

108TH CONGRESS
1ST SESSION

S. 485

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2003

Mr. INHOFE (for himself and Mr. VOINOVICH) (by request) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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

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

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

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

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

- Sec. 1. Short title, table of contents.
 Sec. 2. Emission Reduction Programs.

“TITLE IV—EMISSION REDUCTION PROGRAMS

“PART A—GENERAL PROVISIONS

- “Sec. 401. (Reserved)
 “Sec. 402. Definitions.
 “Sec. 403. Allowance system.
 “Sec. 404. Permits and compliance plans.
 “Sec. 405. Monitoring, reporting, and recordkeeping requirements.
 “Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.
 “Sec. 407. Election of additional units.
 “Sec. 408. Clean coal technology regulatory incentives.
 “Sec. 409. Auctions.
 “Sec. 410. Evaluation of limitations on total sulfur dioxide, nitrogen oxides, and mercury emissions that start in 2018.

“PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

“Subpart 1—Acid Rain Program

- “Sec. 410. Evaluation of limitations on total sulfur dioxide, nitrogen oxides, and mercury emissions that start in 2018.
 “Sec. 411. Definitions.
 “Sec. 412. Allowance allocations.
 “Sec. 413. Phase I sulfur dioxide requirements.
 “Sec. 414. Phase II sulfur dioxide requirements.
 “Sec. 415. Allowances for States with emission rates at or below .8 lbs/mmBtu.
 “Sec. 416. Election for additional sources.
 “Sec. 417. Auctions, Reserve.
 “Sec. 418. Industrial sulfur dioxide emissions.
 “Sec. 419. Termination.

“Subpart 2—Clear Skies Sulfur Dioxide Allowance Program

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

“Subpart 3—Western Regional Air Partnership

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

“PART C—NITROGEN OXIDES EMISSIONS REDUCTIONS

“Subpart 1—Acid Rain Program

“Sec. 441. Nitrogen Oxides Emission Reduction Program.

“Sec. 442. Termination.

“Subpart 2—Clear Skies Nitrogen Oxides Allowance Program

“Sec. 451. Definitions.

“Sec. 452. Applicability.

“Sec. 453. Limitations on total emissions.

“Sec. 454. Allocations.

“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.

“Sec. 465. Carryforward of Pre-2008 Nitrogen Oxides Allowances.

“PART D—MERCURY EMISSION REDUCTIONS

“Sec. 471. Definitions.

“Sec. 472. Applicability.

“Sec. 473. Limitations on total emissions.

“Sec. 474. Allocations.

“PART E—NATIONAL EMISSION STANDARDS; RESEARCH; ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS

“Sec. 481. National emission standards for affected units.

“Sec. 482. Research, environmental monitoring, and assessment.

“Sec. 483. Exemption from major source preconstruction review and best availability retrofit control technology requirements.”

Sec. 3. Other amendments.

1 **SEC. 2. EMISSION REDUCTION PROGRAMS.**

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

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

7 **“PART A—GENERAL PROVISIONS**

8 **“SEC. 401. (Reserved)**

9 **“SEC. 402. DEFINITIONS.**

10 “As used in this title—

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

4 “(2) The term ‘affected facility’ or ‘affected
5 source’ means a facility or source that includes one
6 or more affected units.

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

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

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

16 “(4) The term ‘allowance’ means—

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

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

24 “(5)(A) The term ‘baseline heat input’ means,
25 except under subpart 1 of part B and section 407,

1 the average annual heat input used by a unit during
2 the 3 years in which the unit had the highest heat
3 input for the period 1998 through 2002.

4 “(B) Notwithstanding subparagraph (A), if a
5 unit commenced or commences operation during the
6 period 2001 through 2004, then ‘baseline heat input’
7 means the manufacturer’s design heat input capacity
8 for the unit multiplied by 80 percent for coal-fired
9 units, 50 percent for boilers that are not coal-fired,
10 50 percent for combustion turbines other than sim-
11 ple cycle turbines, and 5 percent for simple cycle
12 combustion turbines.

13 “(C) A unit’s heat input for a year shall be the
14 heat input—

15 “(i) required to be reported under section
16 405 for the unit, if the unit was required to re-
17 port heat input during the year under that sec-
18 tion;

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

22 “(iii) based on data for the unit reported
23 to the State where the unit is located as re-
24 quired by State law, if the unit was not re-
25 quired to report heat input during the year

1 under section 405 and did not report to the En-
2 energy Information Administration; or

3 “(iv) based on fuel use and fuel heat con-
4 tent data for the unit from fuel purchase or use
5 records, if the unit was not required to report
6 heat input during the year under section 405
7 and did not report to the Energy Information
8 Administration and the State.

9 “(D) Not later than 3 months after the enact-
10 ment of the Clear Skies Act of 2003, the Adminis-
11 trator shall promulgate regulations, without notice
12 and opportunity for comment, specifying the format
13 in which the information under subparagraphs
14 (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted.
15 Not later than 9 months after the enactment of the
16 Clear Skies Act of 2003, the owner or operator of
17 any unit under subparagraph (B)(ii) or (C)(ii), (iii),
18 or (iv) to which allowances may be allocated under
19 section 424, 434, 454, or 474 shall submit to the
20 Administrator such information. The Administrator
21 is not required to allocate allowances under such sec-
22 tions to a unit for which the owner or operator fails
23 to submit information in accordance with the regula-
24 tions promulgated under this subparagraph.

1 “(6) The term ‘clearing price’ means the price
2 at which allowances are sold at an auction conducted
3 by the Administrator or, if allowances are sold at an
4 auction conducted by the Administrator at more
5 than one price, the lowest price at which allowances
6 are sold at the auction.

7 “(7) The term ‘coal’ means any solid fuel classi-
8 fied as anthracite, bituminous, subbituminous, or
9 lignite.

10 “(8) The term ‘coal-derived fuel’ means any
11 fuel (whether in a solid, liquid, or gaseous state)
12 produced by the mechanical, thermal, or chemical
13 processing of coal.

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

19 “(10) The term ‘cogeneration unit’ means, ex-
20 cept under subpart 1 of part B and subpart 1 of
21 part C, a unit that produces through the sequential
22 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 “(11) The term ‘combustion turbine’ means any
5 combustion turbine that is not self-propelled. The
6 term includes, but is not limited to, a simple cycle
7 combustion turbine, a combined cycle combustion
8 turbine and any duct burner or heat recovery device
9 used to extract heat from the combustion turbine ex-
10 haust, and a regenerative combustion turbine. The
11 term does not include a combined turbine in an inte-
12 grated gasification combined cycle plant.

13 “(12) The term ‘commence operation’ with re-
14 gard to a unit means start up the unit’s combustion
15 chamber.

16 “(13) The term ‘compliance plan’ means ei-
17 ther—

18 “(A) a statement that the facility will com-
19 ply with all applicable requirements under this
20 title, or

21 “(B) under subpart 1 of part B or subpart
22 1 of part C, where applicable, a schedule and
23 description of the method or methods for com-
24 pliance and certification by the owner or oper-

1 ator that the facility is in compliance with the
2 requirements of that subpart.

3 “(14) The term ‘continuous emission moni-
4 toring system’ (CEMS) means the equipment as re-
5 quired by section 405, used to sample, analyze,
6 measure, and provide on a continuous basis a per-
7 manent record of emissions and flow (expressed in
8 pounds per million British thermal units (lbs/
9 mmBtu), pounds per hour (lbs/hr) or such other
10 form as the Administrator may prescribe by regula-
11 tions under section 405.

12 “(15) The term ‘designated representative’
13 means a responsible person or official authorized by
14 the owner or operator of a unit and the facility that
15 includes the unit to represent the owner or operator
16 in matters pertaining to the holding, transfer, or dis-
17 position of allowances, and the submission of and
18 compliance with permits, permit applications, and
19 compliance plans.

20 “(16) The term ‘duct burner’ means a combus-
21 tion device that uses the exhaust from a combustion
22 turbine to burn fuel for heat recovery.

23 “(17) The term ‘facility’ means all buildings,
24 structures, or installations located on one or more

1 contiguous or adjacent properties under common
2 control of the same person or persons.

3 “(18) The term ‘fossil fuel’ means natural gas,
4 petroleum, coal, or any form of solid, liquid, or gas-
5 eous fuel derived from such material.

6 “(19) The term ‘fossil fuel-fired’ with regard to
7 a unit means combusting fossil fuel, alone or in com-
8 bination with any amount of other fuel or material.

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

12 “(21) The term ‘gas-fired’ with regard to a unit
13 means, except under subpart 1 of part B and sub-
14 part 1 of part C, combusting only natural gas or
15 fuel oil, with natural gas comprising at least 90 per-
16 cent, and fuel oil comprising no more than 10 per-
17 cent, of the unit’s total heat input in any year.

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

21 “(23) The term ‘generator’ means a device that
22 produces electricity and, under subpart 1 of part B
23 and subpart 1 of part C, that is reported as a gener-
24 ating unit pursuant to Department of Energy Form
25 860.

1 “(24) The term ‘heat input’ with regard to a
2 specific period of time means the product (in
3 mmBtu/time) of the gross calorific value of the fuel
4 (in mmBtu/lb) and the fuel feed rate into a unit (in
5 lb of fuel/time) and does not include the heat derived
6 from preheated combustion air, recirculated flue
7 gases, or exhaust.

8 “(25) The term ‘integrated gasification com-
9 bined cycle plant’ means any combination of equip-
10 ment used to gasify fossil fuels (with or without
11 other material) and then burn the gas in a combined
12 cycle combustion turbine.

13 “(26) The term ‘oil-fired’ with regard to a unit
14 means, except under section 424 and 434, com-
15 busting fuel oil for more than 10 percent of the
16 unit’s total heat input, and combusting no coal or
17 coal-derived fuel, in any year.

18 “(27) The term ‘owner or operator’ with regard
19 to a unit or facility means, except for subpart 1 of
20 part B and subpart 1 of part C, any person who
21 owns, leases, operates, controls, or supervises the
22 unit or the facility.

23 “(28) The term ‘permitting authority’ means
24 the Administrator, or the State or local air pollution

1 control agency, with an approved permitting pro-
2 gram under title V of the Act.

3 “(29) The term ‘potential electrical output’ with
4 regard to a generator means the nameplate capacity
5 of the generator multiplied by 8,760 hours.

6 “(30) The term ‘simple cycle combustion tur-
7 bine’ means a combustion turbine that does not ex-
8 tract heat from the combustion turbine exhaust
9 gases.

10 “(31) The term ‘source’ means, except for sec-
11 tions 410, 481, and 482, all buildings, structures, or
12 installations located on one or more contiguous or
13 adjacent properties under common control of the
14 same person or persons.

15 “(32) The term ‘State’ means—

16 “(A) one of the 48 contiguous States,
17 Alaska, Hawaii, the District of Columbia, the
18 Commonwealth of Puerto Rico, the Virgin Is-
19 lands, Guam, American Samoa, or the Com-
20 monwealth of the Northern Mariana Islands; or

21 “(B) under subpart 1 of part B and sub-
22 part 1 of part C, one of the 48 contiguous
23 States or the District of Columbia.

24 “(33) The term ‘unit’ means—

1 “(A) a fossil fuel-fired boiler, combustion
2 turbine, or integrated gasification combined
3 cycle plan; or

4 “(B) under subpart 1 of part B and sub-
5 part 1 of part C, a fossil fuel-fired combustion
6 device.

7 “(34) The term ‘utility unit’ shall have the
8 meaning set forth in section 411.

9 “(35) The term ‘year’ means calendar year.

10 **“SEC. 403. ALLOWANCE SYSTEM.**

11 “(a) ALLOCATIONS IN GENERAL.—

12 “(1) For the emission limitation programs
13 under this title, the Administrator shall allocate an-
14 nual allowances for an affected unit, to be held or
15 distributed by the designated representative of the
16 owner or operator in accordance with this title as
17 follows—

18 “(A) sulfur dioxide allowances in an
19 amount equal to the annual tonnage emission
20 limitation calculated under section 413, 414,
21 415, or 416, except as otherwise specifically
22 provided elsewhere in subpart 1 of part B, or
23 in an amount calculated under section 424 or
24 434,

1 “(B) nitrogen oxides allowances in an
2 amount calculated under section 454, and

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

5 “(2) Notwithstanding any other provision of
6 law to the contrary, the calculation of the allocation
7 for any unit or facility, and the determination of any
8 values used in such calculation, under sections 424,
9 434, 454, and 474 shall not be subject to judicial re-
10 view.

11 “(3) Allowances shall be allocated by the Ad-
12 ministrator without cost to the recipient, and shall
13 be auctioned or sold by the Administrator, in accord-
14 ance with this title.

15 “(b) ALLOWANCE TRANSFER SYSTEM.—Allowances
16 allocated, auctioned, or sold by the Administrator under
17 this title may be transferred among designated representa-
18 tives of the owners or operators of affected facilities under
19 this title and any other person, as provided by the allow-
20 ance system regulations promulgated by the Adminis-
21 trator. With regard to sulfur dioxide allowances, the Ad-
22 ministrator shall implement this subsection under 40 CFR
23 part 73 (2002), amended as appropriate by the Adminis-
24 trator. With regard to nitrogen oxides allowances and mer-
25 cury allowances, the Administrator shall implement this

1 subsection by promulgating regulations not later than 24
2 months after the date of enactment of the Clear Skies Act
3 of 2003. The regulations under this subsection shall estab-
4 lish the allowance system prescribed under this section,
5 including, but not limited to, requirements for the alloca-
6 tion, transfer, and use of allowances under this title. Such
7 regulations shall prohibit the use of any allowance prior
8 to the calendar year for which the allowance was allocated
9 or auctioned and shall provide, consistent with the pur-
10 poses of this title, for the identification of unused allow-
11 ances, and for such unused allowances to be carried for-
12 ward and added to allowances allocated in subsequent
13 years, except as otherwise provided in section 425. Such
14 regulations shall provide, or shall be amended to provide,
15 that transfers of allowances shall not be effective until cer-
16 tification of the transfer, signed by a responsible official
17 of the transferor, is received and recorded by the Adminis-
18 trator.

19 “(c) ALLOWANCE TRACKING SYSTEM.—The Admin-
20 istrator shall promulgate regulations establishing a system
21 for issuing, recording, and tracking allowances, which
22 shall specify all necessary procedures and requirements for
23 an orderly and competitive functioning of the allowance
24 system. Such system shall provide, not later than the com-
25 mencement date of the nitrogen oxides allowance require-

1 ment under section 452, for one or more facility-wide ac-
2 counts for holding sulfur dioxide allowances, nitrogen ox-
3 ides allowances, and, if applicable, mercury allowances for
4 all affected units at an affected facility. With regard to
5 sulfur dioxide allowances, the Administrator shall imple-
6 ment this subsection under 40 CFR part 73 (2002),
7 amended as appropriate by the Administrator. With re-
8 gard to nitrogen oxides allowances and mercury allow-
9 ances, the Administrator shall implement this subsection
10 by promulgating regulations not later than 24 months
11 after the date of enactment of the Clear Skies Act of 2002.
12 All allowance allocations and transfers shall, upon record-
13 ing by the Administrator, be deemed a part of each unit's
14 or facility's permit requirements pursuant to section 404,
15 without any further permit review and revision.

16 “(d) NATURE OF ALLOWANCES.—A sulfur dioxide al-
17 lowance, nitrogen oxides allowance, or mercury allowance
18 allocated, auctioned, or sold by the Administrator under
19 this title is a limited authorization to emit one ton of sul-
20 fur dioxide, one ton of nitrogen oxides, or one ounce of
21 mercury, as the case may be, in accordance with the provi-
22 sions of this title. Such allowance does not constitute a
23 property right. Nothing in this title or in any other provi-
24 sion of law shall be construed to limit the authority of
25 the United States to terminate or limit such authorization.

1 Nothing in this section relating to allowances shall be con-
2 strued as affecting the application of, or compliance with,
3 any other provision of this Act to an affected unit or facil-
4 ity, including the provisions related to applicable National
5 Ambient Air Quality Standards and State implementation
6 plans. Nothing in this section shall be construed as requir-
7 ing a change of any kind in any State law regulating elec-
8 tric utility rates and charges or affecting any State law
9 regarding such State regulation or as limiting State regu-
10 lation (including any prudency review) under such a State
11 law. Nothing in this section shall be construed as modi-
12 fying the Federal Power Act or as affecting the authority
13 of the Federal Energy Regulatory Commission under that
14 Act. Nothing in this title shall be construed to interfere
15 with or impair any program for competitive bidding for
16 power supply in a State in which such program is estab-
17 lished. Allowances, once allocated or auctioned to a person
18 by the Administrator, may be received, held, and tempo-
19 rarily or permanently transferred in accordance with this
20 title and the regulations of the Administrator without re-
21 gard to whether or not a permit is in effect under title
22 V or section 404 with respect to the unit for which such
23 allowance was originally allocated and recorded.

24 “(e) PROHIBITION.—

1 “(1) It shall be unlawful for any person to hold,
2 use, or transfer any allowance allocated, auctioned,
3 or sold by the Administrator under this title, except
4 in accordance with regulations promulgated by the
5 Administrator.

6 “(2) It shall be unlawful for any affected unit
7 or for the affected units at a facility to emit sulfur
8 dioxide, nitrogen oxides, and mercury, as the case
9 may be, during a year in excess of the number of al-
10 lowances held for that unit or facility for that year
11 by the owner or operator as provided in sections
12 412(c), 422, 432, 452, and 472.

13 “(3) The owner or operator of a facility may
14 purchase allowances directly from the Administrator
15 to be used only to meet the requirements of sections
16 422, 432, 452, and 472, as the case may be, for the
17 year in which the purchase is made or the prior
18 year. Not later than 36 months after the date of en-
19 actment of the Clear Skies Act of 2003, the Admin-
20 istrator shall promulgate regulations providing for
21 direct sales of sulfur dioxide allowances, nitrogen ox-
22 ides allowances, and mercury allowances to an owner
23 or operator of a facility. The regulations shall pro-
24 vide that—

1 “(A) such allowances may be used only to
2 meet the requirements of section 422, 432, 452,
3 and 472, as the case may be, for such facility
4 and for the year in which the purchase is made
5 or the prior year,

6 “(B) each such sulfur dioxide allowance
7 shall be sold for \$4,000, each such nitrogen ox-
8 ides allowance shall be sold for \$4,000, and
9 each such mercury allowance shall be sold for
10 \$2,187.50, with such prices adjusted for infla-
11 tion based on the Consumer Price Index on the
12 date of enactment of the Clear Skies Act of
13 2003 and annually thereafter,

14 “(C) the proceeds from any sales of allow-
15 ances under subparagraph (B) shall be depos-
16 ited in the United States Treasury,

17 “(D) the allowances directly purchased for
18 use for the year specified in subparagraph (A)
19 shall be taken from, and reduce, the amount of
20 sulfur dioxide allowances, nitrogen oxides allow-
21 ances, or mercury allowances, as the case may
22 be, that would otherwise be auctioned under
23 section 423, 453, or 473 starting for the year
24 after the specified year and continuing for each
25 subsequent year as necessary,

1 “(E) if an owner or operator does not use
2 any such allowance in accordance with para-
3 graph (A)—

4 “(i) the owner or operator shall hold
5 the allowance for deduction by the Admin-
6 istrator, and

7 “(ii) the Administrator shall deduct
8 the allowance, without refund or other
9 form of recompense, and offer it for sale in
10 the auction from which it was taken under
11 subparagraph (D) or a subsequent relevant
12 auction as necessary, and

13 “(F) if the direct sales of allowances result
14 in the removal of all sulfur dioxide allowances,
15 nitrogen oxides allowances, or mercury allow-
16 ances, as the case may be, from auctions under
17 section 423, 453, or 473 for 3 consecutive
18 years, the Administrator shall conduct a study
19 to determine whether revisions to the relevant
20 allowance trading program are necessary and
21 shall report the results to the Congress.

22 “(4) Allowances may not be used prior to the
23 calendar year for which they are allocated or auc-
24 tioned. Nothing in this section or in the allowance
25 system regulations shall relieve the Administrator of

1 the Administrator’s permitting, monitoring and en-
2 forcement obligations under this Act, nor relieve af-
3 fected facilities of their requirements and liabilities
4 under the Act.

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

9 “(g) APPLICABILITY OF THE ANTITRUST LAWS.—(1)
10 Nothing in this section affects—

11 “(A) the applicability of the antitrust laws to
12 the transfer, use, or sale of allowances, or

13 “(B) the authority of the Federal Energy Regu-
14 latory Commission under any provision of law re-
15 specting unfair methods of competition or anti-
16 competitive acts or practices.

17 “(2) As used in this section, ‘antitrust laws’ means
18 those Acts set forth in section 1 of the Clayton Act (15
19 U.S.C. 12), as amended.

20 “(h) PUBLIC UTILITY HOLDING COMPANY ACT.—
21 The acquisition or disposition of allowances pursuant to
22 this title including the issuance of securities or the under-
23 taking of any other financing transaction in connection
24 with such allowances shall not be subject to the provisions
25 of the Public Utility Holding Company Act of 1935.

1 “(i) INTERPOLLUTANT TRADING.—Not later than 6
2 years after the enactment of the Clear Skies Act of 2003,
3 the Administrator shall furnish to the Congress a study
4 evaluating the environmental and economic consequences
5 of amending this title to permit trading sulfur dioxide al-
6 lowances for nitrogen oxides allowances and nitrogen ox-
7 ides allowances for sulfur dioxide allowances.

8 “(j) INTERNATIONAL TRADING.—Not later than 24
9 months after the date of enactment of the Clear Skies Act
10 of 2003, the Administrator shall furnish to the Congress
11 a study evaluating the feasibility of international trading
12 of sulfur dioxide allowances, nitrogen oxides allowances,
13 and mercury allowances.

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

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

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

1 “(2) exceeding applicable emissions rates under
2 section 441,

3 “(3) the use of any allowance prior to the year
4 for which it was allocated or auctioned, and

5 “(4) contravention of any other provision of the
6 permit.

