at a facility that are
13 affected EGUs, but did not receive sulfur dioxide al-
14 locations under subpart 1 of this title.

15 “(B) The Administrator shall allocate each year
16 for the units under subparagraph (A) that com-
17 menced commercial operation before January 1,
18 2001, an amount of sulfur dioxide allowances deter-
19 mined by:

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

24 “(ii) For such units at the facility that are
25 oil-fired, multiplying 0.20 lb/mmBtu by the

1 total baseline heat input of such units and con-
2 verting to tons.

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

7 “(iv) If the total of the amounts for all fa-
8 cilities under clauses (i), (ii), and (iii) exceeds
9 the allocation amount under subparagraph (A),
10 multiplying the allocation amount under sub-
11 paragraph (A) by the ratio of the total of the
12 amounts for the facility under clauses (i), (ii),
13 and (iii) to the total of the amounts for all fa-
14 cilities under clause (i), (ii), and (iii).

15 “(v) Allocating to each facility the lesser of
16 the total of the amounts for the facility under
17 clauses (i), (ii), and (iii) or, if the total of the
18 amounts for all facilities under clauses (i), (ii),
19 and (iii) exceeds the allocation amount under
20 subparagraph (A), the amount under clause
21 (iv).

22 “(C) The Administrator shall allocate each year
23 for units under subparagraph (A) that commence
24 commercial operation on or after January 1, 2001

1 and before January 1, 2005, an amount of sulfur di-
2 oxide allowances determined by:

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

7 “(ii) For all such other units at the facility
8 that are not covered by clause (i), multiplying
9 .005 lb/mmBtu by the total baseline heat input
10 of such units and converting to tons.

11 “(iii) If the total of the amounts for all fa-
12 cilities under clauses (i) and (ii) exceeds the al-
13 location amount under subparagraph (A), mul-
14 tiplying the allocation amount under subpara-
15 graph (A) by the ratio of the total of the
16 amounts for the facility under clauses (i) and
17 (ii) to the total of the amounts for all facilities
18 under clauses (i) and (ii).

19 “(iv) Allocating to each facility the lesser
20 of the total of the amounts for the facility
21 under clauses (i) and (ii) or, if the total of the
22 amounts for all facilities under clauses (i) and
23 (ii) exceeds the allocation amount under sub-
24 paragraph (A), the amount under clause (iv).
25 The Administrator shall allocate to the facilities

1 under paragraph (1) and this paragraph on a
2 pro rata basis (based on the allocations under
3 those paragraphs) any allowances not allocated
4 under this paragraph. However, no unit shall
5 receive an allocation in excess of the product
6 obtained by multiplying the baseline heat input
7 of the unit and the quotient obtained by divid-
8 ing the sulfur dioxide emission rate of the unit
9 by 2000.

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

19 “(E) Allowances allocated under this paragraph
20 shall be allocated to each unit on a first-come basis
21 determined by the date on which the unit com-
22 mences operation. If the unit has no applicable na-
23 tional emission standard for sulfur dioxide under
24 section 481, the unit shall be allocated no sulfur di-
25 oxide allowances.

1 “(F) 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 subparagraph (D) will not be reduced as a re-
13 sult of new units commencing commercial operation.

14 “(G) DISTRIBUTION OF REMAINING ALLOW-
15 ANCES.—

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

22 “(ii) ADDITIONAL REMAINING ALLOW-
23 ANCES.—Allowances remaining after each
24 iteration of the calculation under clause (i) shall

1 be allocated in accordance with that subpara-
2 graph.

3 “(3) 2 percent of the total amount of sulfur di-
4 oxide allowances allocated each year under section
5 423 shall be allocated to a set-aside for direct sales
6 under section 402(e)(3)(D). Any sulfur dioxide al-
7 lowances allocated for the year and remaining in the
8 set-aside, as of the deadline established by the Ad-
9 ministrator for holding sulfur dioxide allowances for
10 a facility for the year under section 422, shall be al-
11 located to the units that were allocated sulfur diox-
12 ide allowances for the year under paragraph (1) or
13 (2).

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

23 “(B) If any unit’s allocation for the year
24 under subparagraph (A) and this subparagraph
25 would otherwise result in the unit being allo-

1 cated a total amount of sulfur dioxide allow-
2 ances under paragraph (1) or (2), subpara-
3 graph (A), and this subparagraph exceeding the
4 unit's baseline heat input multiplied by the
5 quotient obtained by dividing the unit's allow-
6 able sulfur dioxide emissions rate by 2000, the
7 amount of sulfur dioxide allowances that ex-
8 ceeds such product shall be instead allocated to
9 the other units under subparagraph (A) on a
10 pro rata basis, based on the units' allocations
11 under paragraph (1) or (2), subparagraph (A),
12 and this subparagraph.

13 “(4) 3 percent of the total amount of sulfur di-
14 oxide allowances allocated beginning January 1,
15 2010, and for each calendar year thereafter through
16 2017 under section 423 shall be allocated to units
17 at a facility that are affected EGUs and received
18 Phase II bonus allowances under section 414(b)(2)
19 and section 414(c)(4). Allowances shall be allocated
20 to each affected unit in the amount equal to each
21 unit's percentage share of the total bonus allowances
22 allocated under subsections (b)(2) and (c)(4) of sec-
23 tion 414.

24 “(b) FAILURE TO PROMULGATE.—If, by the date
25 that is 18 months before January 1 of calendar year 2010

1 and each year thereafter, the Administrator has signed
2 proposed regulations, but has not promulgated final regu-
3 lations, determining allocations under subsection (a), the
4 Administrator shall allocate, for each year, for each facil-
5 ity at which an affected EGU is located, and for each gen-
6 eral account, the amount of sulfur dioxide allowances spec-
7 ified for that facility and that general account in the pro-
8 posed regulations.

9 **“SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES**

10 **ALLOCATED UNDER SUBPART 1.**

11 “(a) REMOVAL FROM ACCOUNTS.—After allocating
12 allowances under section 424(a)(1), the Administrator
13 shall remove from the unit accounts and general accounts
14 in the Allowance Tracking System under section 402(c)
15 and from the Special Allowances Reserve under section
16 418 all sulfur dioxide allowances allocated or deposited
17 under subpart 1 for 2010 or later.

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

1 **“SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION**
2 **CONTROL TECHNOLOGY.**

3 “(a) RESERVE.—The Administrator shall establish a
4 reserve of 250,000 sulfur dioxide allowances comprising
5 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur
6 dioxide allowances for 2011, and 83,333 sulfur dioxide al-
7 lowances for 2012.

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

16 “(1) A statement that the owner or operator
17 will install and commence operation of specified sul-
18 fur dioxide control technology at the unit within 24
19 months after approval of the application under sub-
20 section (c) if the unit is allocated the sulfur dioxide
21 allowances requested under paragraph (4). The
22 owner or operator shall provide description of the
23 control technology.

24 “(2) A statement that, during the period start-
25 ing with the commencement of operation of sulfur
26 dioxide technology under paragraph (1) through

1 2009, the unit will combust Eastern bituminous at
2 a percentage of the unit's total heat input equal to
3 or exceeding the percentage of total heat input com-
4 busted by the unit in 2001 if the unit is allocated
5 the sulfur dioxide allowances requested under para-
6 graph (4).

7 “(3) A demonstration that the unit will achieve,
8 while combusting fuel in accordance with paragraph
9 (2) and operating the sulfur dioxide control tech-
10 nology specified in paragraph (1), a specified ton-
11 nage of sulfur dioxide emission reductions during the
12 period starting with the commencement of operation
13 of sulfur dioxide control technology under subpara-
14 graph (1) through 2009. The tonnage of emission
15 reductions shall be the difference between emissions
16 monitored at a location at the unit upstream of the
17 control technology described in paragraph (1) and
18 emissions monitored at a location at the unit down-
19 stream of such control technology, while the unit is
20 combusting fuel in accordance with paragraph (2).

21 “(4) A request that the Administrator allocate
22 for the unit a specified number of sulfur dioxide al-
23 lowances from the reserve under subsection (a) for
24 the period starting with the commencement of oper-

1 ation of the sulfur dioxide technology under para-
2 graph (1) through 2009.

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

7 “(c) APPROVAL OR DISAPPROVAL.—By order subject
8 to notice and opportunity for comment, the Administrator
9 shall—

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

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

17 “(3) for each application listed under paragraph
18 (2), multiply the amount of sulfur dioxide emission
19 reductions requested by each allowance-to-emission-
20 reduction ratio on the list that equals or is less than
21 the ratio for the application;

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

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

6 “(6) approve each application listed under para-
7 graph (2) with a ratio equal to or less than the al-
8 lowance-to-emission-reduction ratio determined
9 under paragraph (5) and disapprove all the other
10 applications.

11 “(d) MONITORING.—

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

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

18 “(B) a CEMS for sulfur dioxide located
19 downstream of such control technology at the
20 unit during the period beginning on the date of
21 commencement of operation of such control
22 technology and ending on December 31, 2009.

23 “(2) COMPLIANCE.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), the installation of the CEMS

1 and quality assurance of data under paragraph
2 (1) shall be in accordance with subsection (a)(2)
3 of this section and subsections (c) through (e)
4 of section 404.

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

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

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

19 “(A) the total tonnage of sulfur dioxide
20 emissions reductions achieved by the unit, dur-
21 ing the period starting with the commencement
22 of operation of the sulfur dioxide control tech-
23 nology under subparagraph (b)(1) through
24 2009, through use of such control technology;
25 or

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

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

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

22 (4) TREATMENT AS SINGLE UNIT.—Solely for
23 the purpose of making allocations under this sub-
24 section, the Administrator shall treat as a single
25 unit 2 or more units that use a single stack, are cov-

1 ered by an application approved under subsection
2 (c), and are not separately monitored.

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

4 **“SEC. 431. DEFINITIONS.**

5 “For purposes of this subpart—

6 “(1) ADJUSTED BASELINE HEAT INPUT.—The
7 term ‘adjusted baseline heat input’ means the aver-
8 age annual heat input used by a unit during the
9 three years in which the unit had the highest heat
10 input for the period from the eighth through the
11 fourth year before the first covered year.

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

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

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

1 unit during the fourth year before the first
2 covered year.

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

5 “(i) required to be reported under sec-
6 tion 404 for the unit, if the unit was re-
7 quired to report heat input during the year
8 under that section;

9 “(ii) reported to the Energy Informa-
10 tion Administrator for the unit, if the unit
11 was not required to report heat input
12 under section 404;

13 “(iii) based on data for the unit re-
14 ported to the WRAP State where the unit
15 is located as required by State law, if the
16 unit was not required to report heat input
17 during the year under section 404 and did
18 not report to the Energy Information Ad-
19 ministration; or

20 “(iv) based on fuel use and fuel heat
21 content data for the unit from fuel pur-
22 chase or use records, if the unit was not
23 required to report heat input during the
24 year under section 404 and did not report

1 to the Energy Information Administration
2 and the WRAP State.

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

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

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

12 “(3) COAL-FIRED.—The term ‘coal-fired’ with
13 regard to a unit means, for purposes of section 434,
14 a unit combusting coal or any coal-derived fuel alone
15 or in combination with any amount of any other fuel
16 in any year during the period from the eighth
17 through the fourth year before the first covered
18 year.

19 “(4) COVERED YEAR.—The term ‘covered year’
20 means—

21 “(A)(i) the third year after the year 2016
22 or later when the total annual sulfur dioxide
23 emissions of all affected EGUs in the WRAP
24 States first exceed 390,000 tons; or

1 “(ii) the third year after the year 2013 or
2 later when the Administrator determines by
3 regulation that the total annual sulfur dioxide
4 emissions of all affected EGUs in the WRAP
5 States are reasonably projected to exceed
6 390,000 tons in 2018 or any year thereafter.
7 The Administrator may make such determina-
8 tion only if all the WRAP States submit to the
9 Administrator a petition requesting that the
10 Administrator issue such determination and
11 make all affected EGUs in the WRAP States
12 subject to the requirements of sections 432
13 through 434; and

14 “(B) each year after the ‘covered year’
15 under subparagraph (A).

16 “(5) OIL-FIRED.—The term ‘oil-fired’ with re-
17 gard to a unit means, for purposes of section 434,
18 a unit combusting fuel oil for more than 10 percent
19 of the unit’s total heat input, and combusting no
20 coal or coal-derived fuel, and any year during the pe-
21 riod from the eighth through the fourth year before
22 the first covered year.

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

1 **“SEC. 432. APPLICABILITY.**

2 “(a) PROHIBITION.—Starting January 1 of the first
3 covered year, it shall be unlawful for the affected EGUs
4 at a facility to emit a total amount of sulfur dioxide during
5 the year in excess of the number of sulfur dioxide allow-
6 ances held for such facility for that year by the owner or
7 operator of the facility.

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

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

12 For affected EGUs, the total amount of sulfur diox-
13 ide allowances that the Administrator shall allocate for
14 each covered year under section 434 shall equal 390,000
15 tons.