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

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

17 “(1) Submission of a statement by the owner or
18 operator, or the designated representative of the
19 owners and operators, of a unit subject to the emis-
20 sions limitation requirements of sections 412(c),
21 413, 414, and 441, that the unit will meet the appli-
22 cable emissions limitation requirements of such sec-
23 tions in a timely manner or that, in the case of the
24 emissions limitation requirements of sections 412(c),
25 413, and 414, the owners and operators will hold

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

17 “(2) Submission of a statement by the owner or
18 operator, or the designated representative, of a facil-
19 ity that includes a unit subject to the emissions limi-
20 tation requirements of sections 422, 432, 452, and
21 472 that the owner or operator will hold sulfur diox-
22 ide allowances, nitrogen oxide allowances, and mer-
23 cury allowances, as the case may be, in the amount
24 required by such sections shall be deemed to meet
25 the proposed and approved compliance planning re-

1 requirements of this section and title V with regard to
2 subparts A through D.

3 “(3) Recording by the Administrator of trans-
4 fers of allowances shall amend automatically all ap-
5 plicable proposed or approved permit applications,
6 compliance plans and permits.

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

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

25 “(e) PROHIBITION.—

1 “(1) It shall be unlawful for an owner or oper-
2 ator, or designated representative, required to sub-
3 mit a permit application or compliance plan under
4 this title to fail to submit such application or plan
5 in accordance with the deadlines specified in this
6 section or to otherwise fail to comply with regula-
7 tions implementing this section.

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

19 “(3) In order to ensure reliability of electric
20 power, nothing in this title or title V shall be con-
21 strued as requiring termination of operations of a
22 unit serving a generator for failure to have an ap-
23 proved permit or compliance plan under this section,
24 except that any such unit may be subject to the ap-
25 plicable enforcement provisions of section 113.

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

8 **“SEC. 405. MONITORING, REPORTING, AND RECORD-**
9 **KEEPING REQUIREMENTS.**

10 “(a) APPLICABILITY.—

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

18 “(B) The Administrator shall, by regulations,
19 specify the requirements for CEMS under subpara-
20 graph (A), for any alternative monitoring system
21 that is demonstrated as providing information with
22 the same precision, reliability, accessibility, and time
23 lines as that provided by CEMS, and for record-
24 keeping and reporting of information from such sys-
25 tems. Such regulations may include limitations on

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

12 “(2)(A) The owner and operator of any facility
13 subject to this title shall be required to install and
14 operate CEMS to monitor the emissions from each
15 affected unit at the facility, and to quality assure
16 the data for—

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

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

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

1 “(B)(i) The Administrator shall, by regulations,
2 specify the requirements for CEMS under subpara-
3 graph (A), for any alternative monitoring system
4 that is demonstrated as providing information with
5 the same precision, reliability, accessibility, and
6 timeliness as that provided by CEMS, for record-
7 keeping and reporting of information from such sys-
8 tems, and if necessary under section 474, for moni-
9 toring, recordkeeping, and reporting of the mercury
10 content of fuel.

11 “(ii) Notwithstanding the requirements of
12 clause (i), the regulations under clause (i) may
13 specify an alternative monitoring system for deter-
14 mining mercury emissions to the extent that the Ad-
15 ministrator determines that CEMS for mercury with
16 appropriate vendor guarantees are not commercially
17 available.

18 “(iii) The regulations under clause (i) may in-
19 clude limitation on the use of alternative compliance
20 methods by units equipped with an alternative moni-
21 toring system as may be necessary to preserve the
22 orderly functioning of the allowance system, and
23 which will ensure the emissions reductions con-
24 templated by this title.

1 “(iv) Except as provided in clause (v), the regu-
2 lations under clause (i) shall not require a separate
3 CEMS for each unit where two or more units utilize
4 a single stack and shall require that the owner or
5 operator collect sufficient information to permit reli-
6 able compliance determinations for such units.

7 “(v) The regulations under clause (i) may re-
8 quire a separate CEMS for each unit where two or
9 more units utilize a single stack and another provi-
10 sion of the Act requires data under subparagraph
11 (A) for an individual unit.

12 “(b) DEADLINES.—

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

17 “(2) DEADLINE FOR AFFECTED UNITS UNDER
18 SUBPART 2 OF PART B FOR INSTALLATION AND OP-
19 ERATION OF CEMS.—By the later of the date 12
20 months before the commencement date of the sulfur
21 dioxide allowance requirement of section 422, or the
22 date on which the unit commences operation, the
23 owner or operator of each affected unit under sub-
24 part 2 of part B shall install and operate CEMS,
25 quality assure the data, and keep records and re-

1 ports in accordance with the regulations issued
2 under paragraph (a)(2) with regard to sulfur diox-
3 ide, opacity, and volumetric flow.

4 “(3) DEADLINE FOR AFFECTED UNITS UNDER
5 SUBPART 3 OF PART B FOR INSTALLATION AND OP-
6 ERATION OF CEMS.—By the later of January 1 of
7 the year before the first covered year or the date on
8 which the unit commences operation, the owner or
9 operator of each affected unit under subpart 3 of
10 part B shall install and operate CEMS, quality as-
11 sure the data, and keep records and reports in ac-
12 cordance with the regulations issued under para-
13 graph (a)(2) with regard to sulfur dioxide and volu-
14 metric flow.

15 “(4) DEADLINE FOR AFFECTED UNITS UNDER
16 SUBPART 2 OF PART C FOR INSTALLATION AND OP-
17 ERATION OF CEMS.—By the later of the date 12
18 months before the commencement date of the nitro-
19 gen oxides allowance requirement under section 452,
20 or the date on which the unit commences operation,
21 the owner or operator of each affected unit under
22 subpart 2 of part C shall install and operate CEMS,
23 quality assure the data, and keep records and re-
24 ports in accordance with the regulations issued

1 under paragraph (a)(2) with regard to nitrogen ox-
2 ides.

3 “(5) DEADLINE FOR AFFECTED UNITS UNDER
4 PART D FOR INSTALLATION AND OPERATION OF
5 CEMS.—By the later of the date 12 months before
6 the commencement date of the mercury allowance
7 requirement of section 472, or the date on which the
8 unit commences operation, the owner or operator of
9 each affected unit under part D shall install and op-
10 erate CEMS, quality assure the data, and keep
11 records and reports in accordance with the regula-
12 tions issued under paragraph (a)(2) with regard to
13 mercury.

14 “(c) UNAVAILABILITY OF EMISSIONS DATA.—If
15 CEMS data or data from an alternative monitoring system
16 approved by the Administrator under subsection (a) is not
17 available for any affected unit during any period of a cal-
18 endar year in which such data is required under this title,
19 and the owner or operator cannot provide information,
20 satisfactory to the Administrator, on emissions during
21 that period, the Administrator shall deem the unit to be
22 operating in an uncontrolled manner during the entire pe-
23 riod for which the data was not available and shall, by
24 regulation, prescribe means to calculate emissions for that
25 period. The owner or operator shall be liable for excess

1 emissions fees and offsets under section 406 in accordance
2 with such regulations. Any fee due and payable under this
3 subsection shall not diminish the liability of the unit's
4 owner or operator for any fine, penalty, fee or assessment
5 against the unit for the same violation under any other
6 section of this Act.

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

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

22 **“SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLI-**
23 **ANCE WITH OTHER PROVISIONS; ENFORCE-**
24 **MENT.**

25 “(a) EXCESS EMISSIONS PENALTY.—

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

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

22 “(A) the product of the unit’s excess emis-
23 sions (in tons) multiplied by the clearing price
24 of sulfur dioxide allowances sold at the most re-
25 cent auction under section 417, if within thirty

1 days after the date on which the owner or oper-
2 ator was required to hold sulfur dioxide allow-
3 ances—

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

7 “(ii) the Administrator receives the
8 penalty required under this subparagraph.

9 “(B) if the requirements of clause (A)(i) or
10 (A)(ii) are not met, 300 percent of the product
11 of the unit’s excess emissions (in tons) multi-
12 plied by the clearing price of sulfur dioxide al-
13 lowances sold at the most recent auction under
14 section 417.

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

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

14 “(A) the product of the units’ excess emis-
15 sions (in tons or, for mercury emissions, in
16 ounces) multiplied by the clearing price of sul-
17 fur dioxide allowances, nitrogen oxides allow-
18 ances, or mercury allowances, as the case may
19 be, sold at the most recent auction under sec-
20 tion 423, 453, or 473, if within thirty days
21 after the date on which the owner or operator
22 was required to hold sulfur dioxide, nitrogen ox-
23 ides allowance, or mercury allowances as the
24 case may be—

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

4 “(ii) the Administrator receives the
5 penalty required under this subparagraph.

6 “(B) if the requirements of clause (A)(i) or
7 (A)(ii) are not met, 300 percent of the product
8 of the units’ excess emissions (in tons or, for
9 mercury emissions, in ounces) multiplied by the
10 clearing price of sulfur dioxide allowances, ni-
11 trogen oxides allowances, or mercury allow-
12 ances, as the case may be, sold at the most re-
13 cent auction under section 423, 453, or 473.

14 “(5) PAYMENT.—Any penalty under paragraph
15 1, 2, 3, or 4 shall be due and payable without de-
16 mand to the Administrator as provided in regula-
17 tions issued by the Administrator. With regard to
18 the penalty under paragraph 1, the Administrator
19 shall implement this paragraph under 40 CFR part
20 77 (2002), amended as appropriate by the Adminis-
21 trator. With regard to the penalty under paragraphs
22 2, 3, and 4, the Administrator shall implement this
23 paragraph by issuing regulations no later than 24
24 months after the date of enactment of the Clear
25 Skies Act of 2003. Any such payment shall be de-

1 posited in the United States Treasury. Any penalty
2 due and payable under this section shall not dimin-
3 ish the liability of the unit’s owner or operator for
4 any fine, penalty or assessment against the unit for
5 the same violation under any other section of this
6 Act.

7 “(b) EXCESS EMISSIONS OFFSET.—

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

21 “(2) If the units at a facility that are subject
22 to the requirements of section 412(c) emit sulfur di-
23 oxide for a year after 2007 in excess of the sulfur
24 dioxide allowances that the owner or operator of the
25 facility holds for use for the facility for that calendar

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

10 “(3) If the units at a facility that are subject
11 to the requirements of section 422, 432, 452, or 472
12 emit sulfur dioxide, nitrogen oxides, or mercury for
13 any calendar year in excess of the sulfur dioxide al-
14 lowances, nitrogen oxides allowances, or mercury al-
15 lowances, as the case may be, that the owner or op-
16 erator of the facility holds for use for the facility for
17 that calendar year, the owner or operator shall be
18 liable to offset the excess emissions by an equal
19 amount of tons or, for mercury, ounces in the fol-
20 lowing calendar year, or such longer period as the
21 Administrator may prescribe. The Administrator
22 shall deduct sulfur dioxide allowances, nitrogen oxide
23 allowances, or mercury allowances, as the case may
24 be, equal to the excess emissions in tons or, for mer-
25 cury, ounces from those held for the facility for the

1 year, or succeeding years during which offsets are
2 required, following the year in which the excess
3 emissions occurred.

4 “(c) PENALTY ADJUSTMENT.—The Administrator
5 shall, by regulation, adjust the penalty specified in sub-
6 section (a)(1) for inflation, based on the Consumer Price
7 Index, on November 15, 1990, and annually thereafter.

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

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

12 “(2) to offset excess emissions as required by
13 subsection (b).

14 “(e) SAVINGS PROVISION.—Nothing in this title shall
15 limit or otherwise affect the application of section 113,
16 114, 120, or 304 except as otherwise explicitly provided
17 in this title.

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

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

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

13 “(a) APPLICABILITY.—The owner or operator of any
14 unit that is not an affected EGU under subpart 2 of part
15 B and subpart 2 of part C and whose emissions of sulfur
16 dioxide and nitrogen oxides are vented only through a
17 stack or duct may elect to designate such unit as an af-
18 fected unit under subpart 2 of part B and subpart 2 of
19 part C. If the owner or operator elects to designate a unit
20 that is coal-fired and emits mercury vented only through
21 a stack or duct, the owner or operator shall also designate
22 the unit as an affected unit under part D.

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

1 “(c) APPROVAL.—If an application for an election
2 under subsection (b) meets the requirements of subsection
3 (a), the Administrator shall approve the designation as an
4 affected unit under subpart 2 of part B and subpart 2
5 of part C and, if applicable, under part D, subject to the
6 requirements in subsections (d) through (g).

7 “(d) ESTABLISHMENT OF BASELINE.—

8 “(1) After approval of the designation under
9 subsection (c), the owner or operator shall install
10 and operate CEMS on the unit, and shall quality as-
11 sure the data, in accordance with the requirements
12 of paragraph (a)(2) and subsections (c) through (e)
13 of section 405, except that, where two or more units
14 utilize a single stack, separate monitoring shall be
15 required for each unit.

16 “(2) The baselines for heat input and sulfur di-
17 oxide, nitrogen oxides, and mercury emission rates,
18 as the case may be, for the unit shall be the unit’s
19 heat input and the emission rates of sulfur dioxide,
20 nitrogen oxides, and mercury for a year starting
21 after approval of the designation under subsection
22 (c). The Administrator shall issue regulations requir-
23 ing all the unit’s baselines to be based on the same
24 year and specifying minimum requirements con-
25 cerning the percentage of the unit’s operating hours

1 for which quality assured CEMS data must be avail-
2 able during such year.

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

6 “(1) an affected unit under subpart 2 of part
7 B, and shall be allocated sulfur dioxide allowances
8 under paragraph (f), starting the later of January 1,
9 2010, or January 1 of the year after the year on
10 which the unit’s baselines are based under sub-
11 section (d);

12 “(2) an affected unit under subpart 2 of part
13 C, and shall be allocated nitrogen oxides allowances
14 under paragraph (f), starting the later of January 1,
15 2008, or January 1 of the year after the year on
16 which the unit’s baselines are based under sub-
17 section (d); and

18 “(3) if applicable, an affected unit under part
19 D, and shall be allocated mercury allowances, start-
20 ing the later of January 1, 2010, or January 1 of
21 the year after the year on which the unit’s baselines
22 are based under subsection (d).

23 “(f) ALLOCATIONS AND AUCTION AMOUNTS.—

24 “(1) The Administrator shall promulgate regu-
25 lations determining the allocations of sulfur dioxide

1 allowances, nitrogen oxides allowances, and, if appli-
2 cable, mercury allowances for each year during
3 which a unit is an affected unit under subsection
4 (e). The regulations shall provide for allocations
5 equal to 50 percent of the following amounts, as ad-
6 justed under paragraph (2)—

7 “(A) the lesser of the unit’s baseline heat
8 input under subsection (d) or the unit’s heat
9 input for the year before the year for which the
10 Administrator is determining the allocations;
11 multiplied by

12 “(B) the lesser of—

13 “(i) the unit’s baseline sulfur dioxide
14 emission rate, nitrogen oxides emission
15 rate, or mercury emission rate, as the case
16 may be;

17 “(ii) the unit’s sulfur dioxide emission
18 rate, nitrogen oxides emission rate, or mer-
19 cury emission rate, as the case may be,
20 during 2002, as determined by the Admin-
21 istrator based, to the extent available, on
22 information reported to the State where
23 the unit is located; or

24 “(iii) the unit’s most stringent State
25 or Federal emission limitation for sulfur

1 dioxide, nitrogen oxides, or mercury appli-
2 cable to the year on which the unit's base-
3 line heat input is based under subsection
4 (d).

5 “(2) The Administrator shall reduce the alloca-
6 tions under paragraph (1) by 1.0 percent in the first
7 year for which the Administrator is allocating allow-
8 ances to the unit, by an additional 1.0 percent of the
9 allocations under paragraph (1) each year starting
10 in the second year through the twentieth year, and
11 by an additional 2.5 percent of the allocations under
12 paragraph (1) each year starting in the 21 year and
13 each year thereafter. The Administrator shall make
14 corresponding increases in the amounts of allow-
15 ances auctioned under sections 423, 453, and 473.

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

22 “(h) The Administrator shall promulgate regulations
23 implementing this section within 24 months of the date
24 of enactment of the Clear Skies Act of 2003.

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

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

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 20 per-
2 cent of the total cost of the demonstration project.

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

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

22 “(4) EPA REGULATIONS.—Not later than 12
23 months after November 15, 1990, the Administrator
24 shall promulgate regulations or interpretive rulings
25 to revise requirements under section 111 and parts

1 C and D, as appropriate, to facilitate projects con-
2 sistent in this subsection. With respect to parts C
3 and D, such regulations or rulings shall apply to all
4 areas in which EPA is the permitting authority. In
5 those instances in which the State is the permitting
6 authority under part C or D, any State may adopt
7 and submit to the Administrator for approval revi-
8 sions to its implementation plan to apply the regula-
9 tions or rulings promulgated under this subsection.

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

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

22 “(2) was equipped prior to shut-down with a
23 continuous system of emissions control that achieves
24 a removal efficiency for sulfur dioxide of no less

1 than 85 percent and a removal efficiency for particu-
2 lates of no less than 98 percent,

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

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

7 **“SEC. 409. AUCTIONS.**

8 “(a) IN GENERAL.—(1) Commencing in 2005 and in
9 each year thereafter, the Administrator shall conduct auc-
10 tions, as required under sections 423, 424, 426, 434, 453,
11 454, 473, and 474, at which allowances shall be offered
12 for sale in accordance with regulations promulgated by the
13 Administrator no later than 24 months after the date of
14 enactment of the Clear Skies Act of 2003.

15 “(2) Such regulations shall promote an efficient auc-
16 tion outcome and a competitive market for allowances.

17 “(3) Such regulations may provide allowances to be
18 offered for sale before or during the year for which such
19 allowances may be used to meet the requirement to hold
20 allowances under section 422, 432, 452, and 472, as the
21 case may be. Such regulations shall specify the frequency
22 and timing of auctions and may provide for more than
23 one auction of sulfur dioxide allowances, nitrogen oxides
24 allowances, or mercury allowances during a year. Allow-
25 ances purchased at the auction may be used for any pur-

1 pose and at any time after the auction, subject to the pro-
2 visions of this title.

3 “(4) The regulations shall provide that each auction
4 shall be open to any person. A person wishing to bid for
5 allowances in the auction shall submit bids according to
6 auction procedures, a bidding schedule, a bidding means,
7 and requirements for financial guarantees specified in the
8 regulations. Winning bids, and required payments, for al-
9 lowances shall be determined in accordance with the regu-
10 lations. For any winning bid, the Administrator shall
11 record the allowances in the Allowance Tracking System
12 under section 403(c) only after the required payment for
13 such allowances is received.

14 “(b) DEFAULT AUCTION PROCEDURES.—If the Ad-
15 ministrator is required to conduct an auction of allowances
16 under subsection (a) before regulations have been promul-
17 gated under that subsection, such auction shall be con-
18 ducted as follows:

19 “(1) The auction shall begin on the first busi-
20 ness day in October of the year in which the auction
21 is required or, of the year before the first year for
22 which the allowances may be used to meet the re-
23 quirements of section 403(e)(2).

24 “(2) The auction shall be open to any person.

1 “(3) The auction shall be a multiple-round auc-
2 tion in which sulfur dioxide allowances, nitrogen ox-
3 ides allowances, and mercury allowances are offered
4 simultaneously.

5 “(4) In order to bid for allowances included in
6 the auction, a person shall submit, and the Adminis-
7 trator must receive by the date three business days
8 before the auction, one or more initial bids to pur-
9 chase a specified quantity of sulfur dioxide allow-
10 ances, nitrogen oxides allowances, and mercury al-
11 lowances, as the case may be, at a reserve price
12 specified by the Administrator. The bidder shall
13 identify the account in the Allowance Tracking Sys-
14 tem under section 403(c) in which the such allow-
15 ances that are purchased are to be recorded. Each
16 bid must be guaranteed by a certified check, a funds
17 transfer, or, in a form acceptable to the Adminis-
18 trator, a letter of credit for such quantity multiplied
19 by the reserve price payable to the U.S. EPA.

20 “(5) The procedures in paragraph (4) shall con-
21 stitute the first round of the auction.

22 “(6) In each round of the auction, the Adminis-
23 trator shall—

1 “(A) announce current round reserve
2 prices for sulfur dioxide allowances, nitrogen
3 oxides allowances, and mercury allowances;

4 “(B) receive bids comprising nonnegative
5 quantities for sulfur dioxide allowances, nitro-
6 gen oxides allowances, and mercury allowances,
7 as the case may be;

8 “(C) determine whether bids are acceptable
9 as meeting auction requirements;

10 “(D) for sulfur dioxide allowances, nitro-
11 gen oxides allowances, and mercury allowances,
12 as the case may be, determine whether the sum
13 of the acceptable bids exceeds the quantity of
14 such allowances available for auction;

15 “(E) if the sum of the acceptable bids for
16 sulfur dioxide allowances, nitrogen oxides allow-
17 ances, and mercury allowances, as the case may
18 be, exceeds the quantity of such allowances
19 available for auction, increase the reserve price
20 for the next round based on the amount by
21 which the sum of such acceptable bids exceeds
22 the quantity of such allowances; and

23 “(F) if the sum of the acceptable bids for
24 sulfur dioxide allowances, nitrogen oxides allow-
25 ances, and mercury allowances, as the case may

1 be, does not exceed the quantity of such allow-
2 ances available for auction, declare that round
3 the last round of the auction for such allow-
4 ances.

5 “(7) In the second and all subsequent rounds of
6 the auction, the Administrator shall require that, for
7 sulfur dioxide allowances, nitrogen oxides allowances,
8 and mercury allowances, as the case may be, a bid-
9 der’s quantity bid may not exceed the bidder’s quan-
10 tity bid for such allowances in the first round of the
11 auction.

12 “(8) After the auction, the Administrator shall
13 publish the names of winning and losing bidders,
14 their quantities awarded, and the final prices. The
15 Administrator shall provide the successful bidders
16 notice of the allowances that they have purchased
17 within thirty days after payments equaling the quan-
18 tity awarded multiplied by the corresponding final
19 reserve price is collected by the Administrator. After
20 the conclusion of the auction, the Administrator
21 shall return payment to unsuccessful bidders and
22 add any unsold allowances to the next relevant auc-
23 tion.

1 “(9) The Administrator may specify by regula-
2 tions, without notice and opportunity for comment,
3 the following auction requirements and procedures:

4 “(A) reserve prices for sulfur dioxide allow-
5 ances, nitrogen oxides allowances, and mercury
6 allowances, as the case may be;

7 “(B) procedures for adjusting reserve
8 prices in each round;

9 “(C) procedures limiting a bidder’s bids
10 based on his or her bids in previous rounds;

11 “(D) rationing procedures to treat tie bids;

12 “(E) procedures allowing bids at inter-
13 mediate prices between previous reserve prices
14 and current reserve prices;

15 “(F) procedures allowing bid withdrawals
16 before the final round of the auction;

17 “(G) anti-collusion rules;

18 “(H) market share limitations on a bidder
19 or associated bidders;

20 “(I) aggregate information made available
21 to bidders during the auction;

22 “(J) proxy bidding or procedures for facili-
23 tating participation by small bidders;

24 “(K) levels and details of financial guaran-
25 tees;

1 “(L) technical specifications for electronic
2 bidding; and

3 “(M) bidding schedules and other adminis-
4 trative requirements and procedures of the auc-
5 tion.

6 “(c) DELEGATION OR CONTRACT.—The Adminis-
7 trator may by delegation or contract provide for the con-
8 duct of auctions under the Administrator’s supervision by
9 other departments or agencies of the United States Gov-
10 ernment or by nongovernmental agencies, groups, or orga-
11 nizations.

12 “(d) PROCEEDS.—The proceeds from any auction
13 conducted under this title shall be deposited in the United
14 States Treasury.

15 **“SEC. 410. EVALUATION OF LIMITATIONS ON TOTAL SUL-**
16 **FUR DIOXIDE, NITROGEN OXIDES, AND MER-**
17 **CURY EMISSIONS THAT START IN 2018.**

18 “(a) EVALUATION.—(1) The Administrator, in con-
19 sultation with the Secretary of Energy, shall study wheth-
20 er the limitations on the total annual amounts of allow-
21 ances available starting in 2018 for sulfur dioxide under
22 section 423, nitrogen oxides under section 453, and mer-
23 cury under section 473 should be adjusted.

1 “(2) In conducting the study, the Administrator shall
2 include the following analyses and evaluations concerning
3 the pollutants under paragraph (1) of subsection (a)(1):

4 “(A) An evaluation of the need for further
5 emission reductions from affected EGUs under sub-
6 part 2 of part B, subpart 2 of part C, or part D and
7 other sources to attain or maintain the national am-
8 bient air quality standards.

9 “(B) A benefit-cost analysis to evaluate whether
10 the benefits of the limitations on the total annual
11 amounts of allowances available starting in 2018
12 justify the costs and whether adjusting any of the
13 limitations would provide additional benefits which
14 justify the costs of such adjustment, taking into ac-
15 count both quantifiable and non-quantifiable factors.

16 “(C) The marginal cost effectiveness of reduc-
17 ing emissions for each pollutant.

18 “(D) The merits of allowing trading between ni-
19 trogen oxides emissions and sulfur dioxide emissions.

20 “(E) An evaluation of the relative marginal cost
21 effectiveness of reducing sulfur dioxide and nitrogen
22 oxide emissions from affected EGUs under subpart
23 2 of part B and subpart 2 of part C, as compared
24 to the marginal cost effectiveness of controls on
25 other sources of sulfur dioxide, nitrogen oxides and

1 other pollutants that can be controlled to attain or
2 maintain national ambient air quality standards.

3 “(F) An evaluation of the feasibility of attain-
4 ing the limitations on the total annual amounts of
5 allowances available starting in 2018 given the avail-
6 able control technologies and the ability to install
7 control technologies by 2018, and the feasibility of
8 attaining alternative limitations on the total annual
9 amounts of allowances available starting in 2018
10 under paragraph (1) of subsection (a) for each pol-
11 lutant, including the ability to achieve alternative
12 limitations given the available control technologies,
13 and the feasibility of installing the control tech-
14 nologies needed to meet the alternative limitation by
15 2018.

16 “(G) An assessment of the results of the most
17 current research and development regarding tech-
18 nologies and strategies to reduce the emissions of
19 one or more of these pollutants from affected EGUs
20 under subpart 2 of part B, subpart 2 of part C, or
21 part D, as applicable and the results of the most
22 current research and development regarding tech-
23 nologies for other sources of the same pollutants.

24 “(H) The projected impact of the limitations on
25 the total annual amounts of allowances available

1 starting in 2018 and the projected impact of adjust-
2 ing any of the limitations on the total annual
3 amounts of allowances available starting in 2018
4 under paragraph (1) of subsection (a) on the safety
5 and reliability of affected EGUs under subpart 2 of
6 part B, subpart 2 of part C, or part D and on fuel
7 diversity within the power generation section.

8 “(I) An assessment of the best available and
9 most current scientific information relating to emis-
10 sions, transformation and deposition of these pollut-
11 ants, including studies evaluating—

12 “(i) the role of emissions of affected EGUs
13 under subpart 2 of part B, subpart 2 of part
14 C, or part D in the atmospheric formation of
15 pollutants for which national ambient air qual-
16 ity standards exist;

17 “(ii) the transformation, transport, and
18 fate of these pollutants in the atmosphere,
19 other media, and biota;

20 “(iii) the extent to which effective control
21 programs in other countries would prevent air
22 pollution generated in those countries from con-
23 tributing to nonattainment, or interfering with
24 the maintenance of any national ambient air
25 quality standards;

1 “(iv) whether the limitations starting in
2 2010 or 2018 will result in an increase in the
3 level of any other pollutant and the level of any
4 such increase; and

5 “(v) speciated monitoring data for particu-
6 late matter and the effect of various compo-
7 nents of fine particulate matter on public
8 health.

9 “(J) An assessment of the best available and
10 most current scientific information relating to emis-
11 sions, transformation and deposition of mercury, in-
12 cluding studies evaluating—

13 “(i) known and potential human health
14 and environmental effects of mercury;

15 “(ii) whether emissions of mercury from
16 affected EGUs under part D contribute signifi-
17 cantly to elevated levels of mercury in fish;

18 “(iii) human population exposure to mer-
19 cury; and

20 “(iv) the relative marginal cost effective-
21 ness of reducing mercury emissions from af-
22 fected EGUs under part D, as compared to the
23 marginal cost effectiveness of controls on other
24 sources of mercury.

1 “(K) A comparison of the extent to which
2 sources of mercury not located in the United States
3 contributed to adverse affects on terrestrial or
4 aquatic systems as opposed to the contribution from
5 affected EGUs under part D, and the extent to
6 which effective mercury control programs in other
7 countries could minimize such impairment.

8 “(L) An analysis of the effectiveness and effi-
9 ciency of the sulfur dioxide allowance program under
10 subpart 2 of part B, the nitrogen oxides allowance
11 program under subpart 2 of part C, and the mer-
12 cury allowance program under part D.

13 “(3) As part of the study, the Administrator shall
14 take into account the best available information pursuant
15 to the review of the air quality criteria for particulate mat-
16 ter under section 108.

17 “(b) PEER REVIEW PROCEDURES.—(1) The draft re-
18 sults of the study under subsection (a), including the ben-
19 efit-cost analysis, the risk assessment, technological infor-
20 mation and related technical documents shall be subject
21 to an independent and external peer review in accordance
22 with this section. Any documents that are to be considered
23 by the Administrator in the study shall be independently
24 peer reviewed no later than July 1, 2008. The peer review

1 required under this section shall not be subject to the Fed-
2 eral Advisory Committee Act (5 U.S.C. App.).

3 “(2) The Administrator shall conduct the peer review
4 in an open manner. Such peer review shall—

5 “(A) be conducted through a formal panel that
6 is broadly representative and involves qualified spe-
7 cialists who—

8 “(i) are selected primarily on the basis of
9 their technical expertise relevant to the analyses
10 required under this section;

11 “(ii) disclose to the agency prior technical
12 or policy positions they have taken on the issues
13 under consideration; and

14 “(iii) disclose to the agency their sources
15 of personal and institutional funding from the
16 private or public sectors;

17 “(B) contain a balanced presentation of all con-
18 siderations, including minority reports;

19 “(C) provide adequate protections for confiden-
20 tial business information and trade secrets, including
21 requiring panel members or participants to enter
22 into confidentiality agreements;

23 “(D) afford an opportunity for public comment;
24 and

1 “(E) be complete by no later than January 1,
2 2009.

3 “(2) The Administrator shall respond, in writing, to
4 all significant peer review and public comments and certify
5 that—

6 “(A) each peer review participant has the ex-
7 pertise and independence required under this sec-
8 tion; and

9 “(B) the agency has adequately responded to
10 the peer review comments as required under this
11 section.

12 “(c) RECOMMENDATION TO CONGRESS.—The Ad-
13 ministrator, in consultation with the Secretary of Energy,
14 should submit to Congress no later than July 1, 2009,
15 a recommendation whether to revise the limitations on the
16 total annual amounts of allowances available starting in
17 2018 under paragraph (1) of subsection (a). The rec-
18 ommendation shall include the final results of the study
19 under subsections (a) and (b) and shall address the factors
20 described in paragraph (2) of subsection (a). The Admin-
21 istrator may submit separate recommendations addressing
22 sulfur dioxide, nitrogen oxides, or mercury at any time
23 after the study has been completed under paragraph (2)
24 of subsection (a) and the peer review process has been
25 completed under subsection (b).

1 **“PART B—SULFUR DIOXIDE EMISSION**

2 **REDUCTIONS**

3 **“Subpart 1—Acid Rain Program**

4 **“SEC. 410. EVALUATION OF LIMITATIONS ON TOTAL SUL-**

5 **FUR DIOXIDE, NITROGEN OXIDES, AND MER-**

6 **CURY EMISSIONS THAT START IN 2018.**

7 “(a) EVALUATION.—(1) The Administrator, in con-
8 sultation with the Secretary of Energy, shall study wheth-
9 er the limitations on the total annual amounts of allow-
10 ances available starting in 2018 for sulfur dioxide under
11 section 423, nitrogen oxides under section 453, and mer-
12 cury under section 473 should be adjusted.

13 “(2) In conducting the study, the Administrator shall
14 include the following analyses and evaluations concerning
15 the pollutants under paragraph (a)(1),

16 “(A) an evaluation of the need for further emis-
17 sion reductions from affected EGUs under subpart
18 2 of part B, subpart 2 of part C, or part D and
19 other sources to attain or maintain the national am-
20 bient air quality standards;

21 “(B) A benefit-cost analysis to evaluate whether
22 the benefits of the limitations on the total annual
23 amounts of allowances available starting in 2018
24 justify the costs and whether adjusting any of the
25 limitations would provide additional benefits which

1 justify the costs of such adjustment, taking into ac-
2 count both quantifiable and non-quantifiable factors;

3 “(C) the marginal cost effectiveness of reducing
4 emissions for each pollutant;

5 “(D) the merits of allowing trading between
6 NO_x and SO₂ limitations;

7 “(E) an evaluation of the relative marginal cost
8 effectiveness of reducing sulfur dioxide and nitrogen
9 oxide emissions from affected EGUs under sub-part
10 2 of part B and subpart 2 of part C, as compared
11 to the marginal cost effectiveness of controls on
12 other sources of sulfur dioxide, nitrogen oxides and
13 other pollutants that can be controlled to attain or
14 maintain national ambient air quality standard;

15 “(F) an evaluation of the feasibility of attaining
16 the limitations on the total annual amounts of allow-
17 ances available starting in 2018 given the available
18 control technologies and the ability to install control
19 technologies by 2018, and the feasibility of attaining
20 alternative limitations on the total annual amounts
21 of allowances available starting in 2018 under para-
22 graph (a)(1) for each pollutant, including the ability
23 to achieve alternative limitations given the available
24 control technologies, and the feasibility of installing

1 the control technologies needed to meet the alter-
2 native limitation by 2018;

3 “(G) an assessment of the results of the most
4 current research and development regarding tech-
5 nologies and strategies to reduce the emissions of
6 one or more of these pollutants from affected EGUs
7 under subpart 2 of part B, subpart 2 of part C, or
8 part D, as applicable and the results of the most
9 current research and development regarding tech-
10 nologies for other sources of the same pollutants;

11 “(H) the projected impact of the limitations on
12 the total annual amounts of allowances available
13 starting in 2018 and the projected impact of adjust-
14 ing any of the limitations on the total annual
15 amounts of allowances available starting in 2018
16 under paragraph (a)(1) on the safety and reliability
17 of affected EGUs under subpart 2 of part B, sub-
18 part 2 of part C, or part D and on fuel diversity
19 within the power generation section;

20 “(I) an assessment of the best available and
21 most current scientific information relating to emis-
22 sions, transformation and deposition of these pollut-
23 ants, including studies evaluating—

24 “(i) the role of emissions of affected EGUs
25 under subpart 2 of part B, subpart 2 of part

1 C, or part D in the atmospheric formation of
2 pollutants for which national ambient air qual-
3 ity standards exist;

4 “(ii) the transformation, transport, and
5 fate of these pollutants in the atmosphere,
6 other media, and biota;

7 “(iii) the extent to which effective control
8 programs in other countries would prevent air
9 pollution generated in those countries from con-
10 tributing to nonattainment, or interfering with
11 the maintenance of any national ambient air
12 quality standards;

13 “(iv) whether the limitations starting in
14 2010 or 2018 will result in an increase in the
15 level of any other pollutant and the level of any
16 such increase; and

17 “(v) speciated monitoring data for particu-
18 late matter and the effect of various elements
19 of fine particulate matter on public health;

20 “(J) an assessment of the best available and
21 most current scientific information relating to emis-
22 sions, transformation and deposition of mercury, in-
23 cluding studies evaluating—

24 “(i) known and potential human health
25 and environmental effects of mercury;

1 “(ii) whether emissions of mercury from
2 affected EGUs under part D contribute signifi-
3 cantly to elevated levels of mercury in fish;

4 “(iii) human population exposure to mer-
5 cury; and

6 “(iv) the relative marginal cost effective-
7 ness of reducing mercury emissions from af-
8 fected EGUs under part D, as compared to the
9 marginal cost effectiveness of controls on other
10 sources of mercury;

11 “(K) a comparison of the extent to which
12 sources of mercury not located in the United States
13 contributed to adverse affects on terrestrial or
14 aquatic systems as opposed to the contribution from
15 affected EGUs under part D, and the extent to
16 which effective mercury control programs in other
17 countries could minimize such impairment; and

18 “(L) an analysis of the effectiveness and effi-
19 ciency of the sulfur dioxide allowance program under
20 subpart 2 of part B, the nitrogen oxides allowance
21 program under subpart 2 of part C, and the mer-
22 cury allowance program under part D.

23 “(3) As part of the study, the Administrator shall
24 take into account the best available information pursuant

1 to the review of the air quality criteria for particulate mat-
2 ter under section 108.

3 “(b) PEER REVIEW PROCEDURES.—(1) The draft re-
4 sults of the study under subsection (a) shall be subject
5 to an independent and external peer review in accordance
6 with this section. Any documents that are to be considered
7 by the Administrator in the study shall be independently
8 peer reviewed no later than July 1, 2008. The peer review
9 required under this section shall not be subject to the Fed-
10 eral Advisory Committee Act (5 U.S.C. App.).

11 “(2) The Administrator shall conduct the peer review
12 in an open and rigorous manner. Such peer review shall—

13 “(A) be conducted through a formal panel that
14 is broadly representative of the relevant scientific
15 and technical views and involves qualified specialists
16 who—

17 “(i) are selected primarily on the basis of
18 their technical expertise relevant to the analyses
19 required under this section;

20 “(ii) disclose to the agency prior technical
21 or policy positions they have taken on the issues
22 under consideration; and

23 “(iii) disclose to the agency their sources
24 of personal and institutional funding from the
25 private or public sectors;

1 “(B) contain a balanced presentation of all con-
2 siderations, including minority reports;

3 “(C) provide adequate protections for confiden-
4 tial business information and trade secrets, including
5 requiring panel members or participants to enter
6 into confidentiality agreements;

7 “(D) afford an opportunity for public comment;
8 and

9 “(E) be complete by no later than January 1,
10 2009.

11 “(3) The Administrator shall respond, in writing, to
12 all significant peer review and public comments; and

13 “(4) The Administrator shall certify that—

14 “(A) each peer review participant has the ex-
15 pertise an independence required under this section;
16 and

17 “(B) the agency has adequately responded to
18 the peer review comments as required under this
19 section.

20 “(c) RECOMMENDATION TO CONGRESS.—The Ad-
21 ministrators, in consultation with the Secretary of Energy,
22 shall submit to Congress no later than July 1, 2009, a
23 recommendation whether to revise the limitations on the
24 total annual amounts of allowances available starting in
25 2018 under paragraph (a)(1). The recommendation shall

1 include the final results of the study under subsections (a)
2 and (b) and shall address the factors described in para-
3 graph (2) of subsection (a). The Administrator may sub-
4 mit separate recommendations addressing sulfur dioxide,
5 nitrogen oxides, or mercury at any time after the study
6 has been completed under paragraph (2) of subsection (a)
7 and the peer review process has been completed under sub-
8 section (b).

9 **“SEC. 411. DEFINITIONS.**

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

12 “(1) The term ‘actual 1985 emission rate’, for
13 electric utility units means the annual sulfur dioxide
14 or nitrogen oxides emission rate in pounds per mil-
15 lion Btu as reported in the NAPAP Emissions In-
16 ventory, Version, 2 National Utility reference File.
17 For nonutility units, the term ‘actual 1985 emission
18 rate’ means the annual sulfur dioxide or nitrogen ox-
19 ides emission rate in pounds per million Btu as re-
20 ported in the NAPAP Emission Inventory, Version
21 2.

22 “(2) The term ‘allowable 1985 emissions rate’
23 means a federally enforceable emissions limitation
24 for sulfur dioxide or oxides of nitrogen, applicable to
25 the unit in 1985 or the limitation applicable in such

1 other subsequent year as determined by the Admin-
2 istrator if such a limitation for 1985 does not exist.
3 Where the emissions limitation for a unit is not ex-
4 pressed in pounds of emissions per million Btu, or
5 the averaging period of that emissions limitation is
6 not expressed on an annual basis, the Administrator
7 shall calculate the annual equivalent of that emis-
8 sions.

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

12 “(A) a substitution plan submitted and ap-
13 proved in accordance with subsections 413(b)
14 and (c); or

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

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

24 “(A) For each utility unit that was in com-
25 mercial operation prior to January 1, 1985, the

1 baseline shall be the annual average quantity of
2 mmBtu's consumed in fuel during calendar
3 years 1985, 1986, and 1987, as recorded by the
4 Department of Energy pursuant to Form 767.
5 For any utility unit for which such form was
6 not filed, the baseline shall be the level specified
7 for such unit in the 1985 National Acid Pre-
8 cipitation Assessment Program (NAPAP)
9 Emissions Inventory, Version 2, National Util-
10 ity Reference File (NURF) or in a corrected
11 data base as established by the Administrator
12 pursuant to paragraph (3). For non-utility
13 units, the baseline in the NAPAP Emissions In-
14 ventory, Version 2. The Administrator, in the
15 Administrator's sole discretion, may exclude pe-
16 riods during which a unit is shutdown for a
17 continuous period of 4 calendar months or
18 longer, and make appropriate adjustments
19 under this paragraph. Upon petition of the
20 owner or operator of any unit, the Adminis-
21 trator may make appropriate baseline adjust-
22 ments for accidents that caused prolonged out-
23 ages.

24 “(B) For any other nonutility unit that is
25 not included in the NAPAP Emissions Inven-

1 tory, Version 2, or a corrected data base as es-
2 tablished by the Administrator pursuant to
3 paragraph (3), the baseline shall be the annual
4 average quantity, in mmBtu consumed in fuel
5 by that unit, as calculated pursuant to a meth-
6 od which the Administrator shall prescribe by
7 regulation to be promulgated not later than 18
8 months after November 15, 1990.

9 “(C) The Administrator shall, upon appli-
10 cation or on his own motion, by December 31,
11 1991, supplement data needed in support of
12 this subpart and correct any factual errors in
13 data from which affected Phase II units’ base-
14 lines or actual 1985 emission rates have been
15 calculated. Corrected data shall be used for pur-
16 poses of issuing allowances under this subpart.
17 Such corrections shall not be subject to judicial
18 review, nor shall the failure of the Adminis-
19 trator to correct an alleged factual error in such
20 reports be subject to judicial review.

21 “(5) The term ‘basic Phase II allowance alloca-
22 tions’ means:

23 “(A) For calendar years 2000 through
24 2009 inclusive, allocations of allowances made
25 by the Administrator pursuant to section 412

1 and subsections (b)(1), (3), and (4); (c)(1), (2),
2 (3), and (5); (d)(1), (2), (4), and (5); (e); (f);
3 (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j)
4 of section 414.

5 “(B) For each calendar year beginning in
6 2010, allocations of allowances made by the Ad-
7 ministrator pursuant to section 412 and sub-
8 sections (b)(1), (3), and (4); (c)(1), (2), (3),
9 and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1),
10 (2), (3), (4), and (5); (h)(1) and (3); (i) and (j)
11 of section 414.

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

15 “(7) The term ‘commenced’ as applied to con-
16 struction of any new electric utility unit means that
17 an owner or operator has undertaken a continuous
18 program of construction or that an owner or oper-
19 ator has entered into a contractual obligation to un-
20 dertake and complete, within a reasonable time, a
21 continuous program of construction.

22 “(8) The term ‘commenced commercial oper-
23 ation’ means to have begun to generate electricity
24 for sale.

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

3 “(10) The term ‘existing unit’ means a unit (in-
4 cluding units subject to section 111) that com-
5 menced commercial operation before November 15,
6 1990. Any unit that commenced commercial oper-
7 ation before November 15, 1990 which is modified,
8 reconstructed, or repowered after November 15,
9 1990 shall continue to be an existing unit for the
10 purposes of this subpart. For the purposes of this
11 subpart, existing units shall not include simple com-
12 bustion turbines, or units which serve a generator
13 with a nameplate capacity of 25 MWe or less.

14 “(11) The term ‘independent power producer’
15 means any person who owns or operates, in whole or
16 in part, one or more new independent power produc-
17 tion facilities.

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

20 “(A) is used for the generation of electric
21 energy, 80 percent or more of which is sold at
22 wholesale;

23 “(B) in nonrecourse project-financed (as
24 such term is defined by the Secretary of Energy
25 within 3 months of the date of the enactment

1 of the Clean Air Act Amendments of 1990);
2 and

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

5 “(13) The term ‘industrial source’ means a unit
6 that does not serve a generator that produces elec-
7 tricity, a ‘non-utility unit’ as defined in this section,
8 or a process source.