16 **“SEC. 434. EGU ALLOCATIONS.**

17 “(a) IN GENERAL.—By January 1 of the year before
18 the first covered year, the Administrator shall promulgate
19 regulations determining, for each covered year, the alloca-
20 tions of sulfur dioxide allowances for the units at a facility
21 that commence commercial operation, and are affected
22 EGUs, as of December 31 of the fourth year before the
23 covered year by—

24 “(1) for such units at the facility that are coal-
25 fired, multiplying 0.40 lb/mmBtu by the total ad-

1 justed baseline heat input of such units and con-
2 verting to tons;

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

7 “(3) for all such other units at the facility that
8 are not covered by paragraph (1) or (2) multiplying
9 0.05 lb/mmBtu by the total adjusted baseline heat
10 input of such units and converting to tons; and

11 “(4) multiplying by 0.91 the allocation amount
12 under section 433 by the ratio of the total of the
13 amounts for the facility under paragraphs (1), (2),
14 and (3) to the total of the amounts for all facilities
15 under paragraphs (1), (2), and (3); and

16 “(5)(A) 7 percent of the total amount of sulfur
17 dioxide allowances allocated each year under section
18 433 shall be allocated for units at a facility that are
19 affected EGUs, but did not receive sulfur dioxide al-
20 locations under paragraph (4). These units shall be
21 allocated allowances in accordance with paragraphs
22 (1), (2), and (3). The Administrator shall conduct
23 for each year the allocation of any sulfur dioxide al-
24 lowances for the year under this paragraph that
25 were not previously allocated.

1 “(B) Allowances allocated under subparagraph
2 (A) shall be allocated to units on a first come basis
3 determined by the date on which the unit com-
4 mences operation. As such, allocations to units
5 under paragraph (A) will not be reduced as a result
6 of new units commencing operation.

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

14 “(6) 2 percent of the total amount of sulfur di-
15 oxide allowances allocated each year under section
16 433 shall be allocated to a set-aside for direct sales
17 under section 402(e)(3)(D). Any sulfur dioxide al-
18 lowances allocated for the year and remaining in the
19 set-aside, as of the deadline established by the Ad-
20 ministrator for holding sulfur dioxide allowances for
21 a facility for the year under section 432, shall be al-
22 located to the units that were allocated sulfur diox-
23 ide allowances for the year under paragraphs (1)
24 through (5). Each such unit shall be allocated the
25 amount of sulfur dioxide allowances for the year re-

1 maining in the set-aside, multiplied by the amount
2 of sulfur dioxide allowances allocated to the unit for
3 the year under paragraphs (1) through (5) and di-
4 vided by the total amount of sulfur dioxide allow-
5 ances allocated to all units for the year under para-
6 graphs (1) through (5).

7 “(b) FAILURE TO PROMULGATE.—For each covered
8 year, if, by the date that is 18 months before January
9 1 of the year, the Administrator has signed proposed regu-
10 lations, but has not promulgated final regulations, deter-
11 mining allocations under subsection (a), the Administrator
12 shall allocate, for the year, for each facility at which an
13 affected EGU is located, and for each general account, the
14 amount of sulfur dioxide allowances specified for that fa-
15 cility and that general account in the proposed regula-
16 tions.

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

18 **EMISSION REDUCTIONS**

19 **“Subpart 1—Acid Rain Program**

20 **“SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PRO-**
21 **GRAM.**

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

1 requirements, each such unit shall become an affected unit
2 for purposes of this section and shall be subject to the
3 emission limitations for nitrogen oxides set forth herein.

4 “(b) EMISSION LIMITATIONS.—

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

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

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

1 in excess of the emission rates set by the Ad-
2 ministrator pursuant to this paragraph.

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

8 “(A) wet bottom wall-fired boilers;

9 “(B) cyclones;

10 “(C) units applying cell burner technology;

11 and

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

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

1 unit that is an affected unit pursuant to section 413
2 and that is subject to the requirements of subsection
3 (b)(1), shall be subject to the revised emission limi-
4 tations, if any. The Administrator shall implement
5 that paragraph under 40 CFR parts 76.6 and 76.7
6 (2002).

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

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

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

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

1 “(A) has properly installed appropriate control
2 equipment designed to meet the applicable emission
3 rate;

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

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

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

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

23 “(3) ADDITIONAL CONTROL TECHNOLOGY.—Units
24 subject to subsection (b)(1) for which an alternative emis-
25 sion limitation is established shall not be required to in-

1 stall any additional control technology beyond low NO_x
2 burners. Nothing in this section shall preclude an owner
3 or operator from installing and operating an alternative
4 NO_x control technology capable of achieving the applica-
5 ble emission limitation. The Administrator shall imple-
6 ment this subsection under 40 CFR part 76 (2002),
7 amended as appropriate by the Administrator.

8 “(d) EMISSIONS AVERAGING.—

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

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

22 “(B) the Btu-weighted average annual
23 emission rate for the same units if they had
24 been operated, during the same period of time,
25 in compliance with limitations set in accordance

1 with the applicable emission rates set pursuant
2 to subsections (b)(1) and (2).

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

16 **“SEC. 442. TERMINATION.**

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

21 **“Subpart 2—Clear Skies Nitrogen Oxides Allowance**

22 **Program**

23 **“SEC. 451. DEFINITIONS.**

24 “For purposes of this subpart:

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

3 “(A) for a unit serving a generator before
4 the date of enactment of the Clear Skies Act of
5 2005, a unit in a State serving a generator with
6 a nameplate capacity of greater than 25
7 megawatts that produced or produces electricity
8 for sale during 2002 or any year thereafter, ex-
9 cept for a cogeneration unit that meets the cri-
10 teria for qualifying for a cogeneration facilities
11 codified in section 292.205 of title 18 of the
12 Code of Federal Regulations as issued on April
13 1, 2002 during 2002 and each year thereafter;
14 and

15 “(B) for a unit commencing service of a
16 generator on or after the date of enactment of
17 the Clear Skies Act of 2005, a unit in a State
18 serving a generator that produces electricity for
19 sale during any year starting with the year the
20 unit commences service of a generator, except
21 for a gas-fired unit serving one or more genera-
22 tors with total nameplate capacity of 25
23 megawatts or less, or a cogeneration unit that
24 meets the criteria for qualifying for a cogenera-
25 tion facilities codified in section 292.205 of title

1 18 of the Code of Federal Regulations as issued
2 on April 1, 2002, during each year starting
3 with the unit commences service of a generator.

4 “(C) EXCLUSION.—Notwithstanding para-
5 graphs (A) and (B), the term ‘affected EGU’
6 does not include a solid waste incineration unit
7 subject to section 129 or a unit for the treat-
8 ment, storage, or disposal of hazardous waste
9 subject to section 3005 of the Solid Waste Dis-
10 posal Act.

11 “(2) ADJUSTED BASELINE HEAT INPUT.—The
12 term ‘adjusted baseline heat input’ with regard to a
13 unit means, for purposes of allocating nitrogen ox-
14 ides allowances in a particular year under this sub-
15 part, the unit’s baseline heat input multiplied by—

16 “(A) 1.0 for affected coal-fired units for
17 2008 and each year thereafter;

18 “(B) 0.55 for affected oil- and gas-fired
19 units located in a Zone 1 State for years 2008
20 through 2015 inclusive;

21 “(C) 0.8 for affected oil- and gas-fired
22 units located in a Zone 1 State for 2016 and
23 each year thereafter; and

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

4 “(3) ALLOWABLE NITROGEN OXIDES EMISSIONS
5 RATE.—The term ‘allowable nitrogen oxides emis-
6 sions rate’ means the most stringent Federal or
7 State emissions limitation for nitrogen oxides that
8 applies to the unit as of date of enactment of this
9 subpart. If the emissions limitation for a unit is not
10 expressed 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 to establish the allowable rate. Such
15 limitation shall not include any requirement to hold
16 nitrogen oxides allowances under the Federal NO_x
17 Budget Trading Program as codified at 40 CFR
18 part 97 (2002), or any State program adopted to
19 meet the requirements of the NO_x SIP Call as codi-
20 fied at section 51.121 of title 40, Code of Federal
21 Regulations (as in effect for 2004).

22 “(4) ZONE 1 STATE.—The term ‘Zone 1 State’
23 means Alabama, Arkansas, Connecticut, Delaware,
24 the District of Columbia, Florida, Georgia, Illinois,
25 Indiana, Iowa, Kentucky, Louisiana, Maine, Mary-

1 land, Massachusetts, Michigan, Mississippi, the fine
2 grid portion (as defined in section 51.121 of title 40,
3 Code of Federal Regulations (as in effect for 2004))
4 of Missouri, New Hampshire, New Jersey, New
5 York, North Carolina, Ohio, Pennsylvania, Rhode Is-
6 land, South Carolina, Tennessee, Texas east of
7 Interstate 35, Vermont, Virginia, West Virginia, and
8 Wisconsin.

9 “(5) ZONE 2 STATE.—The term ‘Zone 2 State’
10 means Alaska, American Samoa, Arizona, California,
11 Colorado, the Commonwealth of the Northern Mar-
12 iana Islands, the Commonwealth of Puerto Rico,
13 Guam, Hawaii, Idaho, Kansas, Minnesota, the
14 coarse grid portion (as defined in section 51.121 of
15 title 40, Code of Federal Regulations (as in effect
16 for 2004)) of Missouri, Montana, Nebraska, North
17 Dakota, New Mexico, Nevada, Oklahoma, Oregon,
18 South Dakota, Texas west of Interstate 35, Utah,
19 the Virgin Islands, Washington, and Wyoming.

20 **“SEC. 452. APPLICABILITY.**

21 “(a) ZONE 1 PROHIBITION.—

22 (1) IN GENERAL.—Starting January 1, 2008, it
23 shall be unlawful for the affected EGUs at a facility
24 in a Zone 1 State to emit a total amount of nitrogen
25 oxides during a year in excess of the number of ni-

1 nitrogen oxides allowances held for such facility for
2 that year by the owner or operator of the facility.

3 “(2) LIMITATION.—Only nitrogen oxides allow-
4 ances under section 453(a) shall be held in order to
5 meet the requirements of paragraph (1), except as
6 provided under section 465.

7 “(b) ZONE 2 PROHIBITION.—

8 (1) IN GENERAL.—Starting January 1, 2008, it
9 shall be unlawful for the affected EGUs at a facility
10 in a Zone 2 State to emit a total amount of nitrogen
11 oxides during a year in excess of the number of ni-
12 trogen oxides allowances held for such facility for
13 that year by the owner or operator of the facility.

14 “(2) LIMITATION.—Only nitrogen oxides allowances
15 under section 453(b) shall be held in order to meet the
16 requirements of paragraph (1).

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

18 “(a) ZONE 1 ALLOCATIONS.—For affected EGUs in
19 the Zone 1 States for 2008 and each year thereafter, the
20 Administrator shall allocate nitrogen oxides allowances
21 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
2008–2015	1,473,603
2016 and thereafter	1,073,603

1 “(b) ZONE 2 ALLOCATIONS.—For affected EGUs in
 2 the Zone 2 States for 2008 and each year thereafter, the
 3 Administrator shall allocate nitrogen oxides allowances
 4 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

5 **“SEC. 454. EGU ALLOCATIONS.**

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

7 “(1) EPA REGULATIONS.—Not later than 18
 8 months before the date on which the nitrogen oxides
 9 allowance requirement under section 452 takes ef-
 10 fect, the Administrator shall promulgate regulations
 11 determining the allocation of nitrogen oxide allow-
 12 ances for 2008 and each subsequent year for units
 13 at a facility in a Zone 1 State that commence com-
 14 mercial operation, and are affected EGUs, as of the
 15 date of enactment of this section.

16 “(2) FORMULA FOR ALLOCATION.—

17 “(A) IN GENERAL.—Subject to subpara-
 18 graph (B) and paragraph (3), the regulations
 19 shall specify that the allocation of nitrogen
 20 oxide allowances for each unit referred to in
 21 paragraph (1) for each year shall be the prod-
 22 uct obtained by multiplying—

1 “(i) the product of 0.93 and the allo-
2 cation amount under section 453(a); and

3 “(ii) the ratio that—

4 “(I) the total quantity of the ad-
5 justed baseline heat input of the units
6 at the facility; bears to

7 “(II) the total quantity of ad-
8 justed baseline heat input to all af-
9 fected EGUs in the Zone 1 States;
10 and

11 “(B) MAXIMUM ALLOCATION.—Notwith-
12 standing subparagraph (A) and paragraph (3),
13 no unit shall receive an allocation in excess of
14 the product obtained by multiplying—

15 “(i) the adjusted baseline heat input
16 of the unit; and

17 “(ii) the quotient obtained by dividing
18 the allowable nitrogen oxides emissions
19 rate of the unit by 2000.

20 “(3) DISTRIBUTION OF REMAINING ALLOW-
21 ANCES.—

22 “(A) IN GENERAL.—Subject to paragraph
23 (2)(B), any nitrogen oxide allowances remaining
24 after the allocation of allowances under para-
25 graph (2) shall be distributed on a pro rata

1 basis among the units that received nitrogen
2 oxide allowances under that paragraph.

3 “(B) ADDITIONAL REMAINING ALLOW-
4 ANCES.—Allowances remaining after each
5 iteration of the calculation under subparagraph
6 (A) as a result of the limitation under para-
7 graph (2)(B) shall be allocated in accordance
8 with subparagraph (A).

9 “(4) SET-ASIDE FOR NEW UNITS.—

10 “(A) IN GENERAL.—5 percent of the total
11 amount of nitrogen oxide allowances allocated
12 each year under section 453 shall be allocated
13 for units at a facility that are affected EGUs,
14 but did not receive nitrogen oxide allocations
15 under paragraph (2). The Administrator shall
16 conduct for each year the allocation of any ni-
17 trogen oxide allowances for the year under this
18 paragraph that were not previously allocated.

19 “(B) FORMULA FOR ALLOCATION.—

20 “(i) IN GENERAL.—Subject to clause
21 (ii) and subparagraph (E), the regulations
22 promulgated under paragraph (1) shall
23 specify that the allocation of nitrogen oxide
24 allowances for each unit referred to in sub-

1 paragraph (A) for each year shall be the
2 product obtained by multiplying—

3 “(I) the adjusted baseline heat
4 input of the unit; and

5 “(II) the quotient obtained by di-
6 viding the allowable nitrogen oxides
7 emissions rate of the unit by 2000.