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

18 “(A) for the life of the unit;

19 “(B) for a cumulative term of no less than
20 30 years, including contracts that permit an
21 election for early termination; or

22 “(C) for a period equal to or greater than
23 25 years or 70 percent of the economic useful
24 life of the unit determined as of the time the
25 unit was built, with option rights to purchase or

1 release some portion of the capacity and associ-
2 ated energy generated by the unit (or units) at
3 the end of the period.

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

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

9 “(17) The term ‘Phase II bonus allowance allo-
10 cations’ means, for calendar year 2000 through
11 2009, inclusive, and only for such years, allocations
12 made by the Administrator pursuant to section 412,
13 subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as
14 otherwise provided therein), and (h)(2) of section
15 414, and section 415.

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

22 “(19) The term ‘repowering’ means replacement
23 of an existing coal-fired boiler with one of the fol-
24 lowing clean coal technologies: atmospheric or pres-
25 surized fluidized bed combustion, integrated gasifi-

1 cation combined cycle, magneto-hydrodynamics, di-
2 rect and indirect coal-fired turbines, integrated gas-
3 ification fuel cells, or as determined by the Adminis-
4 trator, in consultation with the Secretary of Energy,
5 a derivative of one or more of these technologies,
6 and any other technology capable of controlling mul-
7 tiple combustion emissions simultaneously with im-
8 proved boiler or generation efficiency and with sig-
9 nificantly greater waste reduction relative to the per-
10 formance of technology in widespread commercial
11 use as of November 15, 1990.

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

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

16 “(i) a unit that serves a generator in any
17 State that produces electricity for sale, or

18 “(ii) a unit that, during 1985, served a
19 generator in any State that produced electricity
20 for sale.

21 “(B) Notwithstanding subparagraph (A), a
22 unit described in subparagraph (A) that—

23 “(i) was in commercial operations
24 during 1985, but

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

5 “(C) A unit that cogenerates steam and
6 electricity is not a ‘utility unit’ for purposes of
7 this subpart unless the unit is constructed for
8 the purpose of supplying, or commences con-
9 struction after November 15, 1990 and supplies
10 more than one-third of its potential electric out-
11 put capacity of more than 25 megawatts elec-
12 trical output to any utility power distribution
13 system for sale.

14 **“SEC. 412. ALLOWANCE ALLOCATION.**

15 “(a) Except as provided in sections 414(a)(2),
16 415(a)(3), and 416, beginning January 1, 2000, the Ad-
17 ministrator shall not allocate annual missions of sulfur di-
18 oxide from utility units in excess of 8.90 million tons ex-
19 cept that the Administrator shall not to take into account
20 unused allowances carried forward by owners and opera-
21 tors of affected units or by other persons holding such al-
22 lowances, following the year for which they were allocated.
23 If necessary to meeting he restrictions imposed in the pre-
24 ceding sentence, the Administrator shall reduce, pro rata,
25 the basic Phase II allowance allocations for each unit sub-

1 ject to the requirements of section 414. Subject to the pro-
2 visions of section 417, the Administrator shall allocate al-
3 lowances for each affected unit at an affected source an-
4 nually, as provided in paragraphs (2) and(3) and section
5 404. Except as provided in sections 416, the removal of
6 an existing affected unit or source from commercial oper-
7 ation at any time after November 15, 1990 (whether be-
8 fore or after January 1, 1995, or January 1, 2000), shall
9 not terminate or otherwise affect the allocation of allow-
10 ances pursuant to section 413 or 414 to which the unit
11 is entitled. Prior to June 1, 1998, the Administrator shall
12 publish a revised final statement of allowance allocations,
13 subject to the provisions of section 414(a)(2).

14 “(b) NEW UTILITY UNITS.—

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

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

23 “(3) New utility units shall not be eligible for
24 an allocation of sulfur dioxide allowances under sub-
25 section (a)(1), unless the unit is subject to the provi-

1 sions of subsection (g)(2) or (3) of section 414. New
2 utility units may obtain allowances from any person,
3 in accordance with this title. The owner or operator
4 of any new utility unit in violation of subsection
5 (b)(1) or subsection(c)(3) shall be liable for fulfilling
6 the obligations specified in section 406.

7 “(c) PROHIBITIONS.—

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

12 “(2) For any year 1995 through 2007, it shall
13 be unlawful for any affected unit to emit sulfur diox-
14 ide in excess of the number of allowances held for
15 that unit for that year by the owner or operator of
16 the unit.

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

22 “(4) Upon the allocation of allowances under
23 this subpart, the prohibition in paragraphs (2) and
24 (3) shall supersede any other emission limitation ap-

1 plicable under this subpart to the units for which
2 such allowances are allocated.

3 “(d) In order to insure electric reliability, regulations
4 establishing a system for issuing, recording, and tracking
5 allowances under section 403(b) and this subpart shall not
6 prohibit or affect temporary increases and decreases in
7 emissions within utility systems, power pools, or utilities
8 entering into allowance pool agreements, that result from
9 their operations, including emergencies and central dis-
10 patch, and such temporary emissions increases and de-
11 creases shall not require transfer of allowances among
12 units nor shall it require recording. The owners or opera-
13 tors of such units shall act through a designated rep-
14 resentative. Notwithstanding the preceding sentence, the
15 total tonnage of emissions in any calendar year (calculated
16 at the end thereof) from all units in such a utility system,
17 power pool, or allowance pool agreements shall not exceed
18 the total allowances for such units for the calendar year
19 concerned, including for calendar years after 2007, allow-
20 ances held for such units by the owner or operator of the
21 sources where the units are located.

22 “(e) Where there are multiple holders of a legal or
23 equitable title to, or a leasehold interest in, an affected
24 unit, or where a utility or industrial customer purchases
25 power from an affected unit (or units) under life-of-the-

1 unit, firm power contractual arrangements, the certificate
2 of representation required under section 404(f) shall
3 state—

4 “(1) that allowances under this subpart and the
5 proceeds of transactions involving such allowances
6 will be deemed to be held or distributed in propor-
7 tion to each holder’s legal, equitable, leasehold, or
8 contractual reservation or entitlement, or

9 “(2) if such multiple holders have expressly pro-
10 vided for a different distribution of allowances by
11 contract, that allowances under this subpart and the
12 proceeds of transactions involving such allowances
13 will be deemed to be held or distributed in accord-
14 ance with the contract.

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

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

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

4 “(a) EMISSION LIMITATIONS.—

5 “(1) After January 1, 1995, each source that
6 includes one or more affected units listed in table A
7 is an affected source under this section. After Janu-
8 ary 1, 1995, it shall be unlawful for any affected
9 unit (other than an eligible phase I unit under sec-
10 tion 413(d)(2)) to emit sulfur dioxide in excess of
11 the tonnage limitation stated as a total number of
12 allowances in table A for phase I, unless—

13 “(A) the emissions reduction requirements
14 applicable to such unit have been achieved pur-
15 suant to subsection (b) or (d), or

16 “(B) the owner or operator of such unit
17 holds allowances to emit not less than the unit’s
18 total annual emissions, except that, after Janu-
19 ary 1, 2000, the emissions limitations estab-
20 lished in this section shall be superseded by
21 those established in section 414. The owner or
22 operator of any unit in violation of this section
23 be fully liable for such violation including, but
24 not limited to, liability for fulfilling the obliga-
25 tions specified in section 406.

1 “(2) Not later than December 31, 1991, the
2 Administrator shall determine the total tonnage of
3 reductions in the emissions of sulfur dioxide from all
4 utility units in calendar year 1995 that will occur as
5 a result of compliance with the emissions limitation
6 requirements of this section, and shall establish a re-
7 serve of allowances equal in amount to the number
8 of tons determined thereby not to exceed a total of
9 3.50 million tons. In making such a determination,
10 the Administrator shall compute for each unit sub-
11 ject to the emissions limitation requirements of this
12 section the difference between—

13 “(A) the product of its baseline multiplied
14 by the lesser of each unit’s allowable 1985
15 emissions rate and its actual 1985 emissions
16 rate, divided by 2,000, and

17 “(B) the product of each unit’s baseline
18 multiplied by 2.50 lbs/mmBtu divided by 2,000,
19 and sum the computations. The Administrator
20 shall adjust the foregoing calculation to reflect
21 projected calendar year 1995 utilization of the
22 units subject to the emissions limitations of this
23 subpart that the Administrator finds would
24 have occurred in the absence of the imposition
25 of such requirements. Pursuant to subsection

1 (d), the Administrator shall allocate allowances
2 from the reserve established hereunder until the
3 earlier of such time as all such allowances in
4 the reserve are allocated or December 31, 1999.

5 “(3) In addition to allowances allocated pursu-
6 ant to paragraph (1), in each calendar year begin-
7 ning in 1995 and ending in 1999, inclusive, the Ad-
8 ministrator shall allocate for each unit on Table A
9 that is located in the States of Illinois, Indiana, or
10 Ohio (other than units at Kyger Creek, Clifty Creek
11 and Joppa Steam), allowances in an amount equal
12 to 200,000 multiplied by the unit’s pro rata share
13 of the total number of allowances allocated for all
14 units on Table A in the 3 States (other than units
15 at Kyger Creek, Clifty Creek, and Joppa Steam)
16 pursuant to paragraph (1). Such allowances shall be
17 excluded from the calculation of the reserve under
18 paragraph (2).

19 “(b) SUBSTITUTIONS.—The owner or operator of an
20 affected unit under subsection (a) may include in its sec-
21 tion 404 permit application and proposed compliance
22 plan a proposal to reassign, in whole or in part, the af-
23 fected unit’s sulfur dioxide reduction requirements to any
24 other unit(s) under the control of such owner or operator.
25 Such proposal shall specify—

1 “(1) the designation of the substitute unit or
2 units to which any part of the reduction obligations
3 of subsection (a) shall be required, in addition to, or
4 in lieu of, any original affected units designated
5 under such subsection;

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

10 “(3) calculation of the annual average tonnage
11 for calendar years 1985, 1986, and 1987, emitted by
12 the substitute unit or units, based on the baseline
13 for each unit, as defined in section 411(4), multi-
14 plied by the lesser of the unit’s actual or allowable
15 1985 emissions rate;

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

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

1 “(6) such other information as the Adminis-
2 trator may require.

3 “(c) ADMINISTRATOR’S ACTION ON SUBSTITUTION
4 PROPOSALS.—

5 “(1) The Administrator shall take final action
6 on such substitution proposal in accordance with
7 section 404(c) if the substitution proposal fulfills the
8 requirements of this subsection. The Administrator
9 may approve a substitution proposal in whole or in
10 part and with such modifications or conditions as
11 may be consistent with the orderly functioning of the
12 allowance system and which will ensure the emis-
13 sions reductions contemplated by this title. If a pro-
14 posal does not meet the requirements of subsection
15 (b), the Administrator shall disapprove it. The owner
16 or operator of a unit listed in table A shall not sub-
17 stitute another unit or units without the prior ap-
18 proval of the Administrator.

19 “(2) Upon approval of a substitution proposal,
20 each substitute unit, and each source with such unit,
21 shall be deemed affected under this title, and the
22 Administrator shall issue a permit to the original
23 and substitute affected source and unit in accord-
24 ance with the approved substitution plan and section
25 404. The Administrator shall allocate allowances for

1 the original and substitute affected units in accord-
2 ance with the approved substitution proposal pursu-
3 ant to section 412. It shall be unlawful for any
4 source or unit that is allocated allowances pursuant
5 to this section to emit sulfur dioxide in excess of the
6 emissions limitation provided for in the approved
7 substitution permit and plan unless the owner or op-
8 erator of each unit governed by the permit and ap-
9 proved substitution plan holds allowances to emit
10 not less than the unit's total annual emissions. The
11 owner or operator of any original or substitute af-
12 fected unit operated in violation of this subsection
13 shall be fully liable for such violation, including li-
14 ability for fulfilling the obligations specified in sec-
15 tion 406. If a substitution proposal is disapproved,
16 the Administrator shall allocate allowances to the
17 original affected unit or units in accordance with
18 subsection (a).

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

20 “(1) The owner or operator of any affected unit
21 subject to an emissions limitation requirement under
22 this section may petition the Administrator in its
23 permit application under section 404 for an exten-
24 sion of 2 years of the deadline for meeting such re-
25 quirement, provided that the owner or operator of

1 any such unit holds allowances to emit not less than
2 the unit's total annual emissions for each of the 2
3 years of the period of extension. To qualify for such
4 an extension, the affected unit must either employ a
5 qualifying phase I technology, or transfer its phase
6 I emissions reduction obligation to a unit employing
7 a qualifying phase I technology. Such transfer shall
8 be accomplished in accordance with a compliance
9 plan, submitted and approved under section 404,
10 that shall govern operations at all units included in
11 the transfer, and that specifies the emissions reduc-
12 tion requirements imposed pursuant to this title.

13 “(2) 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’ baseline,
2 actual 1985 emissions rate, allowable 1985
3 emissions rate, and projected utilization for cal-
4 endar 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) The Administrator shall review and take
14 final action on each extension proposal in order of
15 receipt, consistent with section 404, and for an ap-
16 proved proposal shall designate the unit or units as
17 an eligible phase I extension unit. The Administrator
18 may approve an extension proposal in whole or in
19 part, and with such modifications or conditions as
20 may be necessary, consistent with the orderly func-
21 tioning of the allowance system, and to ensure the
22 emissions reductions contemplated by the subpart.

23 “(4) In order to determine the number of pro-
24 posals eligible for allocations from the reserve under
25 subsection (a)(2) and the number of the allowances

1 remaining available after each proposal is acted
2 upon, the Administrator shall reduce the total num-
3 ber of allowances remaining available in the reserve
4 by the number of allowances calculated according to
5 subparagraph (A), (B) and (C) until either no allow-
6 ances remain available in the reserve for further al-
7 location or all approved proposals have been acted
8 upon. If no allowances remain available in the re-
9 serve for further allocation before all proposals have
10 been acted upon by the Administrator, any pending
11 proposals shall be disapproved. The Administrator
12 shall calculate allowances equal to—

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

21 “(B) the difference between the lesser of
22 the average annual emissions in calendar years
23 1988 and 1989 or the projected emissions ton-
24 nage for calendar year 1996 of each eligible
25 phase I extension unit, as designated under

1 paragraph (3), and the product of the unit's
2 baseline multiplied by an emission rate of 2.50
3 lbs/mmBtu, divided by 2,000; and

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

10 “(5) Each eligible Phase I extension unit shall
11 receive allowances determined under subsection
12 (a)(1) or (c) of this section. In addition, for calendar
13 year 1995, the Administrator shall allocate to each
14 eligible Phase I extension unit, from the allowance
15 reserve created pursuant to subsection (a)(2), allow-
16 ances equal to the difference between the lesser of
17 the average annual emissions in calendar years 1988
18 and 1989 or its projected emission tonnage for cal-
19 endar year 1995 and the product of the unit's base-
20 line multiplied by an emission rate of 2.50 lbs/
21 mmBtu, divided by 2,000. In calendar year 1996,
22 the Administrator shall allocate for each eligible
23 unit, from the allowance reserve created pursuant to
24 subsection (a)(2), allowances equal to the difference
25 between the lesser of the average annual emissions

1 in calendar years 1988 and 1989 or its projected
2 emissions tonnage for calendar year 1996 and the
3 product of the unit's baseline multiplied by an emis-
4 sion rate of 2.50 lbs/mmBtu, divided by 2,000. It
5 shall be unlawful for any source or unit subject to
6 an approved extension plan under this subsection to
7 emit sulfur dioxide in excess of the emissions limita-
8 tions provided for in the permit and approved exten-
9 sion plan, unless the owner or operator of each unit
10 governed by the permit and approved plan holds al-
11 lowances to emit not less than the unit's total an-
12 nual emissions.

13 “(6) In addition to allowances specified in para-
14 graph (4), the Administrator shall allocate for each
15 eligible Phase I extension unit employing qualifying
16 Phase I technology, for calendar years 1997, 1998,
17 and 1999, additional allowances, from any remaining
18 allowances in the reserve created pursuant to sub-
19 section (a)(2), following the reduction in the reserve
20 provided for in paragraph (4), not to exceed the
21 amount by which (A) the product of each eligible
22 unit's baseline times an emission rate of 1.20 lbs/
23 mmBtu, divided by 2,000 exceeds (B) the tonnage
24 level specified under subparagraph (E) of paragraph
25 (2) of this subsection.

1 “(7) After January 1, 1997, in addition to any
2 liability under this Act, including under section 406,
3 if any eligible phase I extension unit employing
4 qualifying phase I technology or any transfer unit
5 under this subsection emits sulfur dioxide in excess
6 of the annual tonnage limitation specified in the ex-
7 tension plan, as approved in paragraph (2) of this
8 subsection, the Administrator shall, in the calendar
9 year following such excess, deduct allowances equal
10 to the amount of such excess from such unit’s an-
11 nual allowance allocation.

12 “(e)(1) In the case of a unit that receives authoriza-
13 tion from the Governor of the State in which such unit
14 is located to make reductions in the emissions of sulfur
15 dioxide prior to calendar year 1995 and that is part of
16 a utility system that meets the following requirements—

17 “(A) the total coal-fired generation within the
18 utility system as a percentage of total system gen-
19 eration decreased by more than 20 percent between
20 January 1, 1980, and December 31, 1985; and

21 “(B) the weighted capacity factor of all coal-
22 fired units within the utility system averaged over
23 the period from January 1, 1985, through December
24 31, 1987, was below 50 percent, the Administrator
25 shall allocate allowances under this paragraph for

1 the unit pursuant to this subsection. The Adminis-
2 trator shall allocate allowances for a unit that is an
3 affected unit pursuant to section 414 (but is not
4 also an affected unit under this section) and part of
5 a utility system that includes 1 or more affected
6 units under section 414 for reductions in the emis-
7 sions of sulfur dioxide made during the period
8 1995–1999 if the unit meets the requirements of
9 this subsection and the requirements of the pre-
10 ceding sentence, except that for the purposes of ap-
11 plying this subsection to any such unit, the prior
12 year concerned as specified below, shall be any year
13 after January 1, 1995 but prior to January 1, 2000.

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

1 mmBtu) in the prior year multiplied by the lesser of 2.50
 2 or the most stringent emission rate (in lbs. per mmBtu)
 3 applicable to the unit under the applicable implementation
 4 plan, divided by 2,000 exceeds (ii) the unit's actual ton-
 5 nage of sulfur dioxide emission for the prior year con-
 6 cerned. Allowances allocated under this subsection for
 7 units referred to in subparagraph (A) may be allocated
 8 only for emission reductions achieved as a result of phys-
 9 ical changes or changes in the method of operation made
 10 after November 15, 1990, including changes in the type
 11 or quality of fossil fuel consumed.

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

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

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680

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

State	Plant name	Generator	Phase I allowances	
Georgia	Bowen	1	56,320	
		2	54,770	
		3	71,750	
		4	71,740	
	Hammond	1	8,780	
		2	9,220	
		3	8,910	
		4	37,640	
	J. McDonough	1	19,910	
		2	20,600	
	Wansley	1	70,770	
		2	65,430	
	Yates	1	7,210	
		2	7,040	
		3	6,950	
		4	8,910	
		5	9,410	
		6	24,760	
		7	21,480	
Illinois	Baldwin	1	42,010	
		2	44,420	
		3	42,550	
	Coffeen	1	11,790	
		2	35,670	
	Grand Tower	4	5,910	
	Hennepin	2	18,410	
	Joppa Steam	1	12,590	
		2	10,770	
		3	12,270	
		4	11,360	
		5	11,420	
		6	10,620	
	Kincaid	1	31,530	
		2	33,810	
		3	13,890	
	Vermilion	2	8,880	
	Indiana	Bailly	7	11,180
			8	15,630
Breed		1	18,500	
Cayuga		1	33,370	
		2	34,130	
Clifty Creek		1	20,150	
		2	19,810	
		3	20,410	
		4	20,080	
		5	19,360	
		6	20,380	
E. W. Stout		5	3,880	
		6	4,770	

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

State	Plant name	Generator	Phase I allowances
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
	.....	3	6,530
	.....	4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
	.....	2	2,860
	.....	3	3,750
	.....	5	3,670
	.....	6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910

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

State	Plant name	Generator	Phase I allowances
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770

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

State	Plant name	Generator	Phase I allowances
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
		1	79,080
	Gen. J.M. Gavin	2	80,560
		1	19,280
	Kyger Creek	2	18,560
		3	17,910
		4	18,710
		5	18,740
		5	760
	Miami Fort	6	11,380
		7	38,510
		1	14,880
	Muskingum River	2	14,170
		3	13,950
		4	11,780
		5	40,470
		1	6,940
	Niles	2	9,100
		5	4,930
	Pieway	3	6,150
4		10,780	
R.E. Burger	5	12,430	
	5	24,170	
	6	39,930	
W.H. Sammis	7	43,220	
	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	

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

State	Plant name	Generator	Phase I allowances
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180

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

State	Plant name	Generator	Phase I allowances
		8	15,790

1 “(f) ENERGY CONSERVATION AND RENEWABLE EN-

2 ERGY.—

3 “(1) DEFINITIONS.—As used in this subsection:

4 “(A) QUALIFIED ENERGY CONSERVATION

5 MEASURE.—The term ‘qualified energy con-

6 servation measure’ means a cost effective meas-

7 ure, as identified by the Administrator in con-

8 sultation with the Secretary of Energy, that in-

9 creases the efficiency of the use of electricity

10 provided by an electric utility to its customers.

11 “(B) QUALIFIED RENEWABLE ENERGY.—

12 The term ‘qualified renewable energy’ means

13 energy derived from biomass, solar, geothermal,

14 or wind as identified by the Administrator in

15 consultation with the Secretary of Energy.

16 “(C) ELECTRIC UTILITY.—The term ‘elec-

17 tric utility’ means any person, State agency, or

18 Federal agency, which sells electric energy.

19 “(2) ALLOWANCES FOR EMISSIONS AVOIDED

20 THROUGH ENERGY CONSERVATION AND RENEWABLE

21 ENERGY.—

1 “(A) IN GENERAL.—The regulations under
2 paragraph (4) of this subsection shall provide
3 that for each ton of sulfur dioxide emissions
4 avoided by an electric utility, during the appli-
5 cable period, through the use of qualified en-
6 ergy conservation measures or qualified renew-
7 able energy, the Administrator shall allocate a
8 single allowance to such electric utility, on a
9 first-come-first-served basis from the Conserva-
10 tion and Renewable Energy Reserve established
11 under subsection (g), up to a total of 300,000
12 allowances for allocation from such Reserve.