8 “(ii) ADDITIONAL ALLOWANCES.—
9 Notwithstanding subparagraph (E), no
10 unit shall receive an allocation under this
11 paragraph in excess of the product ob-
12 tained by multiplying—

13 “(I) the baseline heat input of
14 the unit; and

15 “(II) the quotient obtained by di-
16 viding the allowable nitrogen oxides
17 emissions rate of the unit by 2000.

18 “(C) METHOD OF ALLOCATION.—Allow-
19 ances allocated under this paragraph shall be
20 allocated to each unit on a first-come basis de-
21 termined by the date on which the unit com-
22 mences operation.

23 “(D) NO REDUCTION IN ALLOCATIONS.—
24 Allocations to units under this paragraph shall

1 not be reduced as a result of new units com-
2 mencing operation.

3 “(E) DISTRIBUTION OF REMAINING AL-
4 LOWANCES.—Any nitrogen oxide allowances re-
5 maining after the allocation of allowances under
6 subparagraph (B) shall be distributed on a pro
7 rata basis among the units that received nitro-
8 gen oxide allowances under that subparagraph
9 and paragraphs (2) and (3).

10 “(5) SET-ASIDE FOR DIRECT SALES.—2 percent
11 of the total amount of nitrogen oxides allowances al-
12 located each year under section 453(a) shall be allo-
13 cated to a set-aside for direct sales under section
14 402(e)(3)(D). In 2018 and each of the 9 years
15 thereafter, the Administrator shall reduce the num-
16 ber of allowances allocated to the direct sales set-
17 aside by the total number of early action reduction
18 credits allocated under section 455, divided by 10.
19 Any nitrogen oxides allowances allocated for the year
20 and remaining in the set-aside, as of the deadline es-
21 tablished by the Administrator for holding nitrogen
22 oxides allowances for a facility for the year under
23 section 452(a), shall be allocated to the units that
24 were allocated nitrogen oxides allowances for the
25 year under paragraphs (1) through (4).

1 “(A) Except as provided in subparagraph
2 (B), each unit shall be allocated the amount of
3 nitrogen oxides allowances for the year remain-
4 ing in the set-aside, multiplied by the amount
5 of nitrogen oxides allowances allocated to the
6 unit for the year under paragraphs (2) through
7 (4) and divided by the total amount of nitrogen
8 oxides allowances allocated to all units for the
9 year under paragraphs (1) through (4).

10 “(B) If any unit’s allocation for the year
11 under subparagraph (A) and this subparagraph
12 would otherwise result in the unit being allo-
13 cated a total amount of nitrogen oxides allow-
14 ances under paragraphs (1) through (4), sub-
15 paragraph (A), and this subparagraph exceed-
16 ing the unit’s baseline heat input multiplied by
17 the quotient obtained by dividing the unit’s al-
18 lowable nitrogen oxides emissions rate by 2000,
19 the amount of nitrogen oxides allowances that
20 exceeds such product shall be instead allocated
21 to the other units under subparagraph (A) on
22 a pro rata basis, based on the units’ allocations
23 under paragraphs (1) through (4), subpara-
24 graph (A), and this subparagraph.

1 “(6) FAILURE TO PROMULGATE.—If, by the
2 date that is 18 months before January 1 of calendar
3 year 2008 and each calendar year thereafter, the
4 Administrator has signed proposed regulations but
5 has not promulgated final regulations, determining
6 allocations under paragraphs (1) through (4), the
7 Administrator shall allocate, for the year, for each
8 facility at which an affected EGU is located, the
9 amount of nitrogen oxides allowances specified for
10 that facility in the proposed regulations.

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

12 “(1) EPA REGULATIONS.—Not later than 18
13 months before the date on which the nitrogen oxides
14 allowance requirement under section 452 takes ef-
15 fect, the Administrator shall promulgate regulations
16 determining the allocation of nitrogen oxide allow-
17 ances for 2008 and each subsequent year for units
18 at a facility in a Zone 2 State that are affected
19 EGUs as of the date of enactment of this section.

20 “(2) FORMULA FOR ALLOCATION.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B) and paragraph (3), the regulations
23 shall specify that the allocation of nitrogen
24 oxide allowances for each unit referred to in

1 paragraph (1) for each year shall be the prod-
2 uct obtained by multiplying—

3 “(i) the product of 0.95 and the allo-
4 cation amount under section 453(b); and

5 “(ii) the ratio that—

6 “(I) the total quantity of the ad-
7 justed baseline heat input of the units
8 at the facility; bears to

9 “(II) the total quantity of ad-
10 justed baseline heat input to all af-
11 fected EGUs in the Zone 2 States.

12 “(B) MAXIMUM ALLOCATION.—Notwith-
13 standing subparagraph (A) and paragraph (3),
14 no unit shall receive an allocation in excess of
15 the product obtained by multiplying—

16 “(i) the baseline heat input of the
17 unit; and

18 “(ii) the quotient obtained by dividing
19 the allowable nitrogen oxides emissions
20 rate of the unit by 2000.

21 “(3) DISTRIBUTION OF REMAINING ALLOW-
22 ANCES.—

23 “(A) IN GENERAL.—Subject to paragraph
24 (2)(B), any nitrogen oxide allowances remaining
25 after the allocation of allowances under para-

1 graph (2) shall be distributed on a pro rata
2 basis among the units that received nitrogen
3 oxide allowances under that paragraph.

4 “(B) ADDITIONAL REMAINING ALLOW-
5 ANCES.—Allowances remaining after each
6 iteration of the calculation under subparagraph
7 (A) as a result of the limitation under para-
8 graph (2)(B) shall be allocated in accordance
9 with subparagraph (A).

10 “(4) SET-ASIDE FOR NEW UNITS.—

11 “(A) IN GENERAL.—5 percent of the total
12 amount of nitrogen oxide allowances allocated
13 each year under section 453 shall be allocated
14 for units at a facility that are affected EGUs,
15 but did not receive nitrogen oxide allocations
16 under paragraph (2).

17 “(B) FORMULA FOR ALLOCATION.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii) and subparagraph (E), the regulations
20 promulgated under paragraph (1) shall
21 specify that the allocation of nitrogen oxide
22 allowances for each unit referred to in sub-
23 paragraph (A) for each year shall be the
24 product obtained by multiplying—

1 “(I) the adjusted baseline heat
2 input of the unit; and

3 “(II) the quotient obtained by di-
4 viding the allowable nitrogen oxides
5 emissions rate of the unit by 2000.

6 “(ii) ADDITIONAL ALLOWANCES.—
7 Notwithstanding subparagraph (E), no
8 unit shall receive an allocation under this
9 paragraph in excess of the product ob-
10 tained by multiplying—

11 “(I) the baseline heat input of
12 the unit; and

13 “(II) the quotient obtained by di-
14 viding the allowable nitrogen oxides
15 emissions rate of the unit by 2000.

16 “(C) METHOD OF ALLOCATION.—Allow-
17 ances allocated under this paragraph shall be
18 allocated to each unit on a first-come basis de-
19 termined by the date on which the unit com-
20 mences operation.

21 “(D) NO REDUCTION IN ALLOCATIONS.—
22 Allocations to units under this paragraph shall
23 not be reduced as a result of new units com-
24 mencing operation.

1 “(E) DISTRIBUTION OF REMAINING AL-
2 LOWANCES.—Any nitrogen oxide allowances re-
3 maining after the allocation of allowances under
4 subparagraph (B) shall be distributed on a pro
5 rata basis among the units that received nitro-
6 gen oxide allowances under that subparagraph
7 and paragraphs (2) and (3).

8 “(5) SET-ASIDE FOR DIRECT SALES.—2 percent
9 of the total amount of nitrogen oxides allowances al-
10 located each year under section 453(b) shall be allo-
11 cated to a set-aside for direct sales under section
12 402(e)(3)(D). Any nitrogen oxides allowances allo-
13 cated for the year and remaining in the set-aside, as
14 of the deadline established by the Administrator for
15 holding nitrogen oxides allowances for a facility for
16 the year under section 452(b), shall be allocated to
17 the units that were allocated nitrogen oxides allow-
18 ances for the year under paragraphs (1) through
19 (4).

20 “(A) Except as provided in subparagraph
21 (B), each unit shall be allocated the amount of
22 nitrogen oxides allowances for the year remain-
23 ing in the set-aside, multiplied by the amount
24 of nitrogen oxides allowances allocated to the
25 unit for the year under paragraphs (1) through

1 (4) and divided by the total amount of nitrogen
2 oxides allowances allocated to all units for the
3 year under paragraphs (1) through (4).

4 “(B) If any unit’s allocation for the year
5 under subparagraph (A) and this subparagraph
6 would otherwise result in the unit being allo-
7 cated a total amount of nitrogen oxides allow-
8 ances under paragraphs (1) through (4), sub-
9 subparagraph (A), and this subparagraph exceed-
10 ing the unit’s baseline heat input multiplied by
11 the quotient obtained by dividing the unit’s al-
12 lowable nitrogen oxides emissions rate by 2000,
13 the amount of nitrogen oxides allowances that
14 exceeds such product shall be instead allocated
15 to the other units under subparagraph (A) on
16 a pro rata basis, based on the units’ allocations
17 under paragraphs (1) through (4), subpara-
18 graph (A), and this subparagraph.

19 “(6) FAILURE TO PROMULGATE.—If, by the
20 date that is 18 months before January 1 of calendar
21 year 2008 and each calendar year thereafter, the
22 Administrator has signed proposed regulations but
23 has not promulgated final regulations, determining
24 allocations under paragraphs (1) through (4), the
25 Administrator shall allocate, for the year, for each

1 facility at which an affected EGU is located, the
2 amount of nitrogen oxides allowances specified for
3 that facility in the proposed regulations.

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

6 “(a) CREDITS.—Except as provided in subsection (e),
7 the Administrator shall promulgate regulations within 18
8 months authorizing the allocation of nitrogen oxides allow-
9 ances to units designated under this section that install
10 or modify pollution control equipment or combustion tech-
11 nology improvements identified in such regulations after
12 the date of enactment of this section and prior to January
13 1, 2008.

14 “(b) EMISSIONS REDUCTIONS.—No allowances shall
15 be allocated under this section for emissions reductions
16 that are—

17 “(1) attributable to pollution control equipment
18 or combustion technology improvements that were
19 operational at any time prior to the date of enact-
20 ment of this section;

21 “(2) attributable to fuel switching;

22 “(3) required under any Federal, State, or local
23 statute or regulations for the applicable year; or

24 “(4) made by a unit, subject to—

1 “(A) subpart 1 of part C, that are nec-
2 essary for compliance with the limitation on the
3 Btu-weighted average annual emission rate of
4 the unit and 1 or more other units under sec-
5 tion 441(d); or

6 “(B) the requirements in the applicable
7 implementation plan of a NO_x SIP Call State
8 (as defined in section 461(3)) that meet the re-
9 quirements under sections 51.121 and 51.122
10 of title 40, Code of Federal Regulations (as in
11 effect for calendar year 2004) during the period
12 beginning on May 1 and ending on September
13 30.

14 “(c) ALLOCATION.—The allowances allocated to any
15 unit under this section shall be allocated in an amount
16 equal to one allowance of nitrogen oxides for each 1.05
17 tons of reduction in emissions of nitrogen oxides achieved
18 by the pollution control equipment or combustion tech-
19 nology improvements starting with the year in which the
20 equipment or improvement is implemented. The early com-
21 pliance reduction allowances available under this section
22 shall be used and tradable in the same manner as allow-
23 ances under section 454.

24 “(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—
25 The Administrator shall promulgate regulations as nec-

1 essary to ensure affected units receive early compliance
2 allowance credit. Early compliance allowances shall be al-
3 located at the end of an early compliance year. Should the
4 Administrator fail to promulgate allocation regulations by
5 the end of a given year, early compliance allowances for
6 each year shall be allocated at the earliest possible time
7 after allocation regulations are promulgated.

8 “(e) EXCEPTION.—This section shall not apply to re-
9 ductions that are—

10 “(1) made during the period beginning on May
11 1 and ending on September 30 of a year by units
12 that are subject to an applicable implementation
13 plan for a NO_x SIP Call State (as defined in section
14 461(3)) required under section 51.121 of title 40,
15 Code of Federal Regulations (as in effect for cal-
16 endar year 2004); or

17 “(2) necessary to comply with subpart 1 of part
18 C for the applicable year.

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

20 **“SEC. 461. DEFINITIONS.**

21 “For purposes of this subpart:

22 “(1) OZONE SEASON.—The term ‘ozone season’
23 means—

24 “(A) with regard to Connecticut, Delaware,
25 the District of Columbia, Maryland, Massachu-

1 setts, New Jersey, New York, Pennsylvania,
2 and Rhode Island, the period May 1 through
3 September 30 for each year starting in 2003;
4 and

5 “(B) with regard to all other States, the
6 period May 1 through September 30, for each
7 year starting in 2004 and thereafter.

8 “(2) NON-OZONE SEASON.—The term ‘non-
9 ozone season’ means—

10 “(A) with regard to Connecticut, Delaware,
11 the District of Columbia, Maryland, Massachu-
12 setts, New Jersey, New York, Pennsylvania,
13 and Rhode Island, the period October 1 through
14 April 30; and

15 “(B) with regard to all other States, the
16 period October 1, 2003, through May 29, 2004
17 and the period October 1 through April 30 be-
18 ginning in the year 2004 and for each year
19 thereafter.

20 “(3) NO_x SIP CALL STATE.—The term ‘NO_x
21 SIP Call State’ means Connecticut, Delaware, the
22 District of Columbia, Illinois, Indiana, Kentucky,
23 Maryland, Massachusetts, New Jersey, New York,
24 North Carolina, Ohio, Pennsylvania, Rhode Island,
25 South Carolina, Tennessee, Virginia, and West Vir-

1 ginia and the fine grid portions of Alabama, Geor-
2 gia, Michigan, and Missouri.

3 “(4) FINE GRID PORTIONS OF ALABAMA, GEOR-
4 GIA, MICHIGAN, AND MISSOURI.—The term ‘fine grid
5 portions of Alabama, Georgia, Michigan, and Mis-
6 souri’ means the areas in Alabama, Georgia, Michi-
7 gan, and Missouri subject to section 51.121 of the
8 title 40, Code of Federal Regulations (as in effect
9 for 2004).

10 **“SEC. 462. GENERAL PROVISIONS.**

11 “The provisions of sections 402 through 406 shall not
12 apply to this subpart.

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

14 “(a) SIPS.—Except as provided in subsection (b),
15 the applicable implementation plan for each NO_x SIP Call
16 State shall be consistent with the requirements, including
17 the NO_x SIP Call State’s nitrogen oxides budget and com-
18 pliance supplement pool, in sections 51.121 and 51.122
19 of title 40, Code of Federal Regulations (as in effect for
20 calendar year 2004).

21 “(b) REQUIREMENTS.—Notwithstanding any provi-
22 sion to the contrary in section 51.121 or 51.122 of title
23 40, Code of Federal Regulations (as in effect for calendar
24 year 2004):

1 “(1) IMPLEMENTATION PLAN.—The applicable
2 implementation plan for each NO_x SIP Call State
3 shall require full implementation of the required
4 emission control measures starting no later than the
5 first ozone season.

6 “(2) EXEMPTION.—Starting January 1,
7 2008—

8 “(A) the owners and operators of a boiler,
9 combustion turbine, or integrated gasification
10 combined cycle plant subject to emission reduc-
11 tion requirements or limitations under part B,
12 C, or D shall no longer be subject to the re-
13 quirements in a NO_x SIP Call State’s applica-
14 ble implementation plan that meet the require-
15 ments of subsection (a) and paragraph (1); and

16 “(B) notwithstanding subparagraph (A), if
17 the Administrator determines, by December 31,
18 2007, that a NO_x SIP Call State’s applicable
19 implementation plan meets the requirements of
20 subsection (a) and paragraph (1), such applica-
21 ble implementation plan shall be deemed to con-
22 tinue to meet such requirements.

23 “(c) SAVINGS PROVISION.—Nothing in this section or
24 section 464 shall preclude or deny the right of any State
25 or political subdivision thereof to adopt or enforce any reg-

1 ulation, requirement, limitation, or standard, relating to
2 a boiler, combustion turbine, or integrated gasification
3 combined cycle plant subject to emission reduction re-
4 quirements or limitations under part B, C, or D, that is
5 more stringent than a regulation, requirement, limitation,
6 or standard in effect under this section or under any other
7 provision of this Act.

8 **“SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION**
9 **OF NO_x TRADING PROGRAM FOR EGUS.**

10 “Starting January 1, 2008, with regard to any boiler,
11 combustion turbine, or integrated gasification combined
12 cycle plant subject to emission reduction requirements or
13 limitations under part B, C, or D, the Administrator shall
14 not administer any nitrogen oxides trading program in-
15 cluded in any NO_x SIP Call State’s applicable implemen-
16 tation plan and meeting the requirements of section
17 463(a) and (b)(1).

18 **“SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES**
19 **ALLOWANCES.**

20 “The Administrator shall promulgate regulations as
21 necessary to assure that the requirement to hold allow-
22 ances under section 452(a)(1) may be met using nitrogen
23 oxides allowances allocated for an ozone season before
24 2008 under a nitrogen oxides trading program that the
25 Administrator administers, is included in a NO_x SIP Call

1 State's applicable implementation plan, and meets the re-
2 quirements of section 463 (a) and (b)(1).

3 **“SEC. 466. NON-OZONE SEASON VOLUNTARY ACTION CRED-**
4 **ITS.**

5 “An affected facility that voluntarily elects to operate
6 selective catalytic reduction (SCR) units, installed prior to
7 enactment of this title, during the non-ozone season under
8 section 461(2) shall be credited 0.5 allowances per ton of
9 NO_x emissions avoided as a result of operating these con-
10 trols. The amount avoided will equal every ton of nitrogen
11 oxides reduction below the allowable emission rate. The
12 Administrator shall determine if any other existing NO_x
13 emission control devices are generally uneconomic to oper-
14 ate unless EGUs are provided incentives to control NO_x
15 emissions during the non-ozone season. If the Adminis-
16 trator finds that incentives using different control equip-
17 ment are necessary to make the operation of these devices
18 economic, the Administrator shall specify these types of
19 control devices and, for an affected facility with these
20 specified devices, installed prior to enactment of this title,
21 that voluntarily elects to operate these devices during the
22 nonozone season under section 461(2) shall be credited 0.5
23 allowances per ton of emissions avoided as a result of oper-
24 ating these controls. The Administrator shall promulgate
25 regulations as necessary to establish this NO_x allowance

1 credit program. In so doing, the Administrator shall en-
2 sure that usage of credits earned under this section does
3 not lead to ozone nonattainment in a given area or prevent
4 an area from attaining the ozone standard through devel-
5 opment of a nested cap for ozone season allowances. Fail-
6 ure of the Administrator to promulgate implementing reg-
7 ulations prior to voluntary reductions being undertaken by
8 affected facilities shall not in any manner reduce the num-
9 ber of allowances an otherwise qualifying facility shall be
10 credited upon promulgation of the regulations.

11 **“PART D—MERCURY EMISSIONS REDUCTIONS**

12 **“SEC. 471. DEFINITIONS.**

13 “For purposes of this part:

14 “(1) ADJUSTED BASELINE HEAT INPUT.—The
15 term ‘adjusted baseline heat input’ with regard to a
16 unit means the unit’s baseline heat input multiplied
17 by—

18 “(A) 1.0, for the portion of the baseline
19 heat input that is the unit’s average annual
20 combustion of bituminous during the years on
21 which the unit’s baseline heat input is based;

22 “(B) 3.0, for the portion of the baseline
23 heat input that is the unit’s average annual
24 combustion of lignite during the years on which
25 the unit’s baseline heat input is based;

1 “(C) 1.25, for the portion of the baseline
2 heat input that is the unit’s average annual
3 combustion of subbituminous during the years
4 on which the unit’s baseline heat input is based;
5 and

6 “(D) 1.0, for the portion of the baseline
7 heat input that is not covered by subparagraph
8 (A), (B), or (C) or for the entire baseline heat
9 input if such baseline heat input is not based
10 on the unit’s heat input in specified years.

11 “(2) AFFECTED EGU.—

12 “(A) IN GENERAL.—The term ‘affected
13 EGU’ means—

14 “(i) for a unit serving a generator be-
15 fore the date of enactment of the Clear
16 Skies Act of 2005, a coal-fired unit in a
17 State serving a generator with a nameplate
18 capacity of greater than 25 megawatts that
19 produced or produces electricity for sale
20 during 2002 or any year thereafter, except
21 for a cogeneration unit meets the criteria
22 for qualifying for a cogeneration facilities
23 codified in section 292.205 of title 18 of
24 the Code of Federal Regulations as issued

1 on April 1, 2002, during 2002 and each
2 year thereafter; and

3 “(ii) for a unit commencing service of
4 a generator on or after the date of enact-
5 ment of the Clear Skies Act of 2005, a
6 coal-fired unit in a State serving a gener-
7 ator that produces electricity for sale dur-
8 ing any year starting with the year the
9 unit commences service of a generator, ex-
10 cept for a cogeneration unit that meets the
11 criteria for qualifying for a cogeneration
12 facilities codified in section 292.205 of title
13 18 of the Code of Federal Regulations as
14 issued on April 1, 2002, during each year
15 starting with the year the unit commences
16 service of a generator.

17 “(B) EXCLUSION.—Notwithstanding para-
18 graphs (A), the term ‘affected EGU’ does not
19 include—

20 “(i) a solid waste incineration unit
21 subject to section 129;

22 “(ii) a unit for the treatment, storage,
23 or disposal of hazardous waste subject to
24 section 3005 of the Solid Waste Disposal
25 Act; or

1 “(iii) a unit that commenced commer-
2 cial operation before January 1, 2006, and
3 has de minimis mercury emissions equal to
4 or less than 30 pounds on an average an-
5 nual basis, calculated by the Administrator
6 as follows—

7 “(I) to determine the exclusion
8 status of a unit for 2010, the Admin-
9 istrator shall calculate the average of
10 annual emissions for 2005 through
11 2007; and

12 “(II) to determine the exclusion
13 status of a unit for a year after 2010,
14 the Administrator shall calculate, be-
15 fore each such year, the average of
16 annual emissions for the fourth, third,
17 and second year before such year, and
18 if the average of annual emissions for
19 such 3-year period exceeds 30 pounds,
20 the unit shall become an affected unit
21 as of January 1 of the year for which
22 the exclusion status is being deter-
23 mined and remain an affected unit
24 each year thereafter.

1 “(3) ALLOWABLE MERCURY EMISSIONS RATE.—
 2 The term ‘allowable mercury emissions rate’ means
 3 the most stringent Federal or State emissions limita-
 4 tion for mercury as of the date on which the Admin-
 5 istrator allocates mercury allowances for a unit for
 6 the first year in which the unit is subject to section
 7 472.

8 **“SEC. 472. APPLICABILITY.**

9 “Starting January 1, 2010, it shall be unlawful for
 10 the affected EGUs at a facility in a State to emit a total
 11 amount of mercury during the year in excess of the num-
 12 ber of mercury allowances held for such facility for that
 13 year by the owner or operator of the facility.

14 **“SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.**

15 “For affected EGUs for 2010 and each year there-
 16 after, the Administrator shall allocate mercury allowances
 17 pursuant to section 474.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED
 FOR EGUS

Year	Mercury al- lowances al- located
2010–2015	1,088,000
2016 and thereafter	480,000

18 **“SEC. 474. EGU ALLOCATIONS.**

19 “(a) ALLOCATIONS.—

20 “(1) IN GENERAL.—Not later than 2 years be-
 21 fore the commencement date of the mercury allow-

1 ance requirement of section 472, the Administrator
2 shall promulgate regulations determining allocations
3 of mercury allowances for 2010 and thereafter for
4 units at a facility that commence commercial oper-
5 ation by and are affected EGUs as of the date of en-
6 actment of this section.

7 “(2) FORMULA.—Subject to paragraphs (1) and
8 (3), the regulations shall provide that the Adminis-
9 trator shall allocate each year for such units an
10 amount determined by multiplying by 0.93 the allo-
11 cation amount in section 473 by the ratio of the
12 total amount of the adjusted baseline heat input of
13 such units at the facility to the total amount of ad-
14 justed baseline heat input of all affected EGUs.

15 “(3) DISTRIBUTION OF REMAINING ALLOW-
16 ANCES.—

17 “(A) IN GENERAL.—Any mercury allow-
18 ances remaining after the allocation of allow-
19 ances under paragraph (2) shall be distributed
20 on a pro rata basis among the units that re-
21 ceived mercury allowances under that para-
22 graph.

23 “(B) ADDITIONAL REMAINING ALLOW-
24 ANCES.—Allowances remaining after each
25 iteration of the calculation under subparagraph

1 (A) shall be allocated in accordance with that
2 subparagraph.

3 “(b) NEW FACILITIES.—5 percent of the total
4 amount of nitrogen oxides allowances allocated each year
5 under section 473 shall be allocated for units at a facility
6 that are affected EGUs but did not receive mercury alloca-
7 tions under subsection (a). These units shall be allocated
8 allowances for each year by multiplying the adjusted base-
9 line heat input of the unit and the quotient obtained by
10 dividing the allowable mercury emissions rate of the unit
11 by 2000.

12 “(c) ALLOCATION.—Allowances allocated under sub-
13 section (b) shall be allocated to units on a first come basis
14 determined by the date on which the unit commences oper-
15 ation. As such, allocations to units under subsection (b)
16 will not be reduced as a result of new units commencing
17 operation.

18 “(d) UNALLOCATED ALLOWANCES.—

19 “(1) IN GENERAL.—Subject to paragraph (2)
20 allowances not allocated under subsection (c) shall
21 be allocated to units in subsections (a) and (b) on
22 a pro rata basis.

23 “(2) MAXIMUM ALLOCATION.—No unit shall re-
24 ceive an allocation under this subsection in excess of
25 the product obtained by multiplying the adjusted

1 baseline heat input of the unit and the quotient ob-
2 tained by dividing the allowable mercury emission
3 rate of the unit by 2000.

4 “(e) SET-ASIDE FOR DIRECT SALES.—2 percent of
5 the total amount of mercury allowances allocated each
6 year under section 473 shall be allocated to a set-aside
7 for direct sales under section 402(e)(3)(D). In 2018 and
8 each 9 successive years, the Administrator shall further
9 reduce the number of allowances in the set-aside for direct
10 sales by the total number of Early Action Reduction Cred-
11 its allocated under section 475 divided by 10. Any mercury
12 allowances allocated for the year and remaining in the set-
13 aside, as of the deadline established by the Administrator
14 for holding mercury allowances for a facility for the year
15 under section 472, shall be allocated to the units that were
16 allocated mercury allowances for the year under sub-
17 sections (a) through (d).