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

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

21 “(ii) The emissions of sulfur dioxide
22 avoided through the use of qualified energy
23 conservation measures or qualified renew-
24 able energy are quantified in accordance

1 with regulations promulgated by the Ad-
2 ministrator under this subsection.

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

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

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

23 “(iv) In the case of qualified energy
24 conservation measures undertaken by a
25 State regulated electric utility, the Sec-

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

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

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

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

9 “(D) DETERMINATION OF AVOIDED EMIS-
10 SIONS.—

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

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

20 “(II) calculates, in accordance
21 with subparagraphs (F) and (G), the
22 number of tons of emissions avoided
23 by reason of the implementation of
24 such measures or the use of such re-
25 newable energy sources; and

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

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

23 “(i) the kilowatt hours that would
24 otherwise have been supplied by the utility

1 during such year in the absence of such
2 qualified energy conservation measures, by

3 “(ii) 0.004, and dividing by 2,000.

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

13 “(G) PROHIBITIONS.—

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

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

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

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

18 “(g) CONSERVATION AND RENEWABLE ENERGY RE-
19 SERVE.—The Administrator shall establish a Conservation
20 and Renewable Energy Reserve under this subsection. Be-
21 ginning on January 1, 1995, the Administrator may allo-
22 cate from the Conservation and Renewable Energy Re-
23 serve an amount equal to a total of 300,000 allowances
24 for emissions of sulfur dioxide pursuant to section 411.
25 In order to provide 300,000 allowances for such reserve,

1 in each year beginning in calendar year 2000 and until
2 calendar year 2009, inclusive, the Administrator shall re-
3 duce each unit's basic Phase II allowance allocation on
4 the basis of its pro rata share of 30,000 allowances. Not-
5 withstanding the prior sentence, if allowances remain in
6 the reserve one year after the date of enactment of the
7 Clear Skies Act of 2003, the Administrator shall allocate
8 such allowances for affected units under section 414 on
9 a pro rata basis. For purposes of this subsection, for any
10 unit subject to the emissions limitation requirements of
11 section 414, the term 'pro rata basis' refers to the ratio
12 which the reductions made in such unit's allowances in
13 order to establish the reserve under this subsection bears
14 to the total of such reductions for all such units.

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

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

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

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

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

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

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

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

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

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

4 “(a) APPLICABILITY.—

5 “(1) After January 1, 2000, each existing util-
6 ity unit as provided below is subject to the limita-
7 tions or requirements of this section. Each utility
8 unit subject to an annual sulfur dioxide tonnage
9 emission limitation under this section is an affected
10 unit under this subpart. Each source that includes
11 one or more affected units is an affected source. In
12 the case of an existing unit that was not in oper-
13 ation during calendar year 1985, the emission rate
14 for a calendar year after 1985, as determined by the
15 Administrator, shall be used in lieu of the 1985 rate.
16 The owner or operator of any unit operated in viola-
17 tion of this section shall be fully liable under this
18 Act for fulfilling the obligations specified in section
19 406.

20 “(2) In addition to basic Phase II allowance al-
21 locations, in each year beginning in calendar year
22 2000 and ending in calendar year 2009, inclusive,
23 the Administrator shall allocate up to 530,000
24 Phase II bonus allowances pursuant to subsections

1 (b)(2),(c)(4), (d)(3)(A) and (B), and (h)(2) of this
2 section and section 415.

3 “(3) In addition to basic Phase II allowances
4 allocations and Phase II bonus allowance allocations,
5 beginning January 1, 2000, the Administrator shall
6 allocate for each unit listed on Table A in section
7 413 (other than units at Kyger Creek, Clifty Creek,
8 and Joppa Stream) and located in the States of Illi-
9 nois, Indiana, Ohio, Georgia, Alabama, Missouri,
10 Pennsylvania, West Virginia, Kentucky, or Ten-
11 nessee allowances in an amount equal to 50,000
12 multiplied by the unit’s pro rata share of the total
13 number of basic allowances allocated for all units
14 listed on Table A (other than units at Kyger Creek,
15 Clifty Creek, and Joppa Stream). Allowances allo-
16 cated pursuant to this paragraph shall not be sub-
17 ject to the 8,900,000 ton limitation in section
18 412(a).

19 “(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND
20 1.20 LBS/MMBTU.—

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

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

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

1 the unit's baseline and the unit's fuel consumption
2 at a 60 percent capacity factor.

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

24 “(4) After January 1, 2000, the Administrator
25 shall allocate annually for each unit, subject to the

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

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

24 “(1) Except as otherwise provided in paragraph
25 (3), after January 1, 2000, it shall be unlawful for

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

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

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

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

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

21 “(4) In addition to allowances allocated pursu-
22 ant to paragraph (1) and section 412(a) as basic
23 Phase II allowance allocations, beginning January 1,
24 2000, and for each calendar year thereafter until
25 and including 2009, inclusive, the Administrator

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

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

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

21 “(B) has more than 10 percent of its fos-
22 sil-fuel capacity consisting of coal-fired unites of
23 less than 75 MWe, and

24 “(C) has large units (greater than 400
25 MWe) all of which have difficult or very dif-

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

1 allowances to emit not less than the total an-
2 nual emissions of all affected units at the
3 source.

4 “(d) COAL-FIRED UNITS BELOW 1.20 LBS/
5 MMBTU.—

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

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

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

23 “(2) After January 1, 2000, it shall be unlawful
24 for any existing coal-fired utility unit the lesser of
25 whose actual or allowable 1985 sulfur dioxide emis-

1 sions rate is equal to, or greater than, 0.60 lbs/
2 mmBtu and less than 1.20 lbs/mmBtu to exceed an
3 annual sulfur dioxide tonnage emissions limitation
4 equal to the product of the unit's baseline multiplied
5 by (A) the lesser of its actual 1985 emissions rate
6 or its allowable 1985 emissions rate, and (B) a nu-
7 merical factor of 120 percent, divided by 2,000, un-
8 less the owner or operator of such unit holds allow-
9 ances to emit not less than the unit's total annual
10 emissions or, for a year after 2007, unless the owner
11 or operator of the source that includes such unit
12 holds allowances to emit not less than the total an-
13 nual emissions of all affected units at the source.

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

1 “(i) the product of the lesser of 0.60
2 lbs.mmBtu or the unit’s allowable 1985 emis-
3 sions rate multiplied by the unit’s baseline ad-
4 justed to reflect operation at a 60 percent ca-
5 pacity factor, divided by 2,000, exceeds

6 “(ii) the number of allowances allocated
7 for the unit pursuant to paragraph (1) and sec-
8 tion 403(a)(1) as basic Phase II allowance allo-
9 cations.

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

21 “(i) the product of the lesser of the unit’s
22 actual 1985 emissions rate or its allowable
23 1985 emissions rate multiplied by the unit’s
24 baseline adjusted to reflect operation at a 60

1 percent capacity factor, divided by 2,000, ex-
2 ceeds

3 “(ii) the number of allowances allocated
4 for the unit pursuant to paragraph (2) and sec-
5 tion 412(a) as basic Phase II allowance alloca-
6 tions.

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

17 “(4) Notwithstanding any other provision of
18 this section, at the election of the owner or operator,
19 after January 1, 2000, the Administrator shall allo-
20 cate in lieu of allocation, pursuant to paragraph (1),
21 (2), (3), (5), or (6), allowances for a unit subject to
22 the emissions limitation requirements of this sub-
23 section which commenced commercial operation on
24 or after January 1, 1981 and before December 31,
25 1985, which was subject to, and in compliance with,

1 section 111 of the Act in an amount equal to the
2 unit's annual fuel consumption, on a Btu basis, at
3 a 65 percent capacity factor multiplied by the unit's
4 allowable 1985 emissions rate, divided by 2,000.

5 “(5) For the purposes of this section, in the
6 case of an oil- and gas-fired unit which has been
7 awarded a clean coal technology demonstration grant
8 as of January 1, 1991, by the United States Depart-
9 ment of Energy, beginning January 1, 2002, the Ad-
10 ministrator shall allocate for the unit allowances in
11 an amount equal to the unit's baseline multiplied by
12 1.20 lbs/mmBtu, divided by 2,000.

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

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

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

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

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

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

23 unless 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 “(2) In addition to allowances allocated pursu-
4 ant to paragraph (1) as basic Phase II allowance al-
5 locations and section 412(a), beginning January 1,
6 2000, the Administrator shall, in the case of any
7 unit operated by a utility that furnishes electricity,
8 electric energy, steam, and natural gas within an
9 area consisting of a city and 1 contiguous county,
10 and in the case of any unit owned by a State author-
11 ity, the output of which unit is furnished within that
12 same area consisting of a city and 1 contiguous
13 county, the Administrator shall allocate for each unit
14 in the utility its pro rata share of 7,000 allowances
15 and for each unit in the State authority its pro rata
16 share of 2,000 allowances.

17 “(g) UNITS THAT COMMENCE OPERATION BETWEEN
18 1986 AND DECEMBER 31, 1995.—

19 “(1) After January 1, 2000, it shall be unlawful
20 for any utility unit that has commenced commercial
21 operation on or after January 1, 1986, but not later
22 than September 30, 1990 to exceed an annual ton-
23 nage emission limitation equal to the product of the
24 unit’s annual fuel consumption, on a Btu basis, at
25 a 65 percent capacity factor multiplied by the unit’s

1 allowance 1985 sulfur dioxide emission rate (con-
 2 verted, if necessary, to pounds per mmBtu), divided
 3 by 2,000 unless the owner or operator of such unit
 4 holds allowances to emit not less than the unit’s
 5 total annual emissions or, for a year after 2007, un-
 6 less the owner or operator of the source that in-
 7 cludes such unit holds allowances to emit not less
 8 than the total annual emissions of all affected units
 9 at the source.

10 “(2) After January 1, 2000, the Administrator
 11 shall allocate allowances pursuant to section 411 to
 12 each unit which is listed in table B of this paragraph
 13 in an annual amount equal to the amount specified
 14 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

15 Notwithstanding any other paragraph of this sub-
 16 section, for units subject to this paragraph, the Ad-
 17 ministrator shall not allocate allowances pursuant to
 18 any other paragraph of this subsection, provided
 19 that the owner or operator of a unit listed on Table

1 B may elect an allocation of allowances under an-
2 other paragraph of this subsection in lieu of an allo-
3 cation under this paragraph.

4 “(3) Beginning January 1, 2000, the Adminis-
5 trator shall allocate to the owner or operator of any
6 utility unit that commences commercial operation, or
7 has commenced commercial operation, on or after
8 October 1, 1990, but not later than December 31,
9 1992 allowances in an amount equal to the product
10 of the unit’s annual fuel consumption, on a Btu
11 basis, at a 65 percent capacity factor multiplied by
12 the lesser of 0.30 lbs/mmBtu or the unit’s allowable
13 sulfur dioxide emission rate (converted, if necessary,
14 to pounds per mmBtu), divided by 2,000.

15 “(4) Beginning January 1, 2000, the Adminis-
16 trator shall allocate to the owner or operator of any
17 utility unit that has commenced construction before
18 December 31, 1990 and that commences commercial
19 operation between January 1, 1993 and December
20 31, 1995, allowances in an amount equal to the
21 product of the unit’s annual fuel consumption, on a
22 Btu basis, at a 65 percent capacity factor multiplied
23 by the lesser of 0.30 lbs/mmBtu or the unit’s allow-
24 able sulfur dioxide emission rate (converted, if nec-
25 essary, to pounds per mmBtu), divided by 2,000.

1 “(5) After January 1, 2000, it shall be unlawful
2 for any existing utility unit that has completed con-
3 version from predominantly gas fired existing oper-
4 ation to coal fired operation between January 1,
5 1985 and December 31, 1987, for which there has
6 been allocated a proposed or final prohibition order
7 pursuant to section 301(b) of the Powerplant and
8 Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et
9 seq, repealed 1987) to exceed an annual sulfur diox-
10 ide tonnage emissions limitation equal to the product
11 of the unit’s annual fuel consumption, on a Btu
12 basis, at a 65 percent capacity factor multiplied by
13 the lesser of 1.20 lbs/mmBtu or the unit’s allowable
14 1987 sulfur dioxide emissions rate, divided by 2,000,
15 unless the owner or operator of such unit has ob-
16 tained allowances equal to its actual emissions or,
17 for a year after 2007, unless the owner or operator
18 of the source that includes such unit holds allow-
19 ances to emit not less than the total annual emis-
20 sions of all affected units at the source.

21 “(6) Unless the Administrator has approved a
22 designation of such facility under section 417, the
23 provisions of this subpart shall not apply to a ‘quali-
24 fying small power production facility’ or ‘qualifying
25 cogeneration facility’ (within the meaning of section

1 3(17)(C) or 3(18)(B) of the Federal Power Act) or
2 to a ‘new independent power production facility’ if,
3 as of November 15, 1990—

4 “(A) an applicable power sales agreement
5 has been executed;

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

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

19 “(D) the facility has been selected as a
20 winning bidder in a utility competitive bid solie-
21 itation.

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

24 “(1) After January 1, 2000, it shall be unlawful
25 for any oil- and gas-fired utility unit whose average

1 annual fuel consumption during the period 1980
2 through 1989 on a Btu basis exceeded 90 percent in
3 the form of natural gas to exceed an annual sulfur
4 dioxide tonnage limitation equal to the product of
5 the unit's baseline multiplied by the unit's actual
6 1985 emissions rate divided by 2,000 unless the
7 owner or operator of such unit holds allowances to
8 emit not less than the unit's total annual emissions
9 or, for a year after 2007, unless the owner or oper-
10 ator of the source that includes such unit holds al-
11 lowances to emit not less than the total annual emis-
12 sions of all affected units at the source.

13 “(2) In addition to allowances allocated pursu-
14 ant to paragraph (1) and section 412(a) as basic
15 Phase II allowance allocations, beginning January 1,
16 2000, and for each calendar year thereafter until
17 and including 2009, the Administrator shall allocate
18 annually for each unit subject to the emissions limi-
19 tation requirements of paragraph (1) allowances
20 from the reserve created pursuant to subsection
21 (a)(2) in an amount equal to the unit's baseline mul-
22 tiplied by 0.050 lbs/mmBtu, divided by 2,000.

23 “(3) In addition to allowances allocated pursu-
24 ant to paragraph (1) and section 412(a), beginning
25 January 1, 2010, the Administrator shall allocate

1 annually for each unit subject to the emissions limi-
2 tation requirements of paragraph (1) allowances in
3 an amount equal to the unit's baseline multiplied by
4 0.050 lbs/mmBtu, divided by 2,000.

5 “(i) UNITS IN HIGH GROWTH STATES.—

6 “(1) In addition to allowances allocated pursu-
7 ant to this section and section 412(a) as basic Phase
8 II allowance allocations, beginning January 1, 2000,
9 the Administrator shall allocate annually allowances
10 for each unit, subject to an emissions limitation re-
11 quirement under this section, and located in a State
12 that—

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

19 “(B) had an installed electrical generating
20 capacity of more than 30,000,000 kw in 1988,
21 in an amount equal to the difference between
22 (A) the number of allowances that would be al-
23 located for the unit pursuant to the emissions
24 limitation requirements of this section applica-
25 ble to the unit adjusted to reflect the unit's an-

1 nual average fuel consumption on a Btu basis
2 of any three consecutive calendar years between
3 1980 and 1989 (inclusive) as elected by the
4 owner or operator and (B) the number of allow-
5 ances allocated for the unit pursuant to the
6 emissions limitation requirements of this sec-
7 tion: *Provided*, That the number of allowances
8 allocated pursuant to this subsection shall not
9 exceed an annual total of 40,000. If necessary
10 to meeting the 40,000 allowance restriction im-
11 posed under this subsection the Administrator
12 shall reduce, pro rata, the additional annual al-
13 lowances allocated to each unit under this sub-
14 section.

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

21 “(A) the lesser of whose actual or allow-
22 able 1980 emissions rate has declined by 50
23 percent or more as of November 15, 1990,

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

1 “(C) which commenced operation after
2 January 1, 1970,

3 “(D) which is owned by a utility company
4 whose combined commercial and industrial kilo-
5 watt-hour sales have increased by more than 20
6 percent between calendar year 1980 and No-
7 vember 15, 1990, and

8 “(E) whose company-wide fossil-fuel sulfur
9 dioxide emissions rate has declined 40 percent
10 or more from 1980 to 1988, allowances in an
11 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 subsection (b)(1) adjusted to reflect the
16 unit’s annual average fuel consumption on
17 a Btu basis for any three consecutive years
18 between 1980 and 1989 (inclusive) as
19 elected by the owner or operator, and

20 “(ii) the number of allowances allo-
21 cated for the unit pursuant to the emis-
22 sions limitation requirements of subsection
23 (b)(1): *Provided*, That the number of al-
24 lowances allocated pursuant to this para-
25 graph shall not exceed an annual total of

1 5,000. If necessary to meeting the 5,000
 2 allowance restriction imposed in the last
 3 clause of the preceding sentence the Ad-
 4 ministrators shall reduce, pro rata, the ad-
 5 ditional allowances allocated to each unit
 6 pursuant to this paragraph.

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

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

22 “(a) ELECTION OF GOVERNOR.—In addition to basic
 23 Phase II allowance allocations, upon the election of the
 24 Governor of any State, with a 1985 statewide annual sul-
 25 fur dioxide emissions rate equal to or less than, 0.80 lbs/

1 mmBtu, averaged over all fossil fuel-fired utility steam
2 generating units, beginning January 1, 2000, and for each
3 calendar year thereafter until and including 2009, the Ad-
4 ministrator shall allocate, in lieu of other Phase II bonus
5 allowance allocations, allowances from the reserve created
6 pursuant to section 414(a)(2) to all such units in the State
7 in an amount equal to 125,000 multiplied by the unit's
8 pro rata share of electricity generated in calendar year
9 1985 at fossil fuel-fired utility steam units in all States
10 eligible for the election.

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

18 “(c) ALLOWANCES AFTER JANUARY 1, 2010.—After
19 January 1, 2010, the Administrator shall allocate allow-
20 ances to units subject to the provisions of this section pur-
21 suant to section 414.

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

23 “(a) APPLICABILITY.—The owner or operator of any
24 unit that is not, nor will become, an affected unit under
25 section 412(b), 413, or 414, that emits sulfur dioxide, may

1 elect to designate that unit or source to become an af-
2 fected unit and to receive allowances under this subpart.
3 An election shall be submitted to the Administrator for
4 approval, along with a permit application and proposed
5 compliance plan in accordance with section 404. The Ad-
6 ministrator shall approve a designation that meets the re-
7 quirements of this section, and such designated unit shall
8 be allocated allowances, and be an affected unit for pur-
9 poses of this subpart.

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

17 “(c) EMISSION LIMITATIONS.—

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

1 the lesser of the unit's actual or allowable emission
2 rate for a calendar year after 1985 (as determined
3 by the Administrator), divided by 2,000.

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

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

23 “(e) LIMITATION.—Any unit designated under this
24 section shall not transfer or bank allowances produced as
25 a result of reduced utilization or shutdown, except that,

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

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

18 **“SEC. 417. AUCTIONS, RESERVE.**

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

22 “(1) 2.8 percent of the allocation of allowances
23 for each year from 1995 through 1999 inclusive; and

1 “(2) 2.8 percent of the basic Phase II allowance
2 allocation of allowances for each year beginning in
3 the year 2000

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

10 “(b) AUCTION SALES.—

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

19 “(2) ANNUAL AUCTIONS.—Commencing in
20 1993 and in each year thereafter until 2010, the Ad-
21 ministrator shall conduct auctions at which the al-
22 lowances referred to in paragraph (1) shall be of-
23 fered for sale in accordance with regulations promul-
24 gated by the Administrator. The allowances referred
25 to in paragraph (1) shall be offered for sale at auc-

1 tion in the amounts specified in table C. The auction
 2 shall be open to any person. A person wishing to bid
 3 for such allowances shall submit (by a date set by
 4 the Administrator) to the Administrator (on a sealed
 5 bid schedule provided by the Administrator) offers to
 6 purchase specified numbers of allowance sat speci-
 7 fied prices. Such regulations shall specify that the
 8 auctioned allowances shall be allocated and sold on
 9 the basis of bid price, starting with the highest-
 10 priced bid and continuing until all allowances for
 11 sale at such auction have been allocated. The regula-
 12 tions shall not permit that a minimum price be set
 13 for the purchase of withheld allowances. Allowances
 14 purchased at the auction may be used for any pur-
 15 pose and at any time after the auction, subject to
 16 the provisions of this subpart and subpart 2.

“TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

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

“TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION—Continued

Year of sale	Spot auction (same year)	Advance auction
2004–2009	125,000	0

Allowances sold in the spot sale in any year are allowances which may be used only in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

1 “(3) PROCEEDS.—

2 “(A) TRANSFER.—Notwithstanding section

3 3302 of title 31 of the United States Code or

4 any other provision of law, within 90 days of re-

5 ceipt, the Administrator shall transfer the pro-

6 ceeds from the auction under this section, on a

7 pro rata basis, to the owners or operators of the

8 affected units at an affected source from whom

9 allowances were withheld under subsection (b).

10 No funds transferred from a purchaser to a

11 seller of allowances under this paragraph shall

12 be held by any officer or employee of the United

13 States or treated for any purpose as revenue to

14 the United States or the Administrator.

15 “(B) RETURN.—At the end of each year,

16 any allowances offered for sale but not sold at

17 the auction shall be returned without charge, on

18 a pro rata basis, to the owner or operator of the

19 affected units from whose allocation the allow-

1 ances were withheld. With 170 days after the
2 date of enactment of the Clear Skies Act of
3 2003, any allowance withheld under paragraph
4 (a)(2) but not offered for sale at an auction
5 shall be returned without charge, on a pro rata
6 basis, to the owner or operator of the affected
7 units from whose allocation the allowances were
8 withheld.

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

19 “(c) CHANGES IN AUCTIONS AND WITHHOLDING.—
20 Pursuant to rulemaking after public notice and comment
21 the Administrator may at any time after the year 1998
22 (in the case of advance auctions) and 2005 (in the case
23 of spot auctions) decrease the number of allowances with-
24 held and sold under this section.