18 “(1) Except as provided in paragraph (2), each
19 unit shall be allocated the amount of mercury allow-
20 ances for the year remaining in the set-aside, multi-
21 plied by the amount of mercury allowances allocated
22 to the unit for the year under subsections (a)
23 through (d) and divided by the total amount of mer-
24 cury allowances allocated to all units for the year
25 under subsections (a) through (d).

1 “(2) If any unit’s allocation for the year under
2 paragraph (1) and this paragraph would otherwise
3 result in the unit being allocated a total amount of
4 mercury allowances under subsections (a) through
5 (d), paragraph (1), and this paragraph exceeding the
6 unit’s baseline heat input multiplied by the quotient
7 obtained by dividing the unit’s allowable mercury
8 emissions rate by 2000, the amount of mercury al-
9 lowances that exceeds such product shall be instead
10 allocated to the other units under paragraph (1) on
11 a pro rata basis, based on the units’ allocations
12 under subsections (a) through (d), paragraph (1),
13 and this paragraph.

14 “(f) FAILURE TO PROMULGATE.—If, by the date 18
15 months before January 1 of each year 2010 and there-
16 after, the Administrator has signed proposed regulations,
17 but has not promulgated final regulations, determining al-
18 locations under subsection (a), the Administrator shall al-
19 locate, for such year, for each facility where an affected
20 EGU is located, and for each general account, the amount
21 of sulfur dioxide allowances specified for that facility and
22 that general account in such proposed regulations.

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

24 “(a) IN GENERAL.—The Administrator shall promul-
25 gate regulations within 18 months authorizing the alloca-

1 tion of mercury allowances to units designated under this
2 section that install or modify pollution control equipment
3 or combustion technology improvements identified in such
4 regulations after the date of enactment of this section and
5 prior to January 1, 2010.

6 “(b) NONALLOCATION OF ALLOWANCES.—No allow-
7 ances shall be allocated under this paragraph for emis-
8 sions reductions: attributable to pollution control equip-
9 ment or combustion technology improvements that were
10 operational or under construction at any time prior to the
11 date of enactment of this section; attributable to fuel
12 switching; required under any Federal, State, or local stat-
13 ute or regulations or not designed for the primary purpose
14 of reducing mercury emissions.

15 “(c) AMOUNT OF ALLOWANCES.—The allowances al-
16 located to any unit under this paragraph shall be allocated
17 in an amount equal to 1 allowance of mercury for each
18 1.05 ounces of reduction in emissions of mercury achieved
19 by the pollution control equipment or combustion tech-
20 nology improvements starting with the year in which the
21 equipment or improvement is implemented. The early com-
22 pliance reduction allowances available under this section
23 shall be used and tradable in the same manner as allow-
24 ances under section 474.

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

10 **“SEC. 476. MERCURY HOT SPOT PROGRAM.**

11 “(a) MERCURY HOT SPOTS.—

12 “(1) IN GENERAL.—Not later than 18 months
13 after the date of enactment of this title, the Admin-
14 istrator shall promulgate regulations establishing a
15 program for the identification of mercury hot spots
16 resulting from the emissions of an affected unit, as
17 determined under paragraph (2).

18 “(2) DETERMINATION.—

19 “(A) IN GENERAL.—The Administrator
20 shall consider an affected unit as having cre-
21 ated a mercury hot spot if the Administrator
22 determines that local deposition of mercury
23 emissions from the affected unit is sufficient,
24 considering background levels or deposition
25 from other sources, to cause mercury blood lev-

1 els of exposed individuals living near the af-
2 fected unit to exceed the reference dose for
3 mercury.

4 “(B) FACTORS.—In making a determina-
5 tion under this paragraph, the Administrator
6 shall take into consideration—

7 “(i) realistic exposure patterns typical
8 of nearby residents that are potentially ex-
9 posed to mercury from local deposition;

10 “(ii) the extent to which exposure of
11 humans to mercury may reasonably be ex-
12 pected to decline as a result of the provi-
13 sions of the Clear Skies Act of 2005; and

14 “(iii) the extent to which any decline
15 in mercury emissions as a result of the
16 provisions of the Clear Skies Act of 2005
17 may reasonably be expected to mitigate or
18 prevent any exceedance of the reference
19 dose level in the blood of exposed individ-
20 uals.

21 “(b) LIST OF HOT SPOTS.—

22 “(1) IN GENERAL.—Not later than June 30,
23 2008, after notice and opportunity for public com-
24 ment, the Administrator shall publish a list of poten-
25 tial hot spots that meet the criteria under subsection

1 (a)(2) based on modeling results of the impact of
2 emissions of affected units.

3 “(2) INSTALLATION OF MONITORS.—Not later
4 than January 1, 2009, the Administrator shall in-
5 stall monitors at each hot spot on the list published
6 under paragraph (1)—

7 “(A) to measure local deposition levels;
8 and

9 “(B) to better understand the potential im-
10 pact of deposition levels on the health of nearby
11 residents.

12 “(3) FINAL LIST.—Not later than December
13 31, 2011, the Administrator shall develop a final list
14 of all mercury hot spots and the affected units that
15 are believed to be causing those hot spots based on
16 all available information, including monitoring data
17 collected in 2009 and 2010.

18 “(4) RISK ESTIMATE.—

19 “(A) IN GENERAL.—In developing any es-
20 timate of risk to exposed individuals under this
21 subsection, the Administrator shall rely only on
22 models and data that have been made publicly
23 available.

24 “(B) OBJECTIVITY.—The Administrator
25 shall ensure, to the maximum extent prac-

1 ticable, that all data and assumptions used will
2 produce objective estimates of the most likely
3 risks to the exposed public.

4 “(5) REMEDY.—

5 “(A) IN GENERAL.—In each areas des-
6 igned as a mercury hot spot under this sub-
7 section, the Administrator shall require affected
8 EGUs to achieve 70 percent controls, if appro-
9 priate vendor guarantees are available for the
10 unit.

11 “(B) NONAVAILABILITY OF VENDOR GUAR-
12 ANTEES.—If appropriate vendor guarantees are
13 not available to achieve the percentage under
14 subparagraph (A), the Administrator shall, by
15 regulation—

16 “(i) establish subcategories of units
17 based on boiler type and types of coal
18 burned;

19 “(ii) establish the technology that
20 achieves the maximum mercury removal
21 for each subcategory of units established
22 under clause (i); and

23 “(iii) require each unit to install the
24 specified technology to operate by the date

1 that is 3 years after the date of promulga-
2 tion of the regulation.

3 **“PART E—NATIONAL EMISSION STANDARDS; RE-**
4 **SEARCH, ENVIRONMENTAL ACCOUNT-**
5 **ABILITY; MAJOR SOURCE**
6 **PRECONSTRUCTION REVIEW AND BEST**
7 **AVAILABLE RETROFIT CONTROL TECH-**
8 **NOLOGY REQUIREMENTS**

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

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

12 “(1) COMMENCED.—The term ‘commenced’,
13 with regard to construction, means that an owner or
14 operator has either undertaken a continuous pro-
15 gram of construction or has entered into a contrac-
16 tual obligation to undertake and complete, within a
17 reasonable time, a continuous program of construc-
18 tion. For boilers and integrated gasification com-
19 bined cycle plants, this term does not include under-
20 taking such a program or entering into such an obli-
21 gation more than 36 months prior to the date on
22 which the unit begins operation. For combustion
23 turbines, this term does not include undertaking
24 such a program or entering into such an obligation

1 more than 18 months prior to the date on which the
2 unit begins operation.

3 “(2) CONSTRUCTION.—The term ‘construction’
4 means fabrication, erection, or installation of an af-
5 fected unit.

6 “(3) AFFECTED UNIT.—The term ‘affected
7 unit’ means any unit that is subject to emission limi-
8 tations under subpart 2 of part B, subpart 2 of part
9 C, or part D.

10 “(4) EXISTING AFFECTED UNIT.—The term
11 ‘existing affected unit’ means any affected unit that
12 is not a new affected unit.

13 “(5) NEW AFFECTED UNIT.—The term ‘new af-
14 fected unit;’ means any affected unit, the construc-
15 tion or reconstruction of which is commenced after
16 the date of enactment of the Clear Skies Act of
17 2005, except that for the purpose of any revision of
18 a standard pursuant to subsection (e), ‘new affected
19 unit’ means any affected unit, the construction or
20 reconstruction of which is commenced after the pub-
21 lication of regulations (or, if earlier, proposed regu-
22 lations) prescribing a standard under this section
23 that will apply to such unit.

1 “(6) RECONSTRUCTION.—The term ‘reconstruc-
2 tion’ means the replacement of components of a unit
3 to such an extent that—

4 “(A) the fixed capital cost of the new com-
5 ponents exceeds 50 percent of the fixed capital
6 cost that would be required to construct a com-
7 parable entirely new unit; and

8 “(B) it is technologically and economically
9 feasible, as determined by the Administrator, to
10 meet the applicable standards set forth in this
11 section.

12 “(b) EMISSION STANDARDS.—

13 “(1) IN GENERAL.—No later than 12 months
14 after the date of enactment of the Clear Skies Act
15 of 2005, the Administrator shall promulgate regula-
16 tions prescribing the standards in subsections (c)
17 through (d) for the specified affected units and es-
18 tablishing requirements to ensure compliance with
19 these standards, including monitoring, record-
20 keeping, and reporting requirements.

21 “(2) MONITORING.—

22 “(A) IN GENERAL.—The owner or operator
23 of any affected unit subject to the standards for
24 sulfur dioxide, nitrogen oxides, or mercury
25 under this section shall meet the requirements

1 of section 404, except that, where two or more
2 units utilize a single stack, separate monitoring
3 shall be required for each affected unit for the
4 pollutants for which the unit is subject to such
5 standards.

6 “(B) REQUIREMENTS.—The Administrator
7 shall, by regulation, require—

8 “(i) the owner or operator of any af-
9 fected unit subject to the standards for
10 sulfur dioxide, nitrogen oxides, or mercury
11 under this section to—

12 “(I) install and operate CEMS
13 for monitoring output, including elec-
14 tricity and useful thermal energy, on
15 the affected unit and to quality assure
16 the data; and

17 “(II) comply with recordkeeping
18 and reporting requirements, including
19 provisions for reporting output data in
20 megawatt hours.

21 “(ii) the owner or operator of any af-
22 fected unit subject to the standards for
23 particulate matter under this section to—

24 “(I) install and operate CEMS
25 for monitoring particulate matter on

1 the affected unit and to quality assure
2 the data;

3 “(II) comply with recordkeeping
4 and reporting requirements; and

5 “(III) comply with alternative
6 monitoring, quality assurance, record-
7 keeping, and reporting requirements
8 for any period of time for which the
9 Administrator determines that CEMS
10 with appropriate vendor guarantees
11 are not commercially available for
12 particulate matter.

13 “(3) COMPLIANCE.—For boilers, integrated
14 gasification combined cycle plants, and coal fired or
15 gas-fired combustion turbines the Administrator
16 shall require that the owner or operator demonstrate
17 compliance with the standards daily, using a 30-day
18 rolling average, except that in the case of mercury,
19 the compliance period shall be the calendar year.
20 For combustion turbines that are oil-fired the Ad-
21 ministrator shall require that the owner or operator
22 demonstrate compliance with the standards hourly,
23 using a 4-hour rolling average.

24 “(c) BOILERS AND INTEGRATED GASIFICATION COM-
25 BINED CYCLE PLANTS.—

1 “(1) IN GENERAL.—After the effective date of
2 standards promulgated under subsection (b), no
3 owner or operator shall cause any boiler or inte-
4 grated gasification combined cycle plant that is a
5 new affected unit to discharge into the atmosphere
6 any gases which contain—

7 “(A) sulfur dioxide in excess of 1.5 lb/
8 MWh for which a 97 percent reduction has not
9 been achieved;

10 “(B) nitrogen oxides in excess of 0.9 lb/
11 MWh;

12 “(C) particulate matter in excess of 0.20
13 lb/MWh; or

14 “(D) if the unit is coal-fired, mercury in
15 excess of 0.015 lb/GWh, unless—

16 “(i) mercury emissions from the unit,
17 determined assuming no use of on-site or
18 off-site pre-combustion treatment of coal
19 and no use of technology that captures
20 mercury, are reduced by 80 percent;

21 “(ii) flue gas desulfurization (FGD)
22 and selective catalytic reduction (SCR) are
23 applied to the unit; or

24 “(iii) a technology is applied to the
25 unit and the permitting authority deter-

1 mines that the technology is equivalent in
2 terms of mercury capture to the applica-
3 tion of FGD and SCR.

4 “(2) EXEMPTION.—Notwithstanding subpara-
5 graph (1)(D), integrated gasification combined cycle
6 plants with a combined capacity of less than 5 GW
7 are exempt from the mercury requirement under
8 subparagraph (1)(D) if they are constructed as part
9 of a demonstration project under the Secretary of
10 Energy that will include a demonstration of removal
11 of significant amounts of mercury as determined by
12 the Secretary of Energy in conjunction with the Ad-
13 ministrator as part of the solicitation process.

14 “(3) DISCHARGES.—After the effective date of
15 standards promulgated under subsection (b), no
16 owner or operator shall cause any oil-fired boiler
17 that is an existing affected unit to discharge into the
18 atmosphere any gases which contain particulate mat-
19 ter in excess of 0.30 lb/MWh.

20 “(d) COMBUSTION TURBINES.—

21 “(1) GAS-FIRED COMBUSTION TURBINES.—
22 After the effective date of standards promulgated
23 under subsection (b), no owner or operator shall
24 cause any gas-fired combustion turbine that is a new

1 affected unit to discharge into the atmosphere any
2 gases which contain nitrogen oxides in excess of—

3 “(A) 0.56 lb/MWh (15 ppm at 15 percent
4 oxygen), if the unit is a simple cycle combustion
5 turbine;

6 “(B) 0.084 lb/MWh (3.5 ppm at 15 per-
7 cent oxygen), if the unit is not a simple cycle
8 combustion turbine and either uses add-on con-
9 trols or is located within 50 km of a class I
10 area; or

11 “(C) 0.21 lb/MWh (9 ppm at 15 percent
12 oxygen), if the unit is not a simple cycle turbine
13 and neither uses add-on controls nor is located
14 within 50 km of a class I area.