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

11 “(e) The Administrator shall implement this section
12 under 40 CFR part 73 (2002), amended as appropriate
13 by the Administrator.

14 **“SEC. 418. INDUSTRIAL SO₂ EMISSIONS.**

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

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

1 “(B) for a unit commencing service of a
2 generator on or after the date of enactment of
3 the Clear Skies Act of 2003, a unit in a State
4 serving a generator that produces electricity for
5 sale during any year starting with the year the
6 unit commences service of a generator, except
7 for a gas-fired unit serving one or more genera-
8 tors with total nameplate capacity of 25
9 megawatts or less, or a cogeneration unit that
10 produces electricity for sale equal to or less
11 than one-third of the potential electrical output
12 of the generator that it serves, during each year
13 starting with the year the unit commences serv-
14 ices of a generator.

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

21 “(2) The term ‘coal-fired’ with regard to a unit
22 means, for purposes of section 424, combusting coal
23 or any coal-derived fuel alone or in combination with
24 any amount of any other fuel in any year during
25 1998 through 2002 or, for a unit that commenced

1 operation during 2001–2004, a unit designed to
2 combust coal or any coal-derived fuel alone or in
3 combination with any other fuel.

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

7 “(4) The term ‘general account’ means an ac-
8 count in the Allowance Tracking System under sec-
9 tion 403(c) established by the Administrator for any
10 person under 40 CFR § 73.31(c) (2002), amended
11 as appropriate by the Administrator.

12 “(5) The term ‘oil-fired’ with regard to a unit
13 means, for purposes of section 424, combusting fuel
14 oil for more than 10 percent of the unit’s total heat
15 input, and combusting no coal or coal-derived fuel,
16 in any year during 1998 through 2002 or, for a unit
17 that commenced operation during 2001–2004, a unit
18 designed to combust oil for more than 10 percent of
19 the unit’s total heat input and not to combust any
20 coal or coal-derived fuel coal.

21 “(6) The term ‘unit account’ means an account
22 in the Allowance Tracking System under section
23 403(c) established by the Administrator for any unit
24 under 40 CFR § 73.31(a) and (b) (2002), amended
25 as appropriate by the Administrator.

1 **“SEC. 422. APPLICABILITY.**

2 “(a) PROHIBITION.—Starting January 1, 2010, it
3 shall be unlawful for the affected EGUs at a facility to
4 emit a total amount of sulfur dioxide during the year in
5 excess of the number of sulfur dioxide allowances held for
6 such facility for that year by the owner or operator of the
7 facility.

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

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

13 “For affected EGUs for 2010 and each year there-
14 after, the Administrator shall allocate sulfur dioxide allow-
15 ances under section 424, and shall conduct auctions of sul-
16 fur dioxide allowances under section 409, in the amounts
17 in Table A.

“TABLE A.—TOTAL SO₂ ALLOWANCES ALLOCATED OR
AUCTIONED FOR EGUS

Year	SO ₂ allow- ances allocated	SO ₂ allow- ances auctioned
2010	4,371,666	45,000
2011	4,326,667	90,000
2012	4,281,667	135,000
2013	4,320,000	180,000
2014	4,275,000	225,000
2015	4,230,000	270,000
2016	4,185,000	315,000
2017	4,140,000	360,000
2018	2,730,000	270,000
2019	2,700,000	300,000
2020	2,670,000	330,000
2021	2,640,000	360,000

“TABLE A.—TOTAL SO₂ ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS—Continued

Year	SO ₂ allow- ances allocated	SO ₂ allow- ances auctioned
2022	2,610,000	390,000
2023	2,580,000	420,000
2024	2,550,000	450,000
2025	2,520,000	480,000
2026	2,490,000	510,000
2027	2,460,000	540,000
2028	2,430,000	570,000
2029	2,400,000	600,000
2030	2,325,000	675,000
2031	2,250,000	750,000
2032	2,175,000	825,000
2033	2,100,000	900,000
2034	2,025,000	975,000
2035	1,950,000	1,050,000
2036	1,875,000	1,125,000
2037	1,800,000	1,200,000
2038	1,725,000	1,275,000
2039	1,650,000	1,350,000
2040	1,575,000	1,425,000
2041	1,500,000	1,500,000
2042	1,425,000	1,575,000
2043	1,350,000	1,650,000
2044	1,275,000	1,725,000
2045	1,200,000	1,800,000
2046	1,125,000	1,875,000
2047	1,050,000	1,950,000
2048	975,000	2,025,000
2049	900,000	2,100,000
2050	825,000	2,175,000
2051	750,000	2,250,000
2052	675,000	2,325,000
2053	600,000	2,400,000
2054	525,000	2,475,000
2055	450,000	2,550,000
2056	375,000	2,625,000
2057	300,000	2,700,000
2058	225,000	2,775,000
2059	150,000	2,850,000
2060	75,000	2,925,000
2061	0	3,000,000

1 **“SEC. 424. EGU ALLOCATIONS.**

2 “(a) IN GENERAL.—Not later than 24 months before
3 the commencement date of the sulfur dioxide allowance re-

1 quirement of section 422, the Administrator shall promul-
2 gate regulations determining allocations of sulfur dioxide
3 allowances for affected EGUs for each year during 2010
4 through 2060. The regulations shall provide that:

5 “(1)(A) 95 percent of the total amount of sul-
6 fur dioxide allowances allocated each year under sec-
7 tion 423 shall be allocated based on the sulfur diox-
8 ide allowances that were allocated under subpart 1
9 for 2010 or thereafter and are held in unit accounts
10 and general accounts in the Allowance Tracking Sys-
11 tem under section 403(c).

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

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

1 appropriate by the Administrator, except that
2 the Administrator shall apply a discount rate of
3 7 percent for each year after 2010 to the
4 amounts of sulfur dioxide allowances allocated
5 for 2011 or later.

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

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

1 dioxide allowances determined under clause (ii)
2 for that general account.

3 “(2)(A) 3½ percent of the total amount of sul-
4 fur dioxide allowances allocated each year under sec-
5 tion 423 shall be allocated for units at a facility that
6 are affected EGUs as of December 31, 2004, that
7 commenced operation before January 1, 2001, and
8 that are not allocated any sulfur dioxide allowances
9 under subpart 1.

10 “(B) The Administrator shall allocate each year
11 for the units under subparagraph (A) an amount of
12 sulfur dioxide allowances determined by:

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

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

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

1 “(iv) If the total of the amounts for all fa-
2 cilities under clauses (i), (ii), and (iii) exceeds
3 the allocation amount under subparagraph (A),
4 multiplying the allocation amount under sub-
5 paragraph (A) by the ratio of the total of the
6 amounts for the facility under clauses (i), (ii),
7 and (iii) to the total of the amounts for all fa-
8 cilities under clause (i), (ii), and (iii).

9 “(v) Allocating to each facility the lesser of
10 the total of the amounts for the facility under
11 clauses (i), (ii), and (iii) or, if the total of the
12 amounts for all facilities under clauses (i), (ii),
13 and (iii) exceeds the allocation amount under
14 subparagraph (A), the amount under clause
15 (iv). The Administrator shall add to the amount
16 of sulfur dioxide allowances allocated under
17 paragraph (3) any unallocated allowances under
18 this paragraph.

19 “(3)(A) 1½ percent of the total amount of sul-
20 fur dioxide allowances allocated each year under sec-
21 tion 423 shall be allocated for units that are affected
22 EGUs as of December 31, 2004, that commence op-
23 eration on or after January 1, 2001 and before Jan-
24 uary 1, 2005, and that are not allocated any sulfur
25 dioxide allowances under subpart 1.

1 “(B) The Administrator shall allocate each year
2 for the units under subparagraph (A) an amount of
3 sulfur dioxide allowances determined by:

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

8 “(ii) For all such other units at the facility
9 that are not covered by clause (i), multiplying
10 0.02 lb/mmBtu by the total baseline heat input
11 of such units and converting to tons.

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

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

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

6 “(b) FAILURE TO PROMULGATE.—(1) If, by the date
7 18 months before January 1 of each year 2010 through
8 2060, the Administrator has signed proposed regulations,
9 but has not promulgated final regulations, determining al-
10 locations under subsection (a), the Administrator shall al-
11 locate, for such year, for each facility where an affected
12 EGU is located, and for each general account, the amount
13 of sulfur dioxide allowances specified for that facility and
14 the general account in such proposed regulations.

15 “(2) If, by the date 18 months before January 1 of
16 each year 2010 through 2060, the Administrator has not
17 signed proposed regulations determining allocations under
18 subsection (a), the Administrator shall—

19 “(A) determine, for such year, for each unit
20 with coal as its primary or secondary fuel or residual
21 oil as its primary fuel listed in the Administrator’s
22 Emissions Scorecard 2001, Appendix B, Table B1
23 an amount of sulfur dioxide allowances by multi-
24 plying 95 percent of the allocation amount under
25 section 423 by the ratio of such unit’s heat input in

1 the Emissions Scorecard 2001, Appendix B, Table
2 B1 to the total of the heat input in the Emissions
3 Scorecard 2001, Appendix B, Table B1 for all units
4 with coal as their primary or secondary fuel or resid-
5 ual oil as their primary fuel;

6 “(B) allocate, for such year, for each facility
7 where a unit under subparagraph (A) is located the
8 total of the amounts of sulfur dioxide allowances for
9 the units at such facility determined under subpara-
10 graph (A); and

11 “(C) auction an amount of sulfur dioxide allow-
12 ances equal to 5 percent of the allocation amount
13 under section 423 and conduct the auction on the
14 first business day in October following the respective
15 promulgation deadline under paragraph (1) and in
16 accordance with section 409.

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

19 “(a) REMOVAL FROM ACCOUNTS.—After allocating
20 allowances under section 424(a)(1), the Administrator
21 shall remove from the unit accounts and general accounts
22 in the Allowance Tracking System under section 403(c)
23 and from the Special Allowances Reserve under section
24 418 all sulfur dioxide allowances allocated or deposited
25 under subpart 1 for 2010 or later.

1 “(b) REGULATIONS.—The Administrator shall pro-
2 mulgate regulations as necessary to assure that the re-
3 quirement to hold allowances under section 422 may be
4 met using sulfur dioxide allowances allocated under sub-
5 part 1 for 1995 through 2009.

6 **“SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION**
7 **CONTROL TECHNOLOGY.**

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

13 “(b) APPLICATION.—Not later than 18 months after
14 the enactment of the Clear Skies Act of 2003, an owner
15 or operator of an affected EGU that commenced operation
16 before 2001 and that during 2001 combusted Eastern bi-
17 tuminous may submit an application to the Administrator
18 for sulfur dioxide allowances from the reserve under sub-
19 section (a). The application shall include each of the fol-
20 lowing:

21 “(1) A statement that the owner or operator
22 will install and commence operation of specified sul-
23 fur dioxide control technology at the unit within 24
24 months after approval of the application under sub-
25 section (c) if the unit is allocated the sulfur dioxide

1 allowances requested under paragraph (4). The
2 owner or operator shall provide description of the
3 control technology.

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

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

1 stream of such control technology, while the unit is
2 combusting fuel in accordance with paragraph (2).

3 “(4) A request that EPA allocate for the unit
4 a specified number of sulfur dioxide allowances from
5 the reserve under subsection (a) for the period start-
6 ing with the commencement of operation of the sul-
7 fur dioxide technology under paragraph (1) through
8 2009.

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

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

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

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

23 “(3) for each application listed under paragraph
24 (2), multiply the amount of sulfur dioxide emission
25 reductions requested by each allowance-to-emission-

1 reduction ratio on the list that equals or is less than
2 the ratio for the application;

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

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

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

17 “(d) MONITORING.—An owner or operator whose ap-
18 plication is approved under subsection (c) shall install, and
19 quality assure data from, a CEMS for sulfur dioxide lo-
20 cated upstream of the sulfur dioxide control technology
21 under paragraph (b)(1) at the unit and a CEMS for sulfur
22 dioxide located downstream of such control technology at
23 the unit during the period starting with the commence-
24 ment of operation of such control technology through
25 2009. The installation of the CEMS and the quality assur-

1 ance of data shall be in accordance with subparagraph
2 (a)(2)(B) and subsections (c) through (e) of section 405,
3 except that, where two or more units utilize a single stock,
4 separate monitoring shall be required for each unit.

5 “(e) ALLOCATIONS.—Not later than 6 months after
6 the commencement date of the sulfur dioxide allowance
7 requirement of section 422, for the units for which appli-
8 cations are approved under subsection (c), the Adminis-
9 trator shall allocate sulfur dioxide allowances as follows:

10 “(1) For each unit, the Administrator shall
11 multiply the allowance-to-emission-reduction ratio of
12 the last application that EPA approved under sub-
13 section (c) by the lesser of—

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

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

23 “(2) If the total amount of sulfur dioxide allow-
24 ances determined for all units under paragraph (1)
25 exceeds 250,000 sulfur dioxide allowances, the Ad-

1 administrator shall multiply 250,000 sulfur dioxide al-
2 lowances by the ratio of the amount of sulfur dioxide
3 allowances determined for each unit under para-
4 graph (1) to the total amount of sulfur dioxide al-
5 lowances determined for all units under paragraph
6 (1).

7 “(3) The Administrator shall allocate to each
8 unit the lesser of the amount determined for that
9 unit under paragraph (1) or, if the total amount of
10 sulfur dioxide allowances determined for all units
11 under paragraph (1) exceeds 250,000 sulfur dioxide
12 allowances, under paragraph (2). The Administrator
13 shall auction any unallocated allowances from the re-
14 serve under this section and conduct the auction by
15 the first business day in October 2010 and in ac-
16 cordance with section 409.

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

18 **“SEC. 431. DEFINITIONS.**

19 “For purposes of this subpart—

20 “(1) The term ‘adjusted baseline heat input’
21 means the average annual heat input used by a unit
22 during the three years in which the unit had the
23 highest heat input for the period from the eighth
24 through the fourth year before the first covered
25 year.

1 “(A) Notwithstanding paragraph (1), if a
2 unit commences operation during such period
3 and—

4 “(i) on or after January 1 of the fifth
5 year before the first covered year, then ‘ad-
6 justed baseline heat input’ shall mean the
7 average annual heat input used by the unit
8 during the fifth and fourth years before
9 the first covered year; and

10 “(ii) on or after January 1 of the
11 fourth year before the first covered year,
12 then ‘adjusted baseline heat input’ shall
13 mean the annual heat input used by the
14 unit during the fourth year before the first
15 covered year.

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

18 “(i) required to be reported under sec-
19 tion 405 for the unit, if the unit was re-
20 quired to report heat input during the year
21 under that section;

22 “(ii) reported to the Energy Informa-
23 tion Administrator for the unit, if the unit
24 was not required to report heat input
25 under section 405;

1 “(iii) based on data for the unit re-
2 ported to the WRAP State where the unit
3 is located as required by State law, if the
4 unit was not required to report heat input
5 during the year under section 405 and did
6 not report to the Energy Information Ad-
7 ministration; or

8 “(iv) based on fuel use and fuel heat
9 content data for the unit from fuel pur-
10 chase or use records, if the unit was not
11 required to report heat input during the
12 year under section 405 and did not report
13 to the Energy Information Administration
14 and the WRAP State.

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

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

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

24 “(3) The term ‘coal-fired’ with regard to a unit
25 means, for purposes of section 434, a unit com-

1 busting coal or any coal-derived fuel alone or in com-
2 bination with any amount of any other fuel in any
3 year during the period from the eighth through the
4 fourth year before the first covered year.

5 “(4) The term ‘covered year’ means—

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

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

23 “(B) each year after the ‘covered year’
24 under subparagraph (A).

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

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

11 **“SEC. 432. APPLICABILITY.**

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

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

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

22 “For affected EGUs, the total amount of sulfur diox-
23 ide allowances that the Administrator shall allocate for
24 each covered year under section 434 shall equal 271,000
25 tons.

1 **“SEC. 434. EGU ALLOCATIONS.**

2 “(a) IN GENERAL.—By January 1 of the year before
3 the first covered year, the Administrator shall promulgate
4 regulations determining, for each covered year, the alloca-
5 tions of sulfur dioxide allowances for the units at a facility
6 that are affected EGUs as of December 31 of the fourth
7 year before the covered year by—

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

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

16 “(3) for all such other units at the facility that
17 are not covered by paragraph (1) or (2) multiplying
18 0.05 lb/mmBtu by the total adjusted baseline heat
19 input of such units and converting to tons; and

20 “(4) multiplying the allocation amount under
21 section 433 by the ratio of the total of the amounts
22 for the facility under paragraphs (1), (2), and (3) to
23 the total of the amounts for all facilities under para-
24 graphs (1), (2), and (3).

25 “(b) FAILURE TO PROMULGATE.—(1) For each cov-
26 ered year, if, by the date 18 months before January 1 of

1 such year, the Administrator has signed proposed regula-
2 tions but has not promulgated final regulations deter-
3 mining allocations under paragraph (a), then the Adminis-
4 trator shall allocate, for such year, for each facility where
5 an affected EGU is located the amount of sulfur dioxide
6 allowances specified for that facility in such proposed reg-
7 ulations.

8 “(2) For each covered year, if, by the date 18 months
9 before January 1 of such year, the Administrator has not
10 signed proposed regulations determining allocations under
11 subsection (a), the Administrator shall—

12 “(A) determine, for such year, for each affected
13 EGU with coal as its primary or secondary fuel or
14 residual oil as its primary fuel listed in the Adminis-
15 trator’s Emissions Scorecard 2001, Appendix B,
16 Table B1 an amount of sulfur dioxide allowances by
17 multiplying 95 percent of the allocation amount
18 under section 433 by the ratio of such unit’s heat
19 input in the Emissions Scorecard 2001, Appendix B,
20 Table B1 to the total of the heat input in the Emis-
21 sions Scorecard 2001, Appendix B, Table B1 for all
22 affected EGUs with coal as their primary or sec-
23 ondary fuel or residual oil as their primary fuel;

24 “(B) allocate, for such year, for each facility
25 where a unit under subparagraph (A) is located the

1 total amounts of sulfur dioxide allowances for the
 2 units at such facility determined under subpara-
 3 graph (A); and

4 “(C) auction an amount of sulfur dioxide allow-
 5 ances equal to 5 percent of the allocation amount
 6 under section 433 and conduct the auction on the
 7 first business day in October following the respective
 8 promulgation deadline under paragraph (1) and in
 9 accordance with section 409.

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

11 **EMISSION REDUCTIONS**

12 **“Subpart 1—Acid Rain Program**

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

15 “(a) **APPLICABILITY.**—On the date that a coal-fired
 16 utility unit becomes an affected unit pursuant to sections
 17 413 or 414, or on the date a unit subject to the provisions
 18 of section 413(d), must meet the SO₂ reduction require-
 19 ments, each such unit shall become an affected unit for
 20 purposes of this section and shall be subject to the emis-
 21 sion limitations for nitrogen oxides set forth herein.

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

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

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

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

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

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

22 “(B) cyclones;

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

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

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

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

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

1 “(B) a unit subject to subsection (b)(2) cannot
2 meet the applicable rate using the technology on
3 which the Administrator based the applicable emis-
4 sion limitation.

5 “(2) The permitting authority shall base such deter-
6 mination upon a showing satisfactory to the permitting
7 authority, in accordance with regulations established by
8 the Administrator, that the owner or operator—

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

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

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

23 “(i) that permits the unit during the dem-
24 onstration period referred to in subparagraph

1 (B), to emit at a rate in excess of the applicable
2 emission rate;

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

7 “(3) Units subject to subsection (b)(1) for which an
8 alternative emission limitation is established shall not be
9 required to install any additional control technology be-
10 yond low NO_x burners. Nothing in this section shall pre-
11 clude an owner or operator from installing and operating
12 an alternative NO_x control technology capable of achiev-
13 ing the applicable emission limitation. The Administrator
14 shall implement this subsection under 40 CFR part 76
15 (2002), amended as appropriate by the Administrator.

16 “(d) EMISSIONS AVERAGING.—(1) In lieu of com-
17 plying with the applicable emission limitations under sub-
18 section (b)(1), (2), or (c), the owner or operator of two
19 or more units subject to one or more of the applicable
20 emission limitations set pursuant to these sections, may
21 petition the permitting authority for alternative contem-
22 poraneous annual emission limitations for such units that
23 ensure that—

24 “(A) the actual annual emission rate in pounds
25 of nitrogen oxides per million Btu averaged over the

1 units in question is a rate that is less than or equal
2 to

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

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

21 **“SEC. 442. TERMINATION.**

22 “Starting January 1, 2008, owner or operator of af-
23 fected units and affected facilities under section 441 shall
24 no longer be subject to the requirements of that section.

1 **“Subpart 2—Clear Skies Nitrogen Oxides Allowance**
2 **Program**

3 **“SEC. 451. DEFINITIONS.**

4 “For purposes of this subpart:

5 “(1) The term ‘affected EGU’ means—

6 “(A) for a unit serving a generator before
7 the date of enactment of the Clear Skies Act of
8 2003, a unit in a State serving a generator with
9 a nameplate capacity of greater than 25
10 megawatts that produced or produces electricity
11 for sale during 2002 or any year thereafter, ex-
12 cept for a cogeneration unit that produced or
13 produces electricity for sale equal to or less
14 than one-third of the potential electrical output
15 of the generator that it served or serves during
16 2002 and each year thereafter; and

17 “(B) for a unit commencing service of a
18 generator on or after the date of enactment of
19 the Clear Skies Act of 2003, a unit in a State
20 serving a generator that produces electricity for
21 sale during any year starting with the year the
22 unit commences service of a generator, except
23 for a gas-fired unit serving one or more genera-
24 tors with total nameplate capacity of 25
25 megawatts or less, or a cogeneration unit that
26 produces electricity for sale equal to or less

1 than one-third of the potential electrical output
2 of the generator that it serves, during each year
3 starting with the unit commences service of a
4 generator.

5 “(C) Notwithstanding paragraphs (A) and
6 (B), the term ‘affected EGU’ does not include
7 a solid waste incineration unit subject to section
8 129 or a unit for the treatment, storage, or dis-
9 posal of hazardous waste subject to section
10 3005 of the Solid Waste Disposal Act.