15 “(2) COAL-FIRED COMBUSTION TURBINES.—
16 After the effective date of standards promulgated
17 under subsection (b), no owner or operator shall
18 cause any coal-fired combustion turbine that is a
19 new affected unit to discharge into the atmosphere
20 any gases which contain sulfur dioxide, nitrogen ox-
21 ides, particulate matter, or mercury in excess of the
22 emission limits under subparagraphs (c)(1) (A)
23 through (D).

24 “(3) COMBUSTION TURBINES THAT ARE NOT
25 GAS-FIRED OR COAL-FIRED.—After the effective date

1 of standards promulgated under subsection (b), no
2 owner or operator shall cause any combustion tur-
3 bine that is not gas-fired or coal-fired and that is a
4 new affected unit to discharge into the atmosphere
5 any gases which contain—

6 “(A) sulfur dioxide in excess of 2.0 lb/
7 MWh;

8 “(B) nitrogen oxides in excess of—

9 “(i) 0.289 lb/MWh (12 ppm at 15
10 percent oxygen), if the unit is not a simple
11 cycle combustion turbine, is dual-fuel capa-
12 ble, and uses add-on controls; or is not a
13 simple cycle combustion turbine and is lo-
14 cated within 50 km of a class I area; and

15 “(ii) 1.01 lb/MWh (42 ppm at 15 per-
16 cent oxygen), if the unit is a simple cycle
17 combustion turbine; is not a simple cycle
18 combustion turbine and is not dual-fuel ca-
19 pable; or is not a simple cycle combustion
20 turbine, is dual-fuel capable, and does not
21 use add-on controls.

22 “(C) particulate matter in excess of 0.20
23 lb/MWh.

24 “(e) PERIODIC REVIEW AND REVISION.—

1 “(1) IN GENERAL.—The Administrator shall, at
2 least every eight years following the promulgation of
3 standards under subsection (b), review and, if appro-
4 priate, revise such standards to reflect the degree of
5 emission limitation demonstrated by substantial evi-
6 dence to be achievable through the application of the
7 best system of emission reduction which (taking into
8 account the cost of achieving such reduction and any
9 nonair quality health and environmental impacts and
10 energy requirements). When implementation and en-
11 forcement of any requirement of this Act indicate
12 that emission limitations and percent reductions be-
13 yond those required by the standards promulgated
14 under this section are achieved in practice, the Ad-
15 ministrator shall, when revising standards promul-
16 gated under this section, consider the emission limi-
17 tations and percent reductions achieved in practice.

18 “(2) EXCEPTION.—Notwithstanding the re-
19 quirements of paragraph (1) the Administrator need
20 not review any standard promulgated under sub-
21 section (b) if the Administrator determines that such
22 review is not appropriate in light of readily available
23 information on the efficacy of such standard.

1 “(f) EFFECTIVE DATE.—The standard promulgated
2 pursuant to this section shall become effective upon pro-
3 mulgation.

4 “(g) DELEGATION.—

5 “(1) IN GENERAL.—Each State may develop
6 and submit to the Administration a procedure for
7 implementing and enforcing standards promulgated
8 under this section for affected units located in such
9 State. If the Administrator finds the State proce-
10 dure is adequate, the Administrator shall delegate to
11 such State any authority the Administrator has
12 under this Act to implement and enforce such stand-
13 ards.

14 “(2) ENFORCEMENT.—Nothing in this sub-
15 section shall prohibit the Administrator from enforce-
16 ing any applicable standard under this section.

17 “(h) VIOLATIONS.—After the effective date of stand-
18 ards promulgated under this section, it shall be unlawful
19 for any owner or operator of any affected unit to operate
20 such unit in violation of any standard, established by this
21 section applicable to such unit.

22 “(i) COORDINATION WITH OTHER AUTHORITIES.—
23 For purposes of sections III(e), 113, 114, 116, 120, 303,
24 304, 307, and other provisions for the enforcement of this
25 Act, each standard established pursuant to this section

1 shall be treated in the same manner as a standard of per-
2 formance under section 111, and each affected unit sub-
3 ject to standards under this section shall be treated in the
4 same manner as a stationary combustion device under sec-
5 tion 111.

6 “(j) STATE AUTHORITY.—Nothing in this section
7 shall preclude or deny the right of any State or political
8 subdivision thereof to adopt or enforce any regulation, re-
9 quirement, limitation, or standard relating to affected
10 units, or other EGUs, that is more stringent than a regu-
11 lation, requirement, limitation, or standard in effect under
12 this section or under any other provision of this Act.

13 “(k) OTHER AUTHORITY UNDER THIS ACT.—Noth-
14 ing in this section shall diminish the authority of the Ad-
15 ministrator or a State to establish any other requirements
16 applicable to affected units under any other authority of
17 law, including the authority to establish for any air pollut-
18 ant a national ambient air quality standard, except that
19 no new affected unit subject to standards under this sec-
20 tion shall be subject to standards under section 111 of
21 this Act.

22 “(l) GLACIATION STUDY.—

23 “(1) ADMINISTRATOR.—The Administrator of
24 the National Aeronautics and Space Administration
25 shall conduct a study into glaciation to evaluate

1 changes in mass balance of glaciers, including devel-
2 oping a better historic record on mass balance as
3 percentage of glaciers analyzed.

4 “(2) FUNDING.—The Administrator shall such
5 funds as are necessary to carry out the study.

6 **“SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND**
7 **ASSESSMENT.**

8 “(a) PURPOSES.—The Administrator, in collabora-
9 tion with the Secretary of Energy and the Secretary of
10 the Interior, shall conduct a comprehensive program of re-
11 search, environmental monitoring, and assessment to en-
12 hance scientific understanding of the human health and
13 environmental effects of particulate matter and mercury
14 and to demonstrate the efficacy of emission reductions
15 under this title for purposes of reporting to Congress
16 under (e)(2). The purposes of such a program are to—

17 “(1) expand current research and knowledge of
18 the contribution of emissions from electricity genera-
19 tion to exposure and health effects associated with
20 particulate matter and mercury;

21 “(2) enhance current research and development
22 of promising multi-pollutant control strategies and
23 CEMS for mercury;

24 “(3) produce peer-reviewed scientific and tech-
25 nology information;

1 “(4) improve environmental monitoring and as-
2 sessment of sulfur dioxide, nitrogen oxides and mer-
3 cury, and their transformation products, to track
4 changes in human health and the environment at-
5 tributable to emission reductions under this title;
6 and

7 “(5) periodically provide peer-reviewed reports
8 on the costs, benefits, and effectiveness of emission
9 reductions achieved under this title.

10 “(b) RESEARCH.—The Administrator shall enhance
11 planned and ongoing laboratory and field research and
12 modeling analyses, and conduct new research and analyses
13 to produce peer-reviewed information concerning the
14 human health and environmental effects of mercury and
15 particulate matter and the contribution of United States
16 electrical generating units to those effects. Such informa-
17 tion shall be included in the report under subsection (d).
18 In addition, such research and analyses shall—

19 “(1) improve understanding of the rates and
20 processes governing chemical and physical trans-
21 formations of mercury in the atmosphere, including
22 speciation of emissions from electricity generation
23 and the transport of these species;

1 “(2) improve understanding of the contribution
2 of mercury emissions from electricity generation to
3 mercury in fish and other biota, including—

4 “(A) the response of and contribution to
5 mercury in the biota owing to atmospheric dep-
6 osition of mercury from U.S. electricity genera-
7 tion on both local and regional scales;

8 “(B) long-term contributions of mercury
9 from U.S. electricity generation on mercury ac-
10 cumulations in ecosystems, and the effects of
11 mercury reductions in that sector on the envi-
12 ronment and public health;

13 “(C) the role and contribution of mercury,
14 from U.S. electricity generating facilities and
15 anthropogenic and natural sources to fish con-
16 tamination and to human exposure, particularly
17 with respect to sensitive populations;

18 “(D) the contribution of U.S. electricity
19 generation to population exposure to mercury in
20 freshwater fish and seafood and quantification
21 of linkages between U.S. mercury emissions and
22 domestic mercury exposure and its health ef-
23 fects; and

24 “(E) the contribution of mercury from
25 U.S. electricity generation in the context of

1 other domestic and international sources of
2 mercury, including transport of global anthro-
3 pogenic and natural background levels;

4 “(3) improve understanding of the health ef-
5 fects of fine particulate matter components related
6 to electricity generation emissions (as distinct from
7 other fine particle fractions and indoor air expo-
8 sures) and the contribution of U.S. electrical gener-
9 ating units to those effects including—

10 “(A) the chronic effects of fine particulate
11 matter from electricity generation in sensitive
12 population groups; and

13 “(B) personal exposure to fine particulate
14 matter from electricity generation; and

15 “(4) improve understanding, by way of a review
16 of the literature, of methods for valuing human
17 health and environmental benefits associated with
18 fine particulate matter and mercury.

19 “(c) INNOVATIVE CONTROL TECHNOLOGIES.—The
20 Administrator shall collaborate with the Secretary of En-
21 ergy to enhance research and development, and conduct
22 new research that facilitates research into and develop-
23 ment of innovative technologies to control sulfur dioxide,
24 nitrogen oxides, mercury, and particulate matter at a
25 lower cost than existing technologies. Such research and

1 development shall provide updated information on the cost
2 and feasibility of technologies. Such information shall be
3 included in the report under subsection (d). In addition,
4 the research and development shall—

5 “(1) upgrade cost and performance models to
6 include results from ongoing and future electricity
7 generation and pollution control demonstrations by
8 the Administrator and the Secretary of Energy;

9 “(2) evaluate the overall environmental implica-
10 tions of the various technologies tested including the
11 impact on the characteristics of coal combustion res-
12 idues;

13 “(3) evaluate the impact of the use of selective
14 catalytic reduction on mercury emissions from the
15 combustion of all coal types;

16 “(4) evaluate the potential of integrated gasifi-
17 cation combined cycle to adequately control mercury;

18 “(5) expand current programs by the Adminis-
19 trator to conduct research and promote, lower cost
20 CEMS capable of providing real-time measurements
21 of both speciated and total mercury and integrated
22 compact CEMS that provide cost-effective real-time
23 measurements of sulfur dioxide, nitrogen oxides, and
24 mercury;

1 “(6) expand lab- and pilot-scale mercury and
2 multi-pollutant control programs by the Secretary of
3 Energy and the Administrator, including develop-
4 ment of enhanced sorbents and scrubbers for use on
5 all coal types;

6 “(7) characterize mercury emissions from low-
7 rank coals, for a range of traditional control tech-
8 nologies, like scrubbers and selective catalytic reduc-
9 tion; and

10 “(8) improve low cost combustion modifications
11 and controls for dry-bottom boilers.

12 “(d) ENVIRONMENTAL ACCOUNTABILITY.—

13 “(1) MONITORING AND ASSESSMENT.—The Ad-
14 ministrador shall conduct a program of environ-
15 mental monitoring and assessment to track on a
16 continuing basis, changes in human health and the
17 environment attributable to the emission reductions
18 required under this title. Such a program shall—

19 “(A) develop and employ methods to rou-
20 tinely monitor, collect, and compile data on the
21 status and trends of mercury and its trans-
22 formation products in emissions from affected
23 facilities, atmospheric deposition, surface water
24 quality, and biological systems. Emphasis shall
25 be placed on those methods that—

1 “(i) improve the ability to routinely
2 measure mercury in dry deposition proc-
3 esses;

4 “(ii) improve understanding of the
5 spatial and temporal distribution of mer-
6 cury deposition in order to determine
7 source-receptor relationships and patterns
8 of long-range, regional, and local deposi-
9 tion;

10 “(iii) improve understanding of aggre-
11 gate exposures and additive effects of
12 methylmercury and other pollutants; and

13 “(iv) improve understanding of the ef-
14 fectiveness and cost of mercury emissions
15 controls;

16 “(B) modernize and enhance the national
17 air quality and atmospheric deposition moni-
18 toring networks in order to cost-effectively ex-
19 pand and integrate, where appropriate, moni-
20 toring capabilities for sulfur, nitrogen, and mer-
21 cury to meet the assessment and reporting re-
22 quirements of this section;

23 “(C) perform and enhance long-term moni-
24 toring of sulfur, nitrogen, and mercury, and pa-
25 rameters related to acidification, nutrient en-

1 richment, and mercury bioaccumulation in
2 freshwater and marine biota;

3 “(D) maintain and upgrade models that
4 describe the interactions of emissions with the
5 atmosphere and resulting air quality implica-
6 tions and models that describe the response of
7 ecosystems to atmospheric deposition; and

8 “(E) assess indicators of ecosystems health
9 related to sulfur, nitrogen, and mercury, includ-
10 ing characterization of the causes and effects of
11 episodic exposure to air pollutants and evalua-
12 tion of recovery.

13 “(2) REPORTING REQUIREMENTS.—Not later
14 than January 1, 2008, and not later than every 4
15 years thereafter, the Administrator shall provide a
16 peer reviewed report to the Congress on the costs,
17 benefits, and effectiveness of emission reduction pro-
18 grams under this title.