11 “(2) The term ‘Zone 1 State’ means Alabama,
12 Arkansas, Connecticut, Delaware, the District of Co-
13 lumbia, Florida, Georgia, Illinois, Indiana, Iowa,
14 Kentucky, Louisiana, Maine, Maryland, Massachu-
15 setts, Michigan, Minnesota, Mississippi, Missouri,
16 New Hampshire, New Jersey, New York, North
17 Carolina, Ohio, Pennsylvania, Rhode Island, South
18 Carolina, Tennessee, Texas east of Interstate 35,
19 Vermont, Virginia, West Virginia, and Wisconsin.

20 “(3) The term ‘Zone 2 State’ means Alaska,
21 American Samoa, Arizona, California, Colorado, the
22 Commonwealth of Northern Mariana Islands, the
23 Commonwealth of Puerto Rico, Guam, Hawaii,
24 Idaho, Kansas, Montana, Nebraska, North Dakota,
25 New Mexico, Nevada, Oklahoma, Oregon, South Da-

1 kota, Texas west of Interstate 35, Utah, the Virgin
2 Islands, Washington, and Wyoming.

3 **“SEC. 452. APPLICABILITY.**

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

10 “(2) Only nitrogen oxides allowances under section
11 453(a) shall be held in order to meet the requirements
12 of paragraph (1), except as provided under section 465.

13 “(b) ZONE 2 PROHIBITION.—(1) Starting January 1,
14 2008, it shall be unlawful for the affected EGUs at a facil-
15 ity in a Zone 2 State to emit a total amount of nitrogen
16 oxides during a year in excess of the number of nitrogen
17 oxides allowances held for such facility for that year by
18 the owner or operator of the facility.

19 “(2) Only nitrogen oxides allowances under section
20 453(b) shall be held in order to meet the requirements
21 of paragraph (1).

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

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

1 under section 454(a), and conduct auctions of nitrogen ox-
 2 ides allowances under section 409, in the amounts in
 3 Table A.

“TABLE A.—TOTAL NO_x ALLOWANCES ALLOCATED OR
 AUCTIONED FOR EGUS IN ZONE 1

Year	NO _x allow- ances allocated	NO _x allow- ances auctioned
2008	1,546,380	15,620
2009	1,530,760	31,240
2010	1,515,140	46,860
2011	1,499,520	62,480
2012	1,483,900	78,100
2013	1,468,280	93,720
2014	1,452,660	109,340
2015	1,437,040	124,960
2016	1,421,420	140,580
2017	1,405,800	156,200
2018	1,034,180	127,820
2019	1,022,560	139,440
2020	1,010,940	151,060
2021	999,320	162,680
2022	987,700	174,300
2023	976,080	185,920
2024	964,460	197,540
2025	952,840	209,160
2026	941,220	220,780
2027	929,600	232,400
2028	900,550	261,450
2029	871,500	290,500
2030	842,450	319,550
2031	813,400	348,600
2032	784,350	377,650
2033	755,300	406,700
2034	726,250	435,750
2035	697,200	464,800
2036	668,150	493,850
2037	639,100	522,900
2038	610,050	551,950
2039	581,000	581,000
2040	551,950	610,050
2041	522,900	639,100
2042	493,850	668,150
2043	464,800	697,200
2044	435,750	726,250
2045	406,700	755,300
2046	377,650	784,350
2047	348,600	813,400
2048	319,550	842,450
2049	290,500	871,500

“TABLE A.—TOTAL NO_x ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS IN ZONE 1—Continued

Year	NO _x allowances allocated	NO _x allowances auctioned
2050	261,450	900,550
2051	232,400	929,550
2052	203,350	958,650
2053	174,300	987,700
2054	145,250	1,016,750
2055	116,200	1,045,800
2056	87,150	1,074,850
2057	58,100	1,103,900
2058	29,050	1,132,950
2059	0	1,162,000

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), and conduct auctions of nitrogen ox-
5 ides allowances under section 409, in the amounts in
6 Table B.

“TABLE B.—TOTAL NO_x ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

Year	NO _x allowance allocated	NO _x allowance auctioned
2008	532,620	5,380
2009	527,240	10,760
2010	521,860	16,140
2011	516,480	21,520
2012	511,100	26,900
2013	505,720	32,280
2014	500,340	37,660
2015	494,960	43,040
2016	489,580	48,420
2017	484,200	53,800
2018	478,820	59,180
2019	473,440	64,560
2020	468,060	69,940
2021	462,680	75,320
2022	457,300	80,700
2023	451,920	86,080
2024	446,540	91,460
2025	441,160	96,840

“TABLE B.—TOTAL NO_x ALLOWANCES ALLOCATED FOR
EGUS IN ZONE 2—Continued

Year	NO _x allowance allocated	NO _x allowance auctioned
2026	435,780	102,220
2027	430,400	107,600
2028	416,950	121,050
2029	403,500	134,500
2030	390,050	147,950
2031	376,600	161,400
2032	363,150	174,850
2033	349,700	188,300
2034	336,250	201,750
2035	322,800	215,200
2036	309,350	228,650
2037	295,900	242,100
2038	282,450	255,550
2039	269,000	269,000
2040	255,550	282,450
2041	242,100	295,900
2042	228,650	309,350
2043	215,200	322,800
2044	201,750	336,250
2045	188,300	349,700
2046	174,850	363,150
2047	161,400	376,600
2048	147,950	390,050
2049	134,500	403,500
2050	121,050	416,950
2051	107,600	430,400
2052	94,150	443,850
2053	80,700	457,300
2054	67,250	470,750
2055	53,800	484,200
2056	40,350	497,650
2057	26,900	511,100
2058	13,450	524,550
2059	0	538,000

1 **“SEC. 454. EGU ALLOCATIONS.**

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

3 “(1) EPA REGULATIONS.—Not later than 18
4 months before the commencement date of the nitro-
5 gen oxides allowance requirement of section 452, the
6 Administrator shall promulgate regulations deter-

1 mining the allocation of nitrogen oxides allowances
2 for each year during 2008 through 2058 for units
3 at a facility in a Zone 1 State that commence oper-
4 ation by and are affected EGUs as of December 31,
5 2004. The regulations shall determine the allocation
6 for such units for each year by multiplying the allo-
7 cation amount under section 453(a) by the ratio of
8 the total amount of baseline heat input of such units
9 at the facility to the total amount of baseline heat
10 input of all affected EGUs in the Zone 1 States.

11 “(2) FAILURE TO REGULATE.—(A) For each
12 year 2008 through 2058, if, by the date 18 months
13 before January 1 of such year, the Administrator—

14 “(i) has promulgated regulations under
15 section 403(b) providing for the transfer of ni-
16 trogen oxides allowances and section 403(c) es-
17 tablishing the Allowance Tracking System for
18 nitrogen oxides allowances; and

19 “(ii) has signed proposed regulations but
20 has not promulgated final regulations deter-
21 mining allocations under paragraph (1),

22 the Administrator shall allocate, for such year,
23 for each facility where an affected EGU is located
24 in the Zone 1 States the amount of nitrogen oxides

1 allowances specified for that facility in such pro-
2 posed regulations.

3 “(B) For each year 2008 through 2058, if, by
4 the date 18 months before January 1 of such year,
5 the Administrator—

6 “(i) has promulgated regulations under
7 section 403(b) providing for the transfer of ni-
8 trogen oxides allowances and section 403(c) es-
9 tablishing the Allowance Tracking System for
10 nitrogen oxides allowances; and

11 “(ii) has not signed proposed regulations
12 determining allocations under paragraph (1),

13 the Administrator shall make allocations, for
14 such year, for each unit in the Zone 1 States listed
15 in the Administrator’s Emissions Scorecard 2001,
16 Appendix B, Table B1 as provided in subparagraph
17 (C).

18 “(C) Allocations of nitrogen oxides allowances
19 for a unit under this subparagraph shall be deter-
20 mined by multiplying 95 percent of the allocation
21 amount under section 453(a) by the ratio of such
22 unit’s heat input in the Emissions Scorecard 2001,
23 Appendix B, Table B1 to the total of the heat input
24 in the Emissions Scorecard 2001, Appendix B,
25 Table B1 for all units in the Zone 1 States.

1 “(D) When the Administrator makes an alloca-
2 tion under subparagraph (C), the Administrator
3 shall—

4 “(i) allocate for each facility where a unit
5 referred to in subparagraph (C) is located the
6 total of the amounts of nitrogen oxides allow-
7 ances for the units at such facility, and

8 “(ii) auction an amount of nitrogen oxides
9 allowances equal to 5 percent of the allocation
10 amount under section 453(a) and conduct the
11 auction on the first business day in October fol-
12 lowing the respective promulgation deadline re-
13 ferred to in subparagraph (A) and in accord-
14 ance with section 409.

15 “(E) For each year 2008 through 2058, if the
16 Administrator has not signed proposed regulations
17 referred to in subparagraph (A) and has not promul-
18 gated the regulations under section 403(b) providing
19 for the transfer of nitrogen oxides allowances and
20 section 403(c) establishing the Allowance Tracking
21 System for nitrogen oxides allowances, by the date
22 18 months before January 1 of such year, then it
23 shall be unlawful for an affected EGU in the Zone
24 1 States to emit nitrogen oxides during such year in
25 excess of 0.14 lb/mmBtu.

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

2 “(1) EPA REGULATIONS.—Not later than 18
3 months before the commencement date of the nitro-
4 gen oxides allowance requirement of section 452, the
5 Administrator shall promulgate regulations deter-
6 mining the allocation of nitrogen oxides allowances
7 for each year during 2008 through 2058 for units
8 at a facility in a Zone 2 State that commence oper-
9 ation by and are affected EGUs as of December 31,
10 2004. The regulations shall determine the allocation
11 for such units for each year by multiplying the allo-
12 cation amount under section 453(b) by the ratio of
13 the total amount of baseline heat input of such units
14 at the facility to the total amount of baseline heat
15 input of all affected EGUs in the Zone 2 States.

16 “(2) FAILURE TO REGULATE.—(A) For each
17 year 2008 through 2058, if, by the date 18 months
18 before January 1 of such year, the Administrator—

19 “(i) has promulgated regulations under
20 section 403(b) providing for the transfer of ni-
21 trogen oxides allowances and section 403(c) es-
22 tablishing the Allowance Tracking System for
23 nitrogen oxides allowances; and

1 “(ii) has signed proposed regulations but
2 has not promulgated final regulations deter-
3 mining allocations under paragraph (1),
4 the Administrator shall allocate, for such year,
5 for each facility where an affected EGU is located
6 in the Zone 2 States the amount of nitrogen oxides
7 allowances specified for that facility in such pro-
8 posed regulations.

9 “(B) For each year 2008 through 2058, if, by
10 the date 18 months before January 1 of such year,
11 the Administrator—

12 “(i) has promulgated regulations under
13 section 403(b) providing for the transfer of ni-
14 trogen oxides allowances and section 403(c) es-
15 tablishing the Allowance Tracking System for
16 nitrogen oxides allowances; and

17 “(ii) has not signed proposed regulations
18 determining allocations under paragraph (1),
19 the Administrator shall make allocations, for
20 such year, for each unit in the Zone 2 States listed
21 in the Administrator’s Emissions Scorecard 2001,
22 Appendix B, Table B1 as provided in subparagraph
23 (C).

24 “(C) Allocations of nitrogen oxides allowances
25 for a unit under this subparagraph shall be deter-

1 mined by multiplying 95 percent of the allocation
2 amount under section 453(b) by the ratio of such
3 unit's heat input in the Emissions Scorecard 2001,
4 Appendix B, Table B1 to the total of the heat input
5 in the Emissions Scorecard 2001, Appendix B,
6 Table B1 for all units in the Zone 2 States.

7 “(D) When the Administrator make an alloca-
8 tion under subparagraph (C), the Administrator
9 shall—

10 “(i) allocate for each facility where a unit
11 referred to in subparagraph (C) is located the
12 total of the amounts of nitrogen oxides allow-
13 ances for the units at such facility, and

14 “(ii) auction an amount of nitrogen oxides
15 allowances equal to 5 percent of the allocation
16 amount under section 453(b) and conduct the
17 auction on the first business day in October fol-
18 lowing the respective promulgation deadline re-
19 ferred to in subparagraph (A) and in accord-
20 ance with section 409.

21 “(E) For each year 2008 through 2058, if the
22 Administrator has not signed proposed regulations
23 referred to in subparagraph (A) and has not promul-
24 gated the regulations under section 403(b) providing
25 for the transfer of nitrogen oxides allowances and

1 section 403(c) establishing the Allowance Tracking
2 System for nitrogen oxides allowances, by the date
3 18 months before January 1 of such year, then it
4 shall be unlawful for an affected EGU in the Zone
5 2 States to emit nitrogen oxides during such year
6 in excess of 0.25 lb/mmBtu.

7 **“Subpart 3—Ozone Season No_x Budget Program**

8 **“SEC. 461. DEFINITIONS.**

9 “For purposes of this subpart:

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

11 “(A) with regard to Connecticut, Delaware,
12 the District of Columbia, Maryland, Massachu-
13 setts, New Jersey, New York, Pennsylvania,
14 and Rhode Island, the period May 1 through
15 September 30 for each year starting in 2003;
16 and

17 “(B) with regard to all other States, the
18 period May 30, 2004 through September 30,
19 2004 and the period May 1 through September
20 30 for each year thereafter.

21 “(2) The term ‘NO_x SIP Call State’ means
22 Connecticut, Delaware, the District of Columbia, Il-
23 linois, Indiana, Kentucky, Maryland, Massachusetts,
24 New Jersey, New York, North Carolina, Ohio, Penn-
25 sylvania, Rhode Island, South Carolina, Tennessee,

1 Virginia, and West Virginia and the fine grid por-
2 tions of Alabama, Georgia, Michigan, and Missouri.

3 “(3) The term ‘fine grid portions of Alabama,
4 Georgia, Michigan, and Missouri’ means the areas in
5 Alabama, Georgia, Michigan, and Missouri subject
6 to 40 CFR § 51.121 (2001), as it would be amended
7 in the notice of proposed rulemaking at 67 Federal
8 Register 8396 (February 22, 2002).

9 **“SEC. 462. GENERAL PROVISIONS.**

10 “The provisions of sections 402 through 406 and sec-
11 tion 409 shall not apply to this subpart.

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

13 “(a) SIPs.—Except as provided in subsection (b), the
14 applicable implementation plan for each NO_x SIP Call
15 State shall be consistent with the requirements, including
16 the NO_x SIP Call State’s nitrogen oxides budget and com-
17 pliance supplement pool, in 40 CFR §§ 51.121 and 51.122
18 (2001), as it would be amended in the notice of proposed
19 rulemaking at 67 Federal Register 8396 (February 22,
20 2002).

21 “(b) REQUIREMENTS.—Notwithstanding any provi-
22 sion to the contrary in 40 CFR §§ 51.121 and 51.122
23 (2001), as it would be amended in the notice of proposed
24 rulemaking at 67 Federal Register 8396 (February 22,
25 2002)—

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

5 “(2) starting January 1, 2008—

6 “(A) the owners and operators of a boiler,
7 combustion turbine, or integrated gasification
8 combined cycle plant subject to emission reduc-
9 tion requirements or limitations under part B,
10 C, or D shall not longer be subject to the re-
11 quirements in a NO_x SIP Call State’s applica-
12 ble implementation plan that meet the require-
13 ments of subsection (a) and paragraph (1); and

14 “(B) notwithstanding subparagraph (A), if
15 the Administrator determines, by December 31,
16 2007, that a NO_x SIP Call State’s applicable
17 implementation plan meets the requirements of
18 subsection (a) and paragraph (1), such applica-
19 ble implementation plan shall be deemed to con-
20 tinue to meet such requirements; and

21 “(3)(A) The owner or operator of a boiler, com-
22 bustion turbine, or combined cycle system may sub-
23 mit to the Administrator a petition to allow use of
24 nitrogen oxides allowances allocated for 2005 to
25 meet the applicable requirement to hold nitrogen ox-

1 ides allowances at least equal to 2004 ozone season
2 emissions of such boiler, combustion turbine, or
3 combined cycle system.

4 “(B) A petition under this paragraph shall be
5 submitted to the Administrator by February 1,
6 2004.

7 “(C) The petition shall demonstrate that the
8 owner or operator made reasonable efforts to install,
9 at the boiler, combustion turbine, or combined cycle
10 system, nitrogen oxides control technology designed
11 to allow the owner or operator to meet such require-
12 ment to hold nitrogen oxides allowances.

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

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

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

23 “(E) The petition shall include a statement by
24 the NO_x SIP Call State where the boiler, combus-
25 tion turbine, or combined cycle system is located

1 that the NO_x SIP Call State does not object to the
2 petition.

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

6 “(c) SAVINGS PROVISION.—Nothing in this section or
7 section 464 shall preclude or deny the right of any State
8 or political subdivision thereof to adopt or enforce any reg-
9 ulation, requirement, limitation, or standard, relating to
10 a boiler, combustion turbine, or integrated gasification
11 combined cycle plant subject to emission reduction re-
12 quirements or limitations under part B, C, or D, that is
13 more stringent than a regulation, requirement, limitation,
14 or standard in effect under this section or under any other
15 provision of this Act.

16 **“SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION**
17 **OF NO_x TRADING PROGRAM FOR EGUS.**

18 “Starting January 1, 2008, with regard to any boiler,
19 combustion turbine, or integrated gasification combined
20 cycle plant subject to emission reduction requirements or
21 limitations under part B, C, or D, the Administrator shall
22 not administer any nitrogen oxides trading program in-
23 cluded in any NO_x SIP Call State’s applicable implemen-
24 tation plan and meeting the requirements of section
25 463(a) and (b)(1).

1 **“SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES**
2 **ALLOWANCES.**

3 “The Administrator shall promulgate regulations as
4 necessary to assure that the requirement to hold allow-
5 ances under section 452(a)(1) may be met using nitrogen
6 oxides allowances allocated for an ozone season before
7 2008 under a nitrogen oxides trading program that the
8 Administrator administers, is included in a NO_x SIP Call
9 State’s applicable implementation plan, and meets the re-
10 quirements of section 463(a) and (b)(1).

11 **“PART D—MERCURY EMISSIONS REDUCTIONS**

12 **“SEC. 471. DEFINITIONS.**

13 “For purposes of this subpart:

14 “(1) The term ‘adjusted baseline heat input’
15 with regard to a unit means the unit’s baseline heat
16 input multiplied by—

17 “(A) 1.0, for the portion of the baseline
18 heat input that is the unit’s average annual
19 combustion of bituminous during the years on
20 which the unit’s baseline heat input is based;

21 “(B) 3.0, for the portion of the baseline
22 heat input that is the unit’s average annual
23 combustion of lignite during the years on which
24 the unit’s baseline heat input is based;

25 “(C) 1.25, for the portion of the baseline
26 heat input that is the unit’s average annual

1 combustion of subbituminous during the years
2 on which the unit's baseline heat input is based;
3 and

4 “(D) 1.0, for the portion of the baseline
5 heat input that is not covered by subparagraph
6 (A), (B), or (C) or for the entire baseline heat
7 input if such baseline heat input is not based
8 on the unit's heat input in specified years.

9 “(2) The term ‘affected EGU’ means—

10 “(A) for a unit serving a generator before
11 the date of enactment of the Clear Skies Act of
12 2003, a coal-fired unit in a State serving a gen-
13 erator with a nameplate capacity of greater
14 than 25 megawatts that produced or produces
15 electricity for sale during 2002 or any year
16 thereafter, except for a cogeneration unit that
17 produced or produces electricity for sale equal
18 to or less than one-third of the potential elec-
19 trical output of the generator that it served or
20 serves during 2002 and each year thereafter;
21 and

22 “(B) for a unit commencing service of a
23 generator on or after the date of enactment of
24 the Clear Skies Act of 2003, a coal-fired unit
25 in a State serving a generator that produces

1 electricity for sale during any year starting with
2 the year the unit commences service of a gener-
3 ator, except for a cogeneration unit that pro-
4 duces electricity for sale equal to or less than
5 one-third of the potential electrical output of
6 the generator that it serves, during each year
7 starting with the year the unit commences serv-
8 ice of a generator.

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

15 **“SEC. 472. APPLICABILITY.**

16 “Starting January 1, 2010, it shall be unlawful for
17 the affected EGUs at a facility in a State to emit a total
18 amount of mercury during the year in excess of the num-
19 ber of mercury allowances held for such facility for that
20 year by the owner or operator of the facility.

21 **“SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.**

22 “For affected EGUs for 2010 and each year there-
23 after, the Administrator shall allocate mercury allowances
24 under section 474, and conduct auctions of mercury allow-
25 ances under section 409, in the amounts in Table A.

“TABLE A.—TOTAL MERCURY ALLOWANCES
ALLOCATED OR AUCTIONED FOR EGUS

Year	Mercury allowances allocated	Mercury allowances auctioned
2010	823,680	8,320
2011	815,360	16,640
2012	807,040	24,960
2013	798,720	33,280
2014	790,400	41,600
2015	782,080	49,920
2016	773,760	58,240
2017	765,440	66,560
2018	436,800	43,200
2019	432,000	48,000
2020	427,200	52,800
2021	422,400	57,600
2022	417,600	62,400
2023	412,800	67,200
2024	408,000	72,000
2025	403,200	76,800
2026	398,400	81,600
2027	393,600	86,400
2028	388,800	91,200
2029	384,000	96,000
2030	372,000	108,000
2031	360,000	120,000
2032	348,000	132,000
2033	336,000	144,000
2034	324,000	156,000
2035	312,000	168,000
2036	300,000	180,000
2037	288,000	192,000
2038	276,000	204,000
2039	264,000	216,000
2040	252,000	228,000
2041	240,000	240,000
2042	228,000	252,000
2043	216,000	264,000
2044	204,000	276,000
2045	192,000	288,000
2046	180,000	300,000
2047	168,000	312,000
2048	156,000	324,000
2049	144,000	336,000
2050	132,000	348,000
2051	120,000	360,000
2052	108,000	372,000
2053	96,000	384,000
2054	84,000	396,000
2055	72,000	408,000
2056	60,000	420,000
2057	48,000	432,000
2058	36,000	444,000

“TABLE A.—TOTAL MERCURY ALLOWANCES
ALLOCATED OR AUCTIONED FOR EGUS—Continued

Year	Mercury allowances allocated	Mercury allowances auctioned
2059	24,000	456,000
2060	12,000	468,000
2061	0	480,000

1 **“SEC. 474. EGU ALLOCATIONS.**

2 “(a) IN GENERAL.—Not later than 24 months before
3 the commencement date of the mercury allowance require-
4 ment of section 472, the Administrator shall promulgate
5 regulations determining allocations of mercury allowances
6 for each year during 2010 through 2060 for units at a
7 facility that commence operation by and are affected
8 EGUs as of December 31, 2004. The regulations shall
9 provide that the Administrator shall allocate each year for
10 such units an amount determined by multiplying the allo-
11 cation amount in section 473 by the ratio of the total
12 amount of the adjusted baseline heat input of such units
13 at the facility to the total amount of adjusted baseline heat
14 input of all affected EGUs.