19 “(A) The report under this subparagraph
20 shall address the relative contribution of emis-
21 sion reductions from U.S. electricity generation
22 under this title compared to the emission reduc-
23 tions achieved under other titles of the Clean
24 Air Act with respect to—

1 “(i) actual and projected emissions of
2 sulfur dioxide, nitrogen oxides, and mer-
3 cury;

4 “(ii) average ambient concentrations
5 of sulfur dioxide and nitrogen oxides trans-
6 formation products, related air quality pa-
7 rameters, and indicators of reductions in
8 human exposure;

9 “(iii) status and trends in total at-
10 mospheric deposition of sulfur, nitrogen,
11 and mercury, including regional estimates
12 of total atmospheric deposition;

13 “(iv) status and trends in visibility;

14 “(v) status of terrestrial and aquatic
15 ecosystems (including forests and forested
16 watersheds, streams, lakes, rivers, estu-
17 aries, and nearcoastal waters);

18 “(vi) status of mercury and its trans-
19 formation products in fish;

20 “(vii) causes and effects of atmos-
21 pheric deposition, including changes in sur-
22 face water quality, forest and soil condi-
23 tions;

24 “(viii) occurrence and effects of coast-
25 al eutrophication and episodic acidification,

1 particularly with respect to high elevation
2 watersheds; and

3 “(ix) reduction in atmospheric deposi-
4 tion rates that should be achieved to pre-
5 vent or reduce adverse ecological effects.

6 “(B) The report under this subparagraph
7 shall address the relative contribution of the
8 United States to world-wide emissions as well
9 as a comparison of the stringency of fossil fuel-
10 fired requirements under the Act to other coun-
11 tries.

12 **“SEC. 483. MAJOR SOURCE PRECONSTRUCTION REVIEW RE-**
13 **QUIREMENTS AND BEST AVAILABLE RET-**
14 **ROFIT CONTROL TECHNOLOGY REQUIRE-**
15 **MENTS; APPLICABILITY TO AFFECTED UNITS.**

16 “(a) MAJOR SOURCE EXEMPTION.—An affected unit
17 shall be considered neither a major emitting facility or
18 major stationary combustion device nor a part of a major
19 emitting facility or major stationary combustion device,
20 for purposes of compliance with the requirements of parts
21 C and part D of title I, and shall not otherwise be subject
22 to the requirements of section 169A or 169B, for a period
23 of 20 years after the date of enactment of this section.
24 This applicability provision only applies to affected units
25 that are either subject to the performance standards of

1 section 481 or meet the following requirements within 3
2 years after the date of enactment of the Clear Skies Act
3 of 2005:

4 “(1) The owner or operator of the affected unit
5 properly operates, maintains and repairs pollution
6 control equipment to limit emissions of particulate
7 matter, or the owner or operator of the affected unit
8 is subject to an enforceable permit issued pursuant
9 to title V or a permit program approved or promul-
10 gated as part of an applicable implementation plan
11 to limit the emissions of particulate matter from the
12 affected unit to 0.03 lb/mmBtu within eight years
13 after the date of enactment of the Clear Skies Act
14 of 2005, and

15 “(2) The owner or operator of the affected unit
16 uses good combustion practices to minimize emis-
17 sions of carbon monoxide. Good combustion prac-
18 tices may be accomplished through control tech-
19 nology, combustion technology improvements, or
20 workplace practices.

21 “(b) CLASS I AREA PROTECTIONS.—Notwith-
22 standing the provisions of subsection (a), an affected unit
23 located within 75 km of a Class I area on which construc-
24 tion commences after the date of enactment of the Clear
25 Skies Act of 2005 is subject to those provisions under part

1 C of title I pertaining to the review of a new or recon-
2 structed major stationary combustion device's impact on
3 a Class I area.

4 “(c) PRECONSTRUCTION REQUIREMENTS.—Each
5 State shall include in its plan under section 110, as pro-
6 gram to provide for the regulation of the construction of
7 an affected unit that ensures that the following require-
8 ments are met prior to the commencement of construction
9 of an affected unit—

10 “(1) in an area designated as attainment or
11 unclassifiable under section 107(d), the owner or op-
12 erator of the affected unit must demonstrate to the
13 State that the emissions increase from the construc-
14 tion or operation of such unit will not cause, or con-
15 tribute to, air pollution in excess of any national am-
16 bient air quality standard;

17 “(2) in an area designated as nonattainment
18 under section 107(d), the State must determine that
19 the emissions increase from the construction or oper-
20 ation of such unit will not interfere with any pro-
21 gram to assure that the national ambient air quality
22 standards are achieved provided that interference
23 with any program will be deemed not to occur, with
24 respect to each nonattainment area located wholly or
25 partially within the State, if on the date of submis-

1 sion of a complete permit application and through-
2 out a continuous period of three years immediately
3 preceding such date, the nonattainment area was in
4 full compliance with all requirements of this Act, in-
5 cluding but not limited to requirements for State
6 Implementation Plans;

7 “(3) for a reconstructed unit, prior to beginning
8 operation, the unit must comply with either the per-
9 formance standards of section 481 or best available
10 control technology as defined in part C of title I for
11 the pollutants whose hourly emissions will increase
12 at the unit’s maximum capacity; and

13 “(4) the State must provide for an opportunity
14 for interested persons to comment on the Class I
15 area protections and preconstruction requirements
16 as set forth in this section.

17 “(d) DEFINITIONS.—For purposes of this section:

18 “(1) AFFECTED UNIT.—The term ‘affected
19 unit’ means any unit that is subject to emission limi-
20 tations under subpart 2 of part B, subpart 2 of part
21 C, or part D.

22 “(2) CONSTRUCTION.—The term ‘construction’
23 includes the construction of a new affected unit and
24 the modification of any affected unit.

1 “(3) MODIFICATION.—The term ‘modification’
2 means any physical change in, or change in the
3 method of operation of, an affected unit that in-
4 creases the maximum hourly emissions of any pollut-
5 ant regulated under this Act above the maximum
6 hourly emissions achievable at that unit during the
7 five years prior to the change or that results in the
8 emission of any pollutant regulated under this Act
9 and not previously emitted.

10 “(e) SAVINGS CLAUSE.—Nothing in this section shall
11 preclude or deny the right of any State or political subdivi-
12 sion thereof to adopt to enforce any regulation, require-
13 ment, limitation, or standard relating to affected units
14 that is more stringent than a regulation, requirement, lim-
15 itation, or standard in effect under this section or under
16 any other provision of this Act.

17 **“SEC. 484. GASIFICATION TECHNOLOGY DEVELOPMENT.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) BIOMASS.—The term ‘biomass’ means any
20 animal, agricultural or plant waste, by-product of
21 wood or paper mill operations such as lignin in spent
22 pulping liquors, and other products of forestry main-
23 tenance, but does not include paper that is com-
24 monly recycled.

1 “(2) ENERGY OUTPUT.—The term ‘energy out-
2 put of the project’ means the Btu content of the gas
3 produced by the qualifying gasification project that
4 is used as a feedstock or fuel in lieu of natural gas.

5 “(3) INCENTIVE ALLOWANCES.—The term ‘in-
6 centive allowances’ means the sulfur dioxide allow-
7 ances and nitrogen dioxide allowances distributed to
8 qualifying gasification projects from the Gasification
9 Incentive Reserve under subsection (b).

10 “(4) GASIFICATION TECHNOLOGY.—The term
11 ‘gasification technology’ means any process that con-
12 verts an eligible solid or liquid product into a gas-
13 eous condition for direct use or subsequent chemical
14 or physical conversion. An eligible solid or liquid
15 product shall include the following materials: coal,
16 petroleum residue (such as carbonization product of
17 high-boiling hydrocarbon fractions obtained in petro-
18 leum processing), biomass, carbonized or semi-car-
19 bonized matter (including peat) or other materials
20 that are recovered for their feedstock, fuel, or other
21 energy value.

22 “(5) QUALIFYING GASIFICATION PROJECT.—
23 The term ‘qualifying gasification project’ means any
24 project that uses a gasification technology that
25 meets the following eligibility requirements:

1 “(A) The energy output of the project is
2 primarily used for applications in one or more
3 of the following industries: electric utility
4 chemicals, fertilizer, glass, steel, petroleum
5 coke, forest products, and agriculture-feedlots.

6 “(B) The gasification technology meets the
7 emissions standards that are established for in-
8 tegrated gasification combined cycle plants
9 under section 481.

10 “(C) The gasification technology was
11 placed into service at a new or existing facility
12 after December 31, 2006.

13 “(b) INCENTIVE ALLOWANCES.—The Administrator
14 shall award incentive sulfur dioxide allowances and incen-
15 tive nitrogen dioxide allowances to qualifying gasification
16 projects in accordance with provisions of this subsection.
17 Such incentive allowances shall be awarded annually to
18 qualifying projects based on the energy output that was
19 used as a feedstock or fuel in lieu of natural gas for each
20 year during the applicable period. The incentive allow-
21 ances shall be distributed to qualifying projects on a first-
22 come-first-served basis from the Gasification Incentive Re-
23 serve established under paragraph (3). The total amount
24 of allowances distributed from the Reserve shall not exceed

1 400,000 sulfur dioxide allowances and 135,000 nitrogen
2 oxide allowances.

3 “(1) PERIOD OF APPLICABILITY.—Incentive al-
4 lowances from the Gasification Incentive Reserve
5 shall be awarded only with respect to the energy out-
6 put produced by qualifying gasification projects dur-
7 ing the period beginning on January 1, 2007 and
8 ending on December 31, 2017.

9 “(2) APPLICATION.—For each year during the
10 applicable period, an owner or operator of a quali-
11 fying gasification project may submit an application
12 to the Administrator for the incentive allowances to
13 be awarded under this subsection. The application
14 shall include the following information:

15 “(A) A quantification of the energy output
16 of the project that was used as a feedstock or
17 fuel in lieu of natural gas for a particular year
18 during the applicable period.

19 “(B) The number of sulfur dioxide allow-
20 ances for which the qualifying project is eligible
21 to receive for a particular year, as determined
22 by multiplying 250 SO₂ allowances per TBtu
23 by the total energy output of the project quan-
24 tified in subparagraph (A), but not to exceed 24
25 TBtu per project year.

1 “(C) The number of nitrogen oxide allow-
2 ances for which the qualifying project is eligible
3 to receive for a particular year, as determined
4 by multiplying 85 NOx allowances per TBtu by
5 the total energy output of the project quantified
6 in subparagraph (A), but not to exceed 24
7 TBtu per project per year.

8 “(D) A demonstration that the require-
9 ments of this subsection have been met.

10 “(3) GASIFICATION INCENTIVE RESERVE.—The
11 Administrator shall establish a Gasification Incentive
12 Reserve of 400,000 sulfur dioxide allowances and
13 135,000 nitrogen oxide allowances under this sub-
14 section. The Reserve of incentive sulfur dioxide al-
15 lowances shall be established by withholding 40,000
16 allowances per year from the total sulfur dioxide al-
17 lowances allocated under section 424(a)(2) during
18 the years 2010 through 2019. Such sulfur dioxide
19 allowances may be used to meet the allowance-hold-
20 ing requirements of section 422 beginning in the
21 year 2010. The Reserve of incentive nitrogen oxide
22 allowances is established by withholding 13,500 al-
23 lowances per year from the total nitrogen oxide al-
24 lowances allocated to Zone 1 States under 454(a)(4)
25 and Zone 2 States under section 454(b)(4) during

1 the years 2010 through 2019. Such nitrogen oxide
2 allowances may be used to meet the allowance-hold-
3 ing requirements of section 452 beginning in the
4 year 2008.

5 “(c) NEW SOURCE REQUIREMENTS.—Not later than
6 12 months after date of enactment, the Administrator
7 shall promulgate regulations to revise the requirements
8 under section 111 and parts C and D of title I in accord-
9 ance with this subsection.

10 “(1) APPLICABILITY.—A qualifying gasification
11 project shall not be considered to be a major sta-
12 tionary source that is subject to the pre-construction
13 review requirements of parts C and D of title I for
14 purposes of constructing such qualifying projects,
15 provided each of the following requirements is met:

16 “(A) Emissions reductions are obtained by
17 other stationary sources located within the
18 same air quality region, as determined by the
19 Administrator based on best available air qual-
20 ity modeling, and such emissions reductions off-
21 set the emissions of the qualifying gasification
22 project on a pollutant-by-pollutant basis.

23 “(B) Such emissions reductions are
24 achieved through a federally enforceable limita-
25 tion that is not otherwise required under the

1 Act, and occurred within a 2 year period prior
2 to the date that the qualifying project was
3 placed in service.

4 “(C) The qualifying gasification project
5 complies with the emissions standards that are
6 established for integrated gasification combined
7 cycle plants under section 481, and with the
8 pre-construction review requirements under
9 subsections (b) and (c) of section 483.

10 “(2) EXPEDITED PERMITTING.—The permitting
11 authority shall expedite the pre-construction review
12 requirements of parts C and D of title I in the case
13 of qualifying gasification projects that do not obtain
14 offsetting emissions reductions under paragraph (1).
15 Expedited pre-construction review shall include the
16 following:

17 “(A) Application of the emissions stand-
18 ards for integrated gasification combined cycle
19 plants under section 481, instead of case-by-
20 case performance standards based on best avail-
21 able control technology or lowest achievable
22 emissions rate under parts C and D of title I.

23 “(B) Other appropriate measures to accel-
24 erate pre-construction review and issuance of all
25 necessary air permits for the construction and

1 operation of qualifying projects under parts C
2 and D of title I.

3 “(3) NEW PERFORMANCE STANDARDS.—Per-
4 formance standards established under section 111
5 shall not apply to qualifying gasification projects
6 that are subject to the emissions standards for inte-
7 grated gasification combined cycle plants under sec-
8 tion 481.”.

9 **SEC. 3. OTHER AMENDMENTS.**

10 (a) TITLE I.—Title I of the Clean Air Act is amended
11 as follows:

12 (1) In section 103 by repealing subparagraphs
13 (E) and (F).

14 (2) In section 107(d)(3) by inserting the fol-
15 lowing after subparagraph (F):

16 “(G) Not later than 90 days after the enact-
17 ment of the Clear Skies Act of 2005, the Adminis-
18 tration shall perform air quality modeling to deter-
19 mine: (1) the air quality effects of the Clear Skies
20 Act of 2005 and other federal, State and local con-
21 trol programs designed to address the 8 hour ozone
22 and PM 2.5 standards; and (2) which areas of the
23 country will attain the 8 hour ozone and PM2.5
24 standards by December 31, 2014.

1 “(H) Not later than 12 months after the Ad-
2 ministrator performs air quality modeling analysis
3 pursuant to subparagraph (G), a State may submit
4 a written request to the Administrator to redesign-
5 gate an area as transitional. Notwithstanding
6 clauses (i) through (iii) in section 107(d)(1)(A), not
7 later than 18 months after the Administrator per-
8 forms air quality modeling analysis pursuant to sub-
9 paragraph (G), the Administrator shall redesignate
10 an area as transitional that has been designated
11 under section 107(d)(1)(A) for the PM_{2.5} national
12 primary or secondary ambient air quality standards
13 or the 8 hour ozone national primary or secondary
14 ambient air quality standard provided that—

15 “(i) the air quality modeling of the Admin-
16 istrator pursuant to subparagraph (G) indicates
17 that the air quality effects of the Clear Skies
18 Act of 2005 alone or in combination with the
19 air quality effects of federal, state and local
20 control programs will bring such area into at-
21 tainment of the PM 2.5 or 8 hour ozone stand-
22 ard by December 31, 2014; or

23 “(ii) In the case of an area that needs ad-
24 ditional control measures within a State in
25 order to reach attainment by December 31,

1 2014, not later than 12 months after the Ad-
2 ministrator performs air quality modeling anal-
3 ysis pursuant to subparagraph (G), the State
4 performs supplemental air quality modeling
5 demonstrating that the area will attain the ap-
6 plicable standard or standards not later than
7 December 31, 2014 and includes a list of any
8 necessary control measures within the State.

9 “(I)(i) Not later than 18 months after any area
10 is designated transitional within the State, a State
11 shall submit an implementation plan revision con-
12 taining: (1) contingency measures; and (2) if appli-
13 cable, all control measures within the State nec-
14 essary to reach attainment with the 8Pm 2.5 and 8
15 hour ozone standards by December 31, 2014.

16 “(ii) Not later than 60 days after the submis-
17 sion described in paragraph (H)(i) is due, the Ad-
18 ministrator shall determine whether the submission
19 has occurred and whether the submission is com-
20 plete.

21 “(iii) The Administrator shall approve or dis-
22 approve any plan submitted under paragraph (H)(i)
23 not later than 1 year after submittal.

24 “(iv) If the Administrator finds the State has
25 failed to submit a plan or to submit a complete plan,

1 or if the Administrator disapproves a plan submitted
2 under paragraph (H)(i) for any transitional area,
3 the Administrator shall redesignate the area as non-
4 attainment for the applicable standard(s) within 90
5 days.

6 “(v) Not later than 90 days after a redesigna-
7 tion to nonattainment, the State shall implement the
8 contingency measures outlined in the plan.

9 “(vi) Not later than 1 year after redesignation
10 to nonattainment, the State shall submit a new im-
11 plementation plan consistent with the requirements
12 of Part D Subpart 1. This plan must provide for at-
13 tainment to be achieved as expeditiously as possible,
14 but no later than 5 years after redesignation as non-
15 attainment.

16 “(vii) The Administrator shall approve or dis-
17 approve the plan not later than 1 year after sub-
18 mittal.”.

19 (3) In section 110 as follows:

20 (A) By amending clause (i) of subsection
21 (a)(2)(D) by inserting “except as provided in
22 subsection (q),” before the word “prohibiting”.

23 (B) By adding the following new sub-
24 sections at the end thereof:

25 “(q) REVIEW OF CERTAIN PLANS.—

1 “(1) IN GENERAL.—The Administrator shall, in
2 reviewing, under subsection (a)(2)(D)(i), any plan
3 with respect to affected units, within the meaning of
4 section 126(d)(1)—

5 “(A) consider, among other relevant fac-
6 tors, emissions reductions required to occur by
7 the attainment date or dates of any relevant
8 nonattainment areas in the other State or
9 States and cost effectiveness of emissions re-
10 ductions from other principal categories of
11 sources;

12 “(B) develop an appropriate peer reviewed
13 methodology for making determinations under
14 subparagraph (B) by December 31, 2006; and

15 “(C) not require submission of plan provi-
16 sions subjecting affected units, within the
17 meaning of section 126(d)(1), to requirements
18 with an effective date prior to December 31,
19 2014.

20 “(2) PROXIMITY.—In making the determination
21 under clause (ii) of subparagraph (B) of paragraph
22 (1), the Administrator will use the best available
23 peer-reviewed models and methodology that consider
24 the proximity of the source or sources to the other

1 State or States and incorporate other source charac-
2 teristics.

3 “(3) EFFECT ON REGULATIONS.—Nothing in
4 paragraph (1) shall be interpreted to require revi-
5 sions to the provisions of sections 51.121 and
6 51.122 of title 40, Code of Federal Regulations (as
7 in effect for 2004).

8 “(r) TRANSITIONAL AREAS.—

9 “(1) PREVENTION OF SIGNIFICANT DETERIORA-
10 TION.—Each area designated as transitional pursu-
11 ant to section 107(d)(3)(G) shall be treated as an
12 attainment or unclassifiable area for purposes of the
13 provisions of part C of this title relating to preven-
14 tion of significant deterioration.

15 “(2) MID-COURSE REVIEW.—

16 “(A) AIR QUALITY DATA, INVENTORY,
17 ANALYSIS.—Not later than 6 years after the
18 date of enactment of the Clear Skies Act of
19 2005, each area redesignated as transitional
20 pursuant to section 107(d)(3)(G) shall submit
21 air quality data, an emissions inventory, and an
22 analysis of expected growth in emissions, in-
23 cluding growth in vehicle miles traveled, pro-
24 jected to December 31, 2014.

1 “(B) REVIEW.—Not later than 90 days
2 after the date on which a State submits infor-
3 mation under subparagraph (A), the Adminis-
4 trator shall complete modeling to determine
5 whether the transitional area is projected to at-
6 tain the relevant standards for 8-hour ozone
7 and PM_{2.5} by December 31, 2014.

8 “(C) NONATTAINMENT DETERMINA-
9 TIONS.—Not later than 180 days after the date
10 on which a State is required to make a submis-
11 sion under subparagraph (A), the Adminis-
12 trator shall redesignate as a nonattainment
13 area any transitional area for which the State
14 failed to make the required submission and any
15 transitional area that is not projected to attain
16 by December 31, 2014. For each area redesign-
17 ated under this paragraph, clauses (v), (vi),
18 and (vii) of section 107(d)(3)(H) shall apply.

19 “(3) FAILURE TO ATTAIN BY DEADLINE.—Not
20 later than June 1, 2015, the Administrator shall de-
21 termine whether each area designated as a transi-
22 tional area for the 8-hour ozone standard or for the
23 PM 2.5 standard has attained that standard, and
24 shall redesignate each area as either an attainment
25 or nonattainment area.

1 “(A) AREA IN ATTAINMENT.—Not later
2 than 1 year after the redesignation of an area
3 as an attainment area by the Administrator,
4 the State must develop for the area a mainte-
5 nance plan that provides for maintenance of the
6 standard for 10 years and includes contingency
7 measures.

8 “(B) NONATTAINMENT AREA.—If the Ad-
9 ministrator determines that the area is a non-
10 attainment area, clauses (v), (vi), and (vii) of
11 section 107(d)(3)(H) shall apply.”.

12 (4) In section 111(b)(1) by adding the following
13 new subparagraph (C) after subparagraph (B):

14 “(C) No standards of performance promul-
15 gated under this section shall apply to units
16 subject to regulations promulgated pursuant to
17 section 481.”.

18 (5) In section 112:

19 (A) By amending paragraph (1) of sub-
20 section (c) to read as follows:

21 “(1) IN GENERAL.—Not later than 12 months
22 after November 15, 1990, the Administrator shall
23 publish, and shall from time to time, but not less
24 often than every eight years, revise, if appropriate,
25 in response to public comment or new information,

1 a list of all categories and subcategories of major
2 sources and area sources (listed under paragraph
3 (3)) of the air pollutants listed pursuant to sub-
4 section (b). Electric utility steam generating units
5 not subject to section 3005 of the Solid Waste Dis-
6 posal Act shall not be included in any category or
7 subcategory listed under this subsection. The Ad-
8 ministrator shall have the authority to regulate the
9 emission of hazardous air pollutants listed under
10 section 112(b), other than mercury compounds, by
11 electric utility steam generating units, provided that
12 any determination shall be based on public health
13 concerns and, on an individual source basis shall:
14 consider the effects of emissions controls installed or
15 anticipated to be installed in order to meet other
16 emission reduction requirements under this Act by
17 2016; and, be based on a peer reviewed study with
18 notice and opportunity to comment, to be completed
19 not before January 2015. Any such regulations shall
20 be promulgated within, and shall not take effect be-
21 fore, the date eight years after the commencement
22 date of the requirements set forth in section 472. To
23 the extent practicable, the categories and subcat-
24 egories listed under this subsection shall be con-
25 sistent with the list of source categories established

1 pursuant to section 111 and part C. Nothing in the
2 preceding sentence limits the Administrator's au-
3 thority to establish subcategories under this section,
4 as appropriate.”.

5 (B) By amending subparagraph (A) of
6 subsection (n)(1) to read as follows:

7 “(A) STUDY.—The Administrator shall
8 perform a study of the hazards to public health
9 reasonably anticipated to occur as a result of
10 emissions by electric utility steam generating
11 units of pollutants listed under subsection (b)
12 after imposition of the requirements of this Act.
13 The Administrator shall report the results of
14 this study to the Congress within three years
15 after November 15, 1990.”

16 (6) Section 126 is amended as follows:

17 (A) By replacing “section 110(a)(2)(D)(ii)
18 or this section” in subsection (b) with “section
19 110(a)(2)(D)(i)”.

20 (B) In the language at end of subsection
21 (c) by striking “section 110(a)(2)(D)(ii)” and
22 inserting “section 110(a)(2)(D)(i)” and deleting
23 the last sentence.

24 (D) By adding at the end the following:

25 “(d) DEFINITION OF AFFECTED UNIT.—

1 “(1) IN GENERAL.—For purposes of this sub-
2 section, the term ‘affected unit’ means any unit that
3 is subject to emission limitations under subpart 2 of
4 part B, subpart 2 of part C, or part D, or is a des-
5 ignated unit under section 406.

6 “(2) FINDING FOR AFFECTED UNITS.—To the extent
7 that any petition submitted under subsection (b) after the
8 date of enactment of the Clear Skies Act of 2005 seeks
9 a finding for any affected unit, then, notwithstanding any
10 provision in subsections (a) through (c) to the contrary:

11 “(A) In determining whether to make a finding
12 under subsection (b) for any affected unit, the Ad-
13 ministrator shall consider, among other relevant fac-
14 tors, emissions reductions required to occur by the
15 attainment date or dates of any relevant nonattain-
16 ment areas in the petitioning State or political sub-
17 division and cost effectiveness of emissions reduc-
18 tions from other principal categories of sources.

19 “(B) The Administrator shall not make any
20 findings with respect to an affected unit under this
21 section prior to December 1, 2011. For any petition
22 submitted prior to January 1, 2010, the Adminis-
23 trator shall make a finding or deny the petition by
24 the December 31, 2011.

1 “(C) The Administrator, by rulemaking, shall
2 extend the compliance and implementation deadlines
3 in subsection (c) to the extent necessary to assure
4 that no affected unit shall be subject to any such
5 deadline prior to January 1, 2014.”.

6 (b) TITLE III.—Section 307(d)(1)(G) of title III of
7 the Clean Air Act is amended to read as follows:

8 “(G) the promulgation or revision of any
9 regulation under title IV,”.

10 (c) NOISE POLLUTION.—Title IV of the Clean Air
11 Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)
12 is redesignated as title VII and amended by renumbering
13 sections 401 through 403 as sections 701 through 703,
14 respectively, and conforming all cross-references thereto
15 accordingly.

16 (d) SECTION 405.—Title IV of the Clean Air Act
17 Amendments of 1990 (relating to acid deposition control)
18 is amended by repealing section 405 (industrial sulfur di-
19 oxide emissions).

20 (e) MONITORING.—Section 821 (a) of title VIII of
21 the Clean Air Act Amendments of 1990 (miscellaneous
22 provisions) is amended to read as follows:

23 “(a) MONITORING.—The Administrator shall promul-
24 gate regulations within eighteen months after November
25 15, 1990, to require that all affected sources subject to

1 subpart 1 of part B of title IV of the Clean Air Act as
2 of December 31, 2009, shall also monitor carbon dioxide
3 emissions according to the same timetable as in section
4 404(b). The regulations shall require that such data be
5 reported to the Administrator. The provisions of section
6 404(e) of title IV of the Clean Air Act shall apply for pur-
7 poses of this section in the same manner and to the same
8 extent as such provision applies to the monitoring and
9 data referred to in section 404. The Administrator shall
10 implement this subsection under 40 CFR part 75 (2002),
11 amended as appropriate by the Administrator.”.