15 “(b) FAILURE TO PROMULGATE.—(1) For each year
16 2010 through 2060, if, by the date 18 months before Jan-
17 uary 1 of such year, the Administrator—

18 “(A) has promulgated regulations under section
19 403(b) providing for the transfer of mercury allow-

1 ances and section 403(c) establishing the Allowance
2 Tracking System for mercury allowances; and

3 “(B) has signed proposed regulations but has
4 not promulgated final regulations determining allo-
5 cations under subsection (a),

6 the Administrator shall allocate, for such year, for each
7 facility where an affected EGU is located the amount of
8 mercury allowances specified for that facility in such pro-
9 posed regulations.

10 “(2) If, by the date 18 months before January 1 of
11 each year 2010 through 2060, the Administrator has not
12 signed proposed regulations determining allocations under
13 subsection (a), the Administrator shall:

14 “(A) determine, for such year, for each unit
15 with coal as its primary or secondary fuel listed in
16 the Administrator’s Emissions Scorecard 2001, Ap-
17 pendix B, Table B1 an amount of mercury allow-
18 ances by multiplying 95 percent of the allocation
19 amount under section 473 by the ratio of such unit’s
20 heat input in the Emissions Scorecard 2001, Appen-
21 dix B, Table B1 to the total of the heat input in the
22 Emissions Scorecard 2001, Appendix B, Table B1
23 for all units with coal as their primary or secondary
24 fuel;

1 “(B) allocate, for such year, for each facility
2 where a unit under subparagraph (A) is located the
3 total of the amounts of mercury allowances for the
4 units at such facility determined under subpara-
5 graph (A); and

6 “(C) auction an amount of mercury allowances
7 equal to 5 percent of the allocation amount under
8 section 473 and conduct the auction on the first
9 business day in October following the respective pro-
10 mulgation deadline under paragraph (1) and in ac-
11 cordance with section 409.

12 “(3) For each year 2010 through 2060, if the Admin-
13 istrator has not signed proposed regulations under sub-
14 section (a), and has not promulgated the regulations
15 under section 403(b) providing for the transfer of mercury
16 allowances and section 403(c) establishing the Allowance
17 Tracking System for mercury allowances, by the date 18
18 months before January 1 of such year, then it shall be
19 unlawful for any affected EGU to emit mercury during
20 such year in excess of 30 percent of the mercury content
21 (in ounces per mmBtu) of the coal and coal-derived fuel
22 combusted by the unit.

1 **“PART E—NATIONAL EMISSION STANDARDS;**
2 **RESEARCH; ENVIRONMENTAL ACCOUNT-**
3 **ABILITY; MAJOR SOURCE**
4 **PRECONSTRUCTION REVIEW AND BEST**
5 **AVAILABLE RETROFIT CONTROL TECH-**
6 **NOLOGY REQUIREMENTS**

7 **“SEC. 481. NATIONAL EMISSION STANDARDS FOR AF-**
8 **FECTED UNITS.**

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

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

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

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

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

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

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

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

23 “(B) it is technologically and economically
24 feasible to meet the applicable standards set
25 forth in this section.

1 “(b) EMISSION STANDARDS.—

2 “(1) IN GENERAL.—No later than 12 months
3 after the date of enactment of the Clear Skies Act
4 of 2003, the Administrator shall promulgate regula-
5 tions prescribing the standards in subsections (c)
6 through (d) for the specified affected units and es-
7 tablishing requirements to ensure compliance with
8 these standards, including monitoring, record-
9 keeping, and reporting requirements.

10 “(2) MONITORING.—(A) The owner or operator
11 of any affected unit subject to the standards for sul-
12 fur dioxide, nitrogen oxides, or mercury under this
13 section shall meet the requirements of section 405,
14 except that, where two or more units utilize a single
15 stack, separate monitoring shall be required for each
16 affected unit for the pollutants for which the unit is
17 subject to such standards.

18 “(B) The Administrator shall, by regulation, re-
19 quire—

20 “(i) the owner or operator of any affected
21 unit subject to the standards for sulfur dioxide,
22 nitrogen oxides, or mercury under this section
23 to—

24 “(I) install and operate CEMS for
25 monitoring output, including electricity and

1 useful thermal energy, on the affected unit
2 and to quality assure the data; and

3 “(II) comply with recordkeeping and
4 reporting requirements, including provi-
5 sions for reporting output data in mega-
6 watt hours.

7 “(ii) the owner or operator of any affected
8 unit subject to the standards for particulate
9 matter under this section to—

10 “(I) install and operate CEMS for
11 monitoring particulate matter on the af-
12 fected unit and to quality assure the data;

13 “(II) comply with recordkeeping and
14 reporting requirements; and

15 “(III) comply with alternative moni-
16 toring, quality assurance, recordkeeping,
17 and reporting requirements for any period
18 of time for which the Administrator deter-
19 mines that CEMS with appropriate vendor
20 guarantees are not commercially available
21 for particulate matter.

22 “(3) COMPLIANCE.—For boilers, integrated gasifi-
23 cation combined cycle plants, and combustion turbines
24 that are gas-fired or coal fired, the Administrator shall
25 require that the owner or operator demonstrate compli-

1 ance with the standards daily, using a 30-day rolling aver-
 2 age, except that in the case of mercury, the compliance
 3 period shall be the calendar year. For combustion turbines
 4 that are not gas-fired or coal-fired, the Administrator shall
 5 require that the owner or operator demonstrate compli-
 6 ance with the standards hourly, using a 4-hour rolling av-
 7 erage.

8 “(c) BOILERS AND INTEGRATED GASIFICATION COM-
 9 BINED CYCLE PLANTS.—

10 “(1) After the effective date of standards pro-
 11 mulgated under subsection (b), no owner or operator
 12 shall cause any boiler or integrated gasification com-
 13 bined cycle plant that is a new affected unit to dis-
 14 charge into the atmosphere any gases which con-
 15 tain—

16 “(A) sulfur dioxide in excess of 2.0 lb/
 17 MWh;

18 “(B) nitrogen oxides in excess of 1.0 lb/
 19 MWh;

20 “(C) particulate matter in excess of 0.20
 21 lb/MWh; or

22 “(D) if the unit is coal-fired, mercury in
 23 excess of 0.015 lb/GWh, unless—

24 “(i) mercury emissions from the unit,
 25 determined assuming no use of on-site or

1 off-site pre-combustion treatment of coal
2 and no use of technology that captures
3 mercury, are reduced by 80 percent;

4 “(ii) flue gas desulfurization (FGD)
5 and selective catalytic reduction (SCR) are
6 applied to the unit and are operated so as
7 to optimize capture of mercury; or

8 “(iii) a technology is applied to the
9 unit and operated so as to optimize cap-
10 ture of mercury, and the permitting au-
11 thority determines that the technology is
12 equivalent in terms of mercury capture to
13 the application of FGD and SCR.

14 “(2) Notwithstanding paragraph (1)(D), inte-
15 grated gasification combined cycle plants with a
16 combined capacity of less than 5 GW are exempt
17 from the mercury requirement under subparagraph
18 (1)(D) if they are constructed as part of a dem-
19 onstration project under the Secretary of Energy
20 that will include a demonstration of removal of sig-
21 nificant amounts of mercury as determined by the
22 Secretary of Energy in conjunction with the Admin-
23 istrator as part of the solicitation process.

24 “(3) After the effective date of standards pro-
25 mulgated under subsection (b), no owner or operator

1 shall cause any oil-fired boiler that is an existing af-
2 fected unit to discharge into the atmosphere any
3 gases which contain particulate matter in excess of
4 0.30 lb/MWh.

5 “(d) COMBUSTION TURBINES.—

6 “(1) After the effective date of standards pro-
7 mulgated under subsection (b), no owner or operator
8 shall cause any gas-fired combustion turbine that is
9 a new affected unit to discharge into the atmosphere
10 any gases which contain nitrogen oxides in excess
11 of—

12 “(A) 0.56 lb/MWh (15 ppm at 15 percent
13 oxygen), if the unit is a simple cycle combustion
14 turbine;

15 “(B) 0.084 lb/MWh (3.5 ppm at 15 per-
16 cent oxygen), if the unit is not a simple cycle
17 combustion turbine and either uses add-on con-
18 trols or is located within 50 km of a class I
19 area; or

20 “(C) 0.21 lb/MWh (9 ppm at 15 percent
21 oxygen), if the unit is not a simple cycle turbine
22 and neither uses add-on controls nor is located
23 within 50 km of a class I area.

24 “(2) After the effective date of standards pro-
25 mulgated under subsection (b), no owner or operator

1 shall cause any coal-fired combustion turbine that is
2 a new affected unit to discharge into the atmosphere
3 any gases which contain sulfur dioxide, nitrogen ox-
4 ides, particulate matter, or mercury in excess of the
5 emission limits under subparagraphs (c)(1) (A)
6 through (D).

7 “(3) After the effective date of standards pro-
8 mulgated under subsection (b), no owner or operator
9 shall cause any combustion turbine that is not gas-
10 fired or coal-fired and that is a new affected unit to
11 discharge into the atmosphere any gases which con-
12 tain—

13 “(A) sulfur dioxide in excess of 2.0lb/
14 MWh;

15 “(B) nitrogen oxides in excess of—

16 “(i) 0.289 lb/MWh (12 ppm at 15
17 percent oxygen), if the unit is not a simple
18 cycle combustion turbine, is dual-fuel capa-
19 ble, and uses add-on controls; or is not a
20 simple cycle combustion turbine and is lo-
21 cated within 50 km of a class I area;

22 “(ii) 1.01 lb/MWh (42 ppm at 15 per-
23 cent oxygen), if the unit is a simple cycle
24 combustion turbine; is not a simple cycle
25 combustion turbine and is not dual-fuel ca-

1 pable; or is not a simple cycle combustion
2 turbine, is dual-fuel capable, and does not
3 use add-on controls.

4 “(C) particulate matter in excess of 0.20
5 lb/MWh.

6 “(e) PERIODIC REVIEW AND REVISION.—

7 “(1) The Administrator shall, at least every 8
8 years following the promulgation of standards under
9 subsection (b), review and, if appropriate, revise
10 such standards to reflect the degree of emission limi-
11 tation achievable through the application of the best
12 system of emission reduction which (taking into ac-
13 count the cost of achieving such reduction and any
14 nonair quality health and environmental impacts and
15 energy requirements) the Administrator determines
16 has been adequately demonstrated. When implemen-
17 tation and enforcement of any requirement of this
18 Act indicate that emission limitations and percent
19 reductions beyond those required by the standards
20 promulgated under this section are achieved in prac-
21 tice, the Administrator shall, when revising stand-
22 ards promulgated under this section, consider the
23 emission limitations and percent reductions achieved
24 in practice.

1 “(2) Notwithstanding the requirements of para-
2 graph (1) the Administrator need not review any
3 standard promulgated under subsection (b) if the
4 Administrator determines that such review is not ap-
5 propriate in light of readily available information on
6 the efficacy of such standard.

7 “(f) EFFECTIVE DATE.—Standard promulgated pur-
8 suant to this section shall become effective upon promul-
9 gation.

10 “(g) DELEGATION.—

11 “(1) Each State may develop and submit to the
12 Administration a procedure for implementing and
13 enforcing standards promulgated under this section
14 for affected units located in such State. If the Ad-
15 ministrator finds the State procedure is adequate,
16 the Administrator shall delegate to such State any
17 authority the Administrator has under this Act to
18 implement and enforce such standards.

19 “(2) Nothing in this subsection shall prohibit
20 the Administrator from enforcing any applicable
21 standard under this section.

22 “(h) VIOLATIONS.—After the effective date of stand-
23 ards promulgated under this section, it shall be unlawful
24 for any owner or operator of any affected unit to operate

1 such unit in violation of any standard applicable to such
2 unit.

3 “(i) COORDINATION WITH OTHER AUTHORITIES.—
4 For purposes of sections 111(e), 113, 114, 116, 120, 303,
5 304, 307 and other provisions for the enforcement of this
6 Act, each standard established pursuant to this section
7 shall be treated in the same manner as a standard of per-
8 formance under section 111, and each affected unit sub-
9 ject to standards under this section shall be treated in the
10 same manner as a stationary source under section 111.

11 “(j) STATE AUTHORITY.—Nothing in this section
12 shall preclude or deny the right of any State or political
13 subdivision thereof to adopt or enforce any regulation, re-
14 quirement, limitation, or standard relating to affected
15 units that is more stringent than a regulation, require-
16 ment, limitation, or standard in effect under this section
17 or under any other provision of this Act.

18 “(k) OTHER AUTHORITY UNDER THIS ACT.—Noth-
19 ing in this section shall diminish the authority of the Ad-
20 ministrator or a State to establish any other requirements
21 applicable to affected units under any other authority of
22 law, including the authority to establish for any air pollut-
23 ant a national ambient air quality standard, except that
24 no new affected unit subject to standards under this sec-

1 tion shall be subject to standards under section 111 of
2 this Act.

3 **“SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND**
4 **ASSESSMENT.**

5 “(a) PURPOSES.—The Administrator, in collabora-
6 tion with the Secretary of Energy and the Secretary of
7 the Interior, shall conduct a comprehensive program of re-
8 search, environmental monitoring, and assessment to en-
9 hance scientific understanding of the human health and
10 environmental effects of particulate matter and mercury
11 and to demonstrate the efficacy of emission reductions
12 under this title. The purposes of such a program are to—

13 “(1) expand current research and knowledge of
14 the contribution of emissions from electricity genera-
15 tion to exposure and health effects associated with
16 particulate matter and mercury;

17 “(2) enhance current research and development
18 of promising multi-pollutant control strategies and
19 CEMS for mercury;

20 “(3) produce peer-reviewed scientific and tech-
21 nology information to inform the review of emissions
22 levels under section 410;

23 “(4) improve environmental monitoring and as-
24 sessment of sulfur dioxide, nitrogen oxides and mer-
25 cury, and their transformation products, to track

1 changes in human health and the environment at-
2 tributable to emission reductions under this title;
3 and

4 “(5) periodically provide peer-reviewed reports
5 on the costs, benefits, and effectiveness of emission
6 reductions achieved under this title.

7 “(b) RESEARCH.—The Administrator shall enhance
8 planned and ongoing laboratory and field research and
9 modeling analyses, and conduct new research and analyses
10 to produce peer-reviewed information concerning the
11 human health and environmental effects of mercury and
12 particulate matter and the contribution of United States
13 electrical generating units to those effects. Such informa-
14 tion shall be included in the report under subsection (d).
15 In addition, such research and analyses shall—

16 “(1) improve understanding of the rates and
17 processes governing chemical and physical trans-
18 formations of mercury in the atmosphere, including
19 speciation of emissions from electricity generation
20 and the transport of these species;

21 “(2) improve understanding of the contribution
22 of mercury emissions from electricity generation to
23 mercury in fish and other biota, including—

24 “(A) the response of and contribution to
25 mercury in the biota owing to atmospheric dep-

1 osition of mercury from U.S. electricity genera-
2 tion on both local and regional scales;

3 “(B) long-term contributions of mercury
4 from U.S. electricity generation on mercury ac-
5 cumulations in ecosystems, and the effects of
6 mercury reductions in that sector on the envi-
7 ronment and public health;

8 “(C) the role and contribution of mercury,
9 from U.S. electricity generating facilities and
10 anthropogenic and natural sources to fish con-
11 tamination and to human exposure, particularly
12 with respect to sensitive populations;

13 “(D) the contribution of U.S. electricity
14 generation to population exposure to mercury in
15 freshwater fish and seafood and quantification
16 of linkages between U.S. mercury emissions and
17 domestic mercury exposure and its health ef-
18 fects; and

19 “(E) the contribution of mercury from
20 U.S. electricity generation in the context of
21 other domestic and international sources of
22 mercury, including transport of global anthro-
23 pogenic and natural background levels;

24 “(3) improve understanding of the health ef-
25 fects of fine particulate matter components related

1 to electricity generation emissions (as distinct from
2 other fine particle fractions and indoor air expo-
3 sures) and the contribution of U.S. electrical gener-
4 ating units to those effects including—

5 “(A) the chronic effects of fine particulate
6 matter from electricity generation in sensitive
7 population groups; and

8 “(B) personal exposure to fine particulate
9 matter from electricity generation; and

10 “(4) improve understanding, by way of a review
11 of the literature, of methods for valuing human
12 health and environmental benefits associated with
13 fine particulate matter and mercury.

14 “(c) INNOVATIVE CONTROL TECHNOLOGIES.—The
15 Administrator shall collaborate with the Secretary of En-
16 ergy to enhance research and development, and conduct
17 new research that facilitates research into and develop-
18 ment of innovative technologies to control sulfur dioxide,
19 nitrogen oxides, mercury, and particulate matter at a
20 lower cost than existing technologies. Such research and
21 development shall provide updated information on the cost
22 and feasibility of technologies. Such information shall be
23 included in the report under subsection (d). In addition,
24 the research and development shall—

1 “(1) upgrade cost and performance models to
2 include results from ongoing and future electricity
3 generation and pollution control demonstrations by
4 the Administrator and the Secretary of Energy;

5 “(2) evaluate the overall environmental implica-
6 tions of the various technologies tested including the
7 impact on the characteristics of coal combustion res-
8 idues;

9 “(3) evaluate the impact of the use of selective
10 catalytic reduction on mercury emissions from the
11 combustion of all coal types;

12 “(4) evaluate the potential of integrated gasifi-
13 cation combined cycle to adequately control mercury;

14 “(5) expand current programs by the Adminis-
15 trator to conduct research and promote, lower cost
16 CEMS capable of providing real-time measurements
17 of both speciated and total mercury and integrated
18 compact CEMS that provide cost-effective real-time
19 measurements of sulfur dioxide, nitrogen oxides, and
20 mercury;

21 “(6) expand lab- and pilot-scale mercury and
22 multi-pollutant control programs by the Secretary of
23 Energy and the Administrator, including develop-
24 ment of enhanced sorbents and scrubbers for use on
25 all coal types;

1 “(7) characterize mercury emissions from low-
2 rank coals, for a range of traditional control tech-
3 nologies, like scrubbers and selective catalytic reduc-
4 tion; and

5 “(8) improve low cost combustion modifications
6 and controls for dry-bottom boilers.

7 “(d) EMISSIONS LEVELS EVALUATION REPORT.—
8 Not later than January 1, 2008, the Administrator, in
9 consultation with the Secretary of Energy, shall prepare
10 a peer reviewed report to inform review of the emissions
11 levels under section 410. The report shall be based on the
12 best available peer-reviewed scientific and technology in-
13 formation. It shall address cost, feasibility, human health
14 and ecological effects, and net benefits associated with
15 emissions levels under this title.

16 “(e) ENVIRONMENTAL ACCOUNTABILITY.—

17 “(1) MONITORING AND ASSESSMENT.—The Ad-
18 ministrators shall conduct a program of environ-
19 mental monitoring and assessment to track on a
20 continuing basis, changes in human health and the
21 environment attributable to the emission reductions
22 required under this title. Such a program shall—

23 “(A) develop and employ methods to rou-
24 tinely monitor, collect, and compile data on the
25 status and trends of mercury and its trans-

1 formation products in emissions from affected
2 facilities, atmospheric deposition, surface water
3 quality, and biological systems. Emphasis shall
4 be placed on those methods that—

5 “(i) improve the ability to routinely
6 measure mercury in dry deposition pro-
7 cesses;

8 “(ii) improve understanding of the
9 spatial and temporal distribution of mer-
10 cury deposition in order to determine
11 source-receptor relationships and patterns
12 of long-range, regional, and local deposi-
13 tion;

14 “(iii) improve understanding of aggre-
15 gate exposures and additive effects of
16 methylmercury and other pollutants; and

17 “(iv) improve understanding of the ef-
18 fectiveness and cost of mercury emissions
19 controls;

20 “(B) modernize and enhance the national
21 air quality and atmospheric deposition moni-
22 toring networks in order to cost-effectively ex-
23 pand and integrate, where appropriate, moni-
24 toring capabilities for sulfur, nitrogen, and mer-

1 cury to meet the assessment and reporting re-
2 quirements of this section;

3 “(C) perform and enhance long-term moni-
4 toring of sulfur, nitrogen, and mercury, and pa-
5 rameters related to acidification, nutrient en-
6 richment, and mercury bioaccumulation in
7 freshwater and marine biota;

8 “(D) maintain and upgrade models that
9 describe the interactions of emissions with the
10 atmosphere and resulting air quality implica-
11 tions and models that describe the response of
12 ecosystems to atmospheric deposition; and

13 “(E) assess indicators of ecosystems health
14 related to sulfur, nitrogen, and mercury, includ-
15 ing characterization of the causes and effects of
16 episodic exposure to air pollutants and evalua-
17 tion of recovery.

18 “(2) REPORTING REQUIREMENTS.—Not later
19 than January 1, 2008, and not later than every 4
20 years thereafter, the Administrator shall provide a
21 peer reviewed report to the Congress on the costs,
22 benefits, and effectiveness of emission reduction pro-
23 grams under this title. The report shall address the
24 relative contribution of emission reductions from
25 U.S. electricity generation under this title compared

1 to the emission reductions achieved under other ti-
2 tles of the Clean Air Act with respect to—

3 “(A) actual and projected emissions of sul-
4 fur dioxide, nitrogen oxides, and mercury;

5 “(B) average ambient concentrations of
6 sulfur dioxide and nitrogen oxides trans-
7 formation products, related air quality param-
8 eters, and indicators of reductions in human ex-
9 posure;

10 “(C) status and trends in total atmos-
11 pheric deposition of sulfur, nitrogen, and mer-
12 cury, including regional estimates of total at-
13 mospheric deposition;

14 “(D) status and trends in visibility;

15 “(E) status of terrestrial and aquatic eco-
16 systems (including forests and forested water-
17 sheds, streams, lakes, rivers, estuaries, and
18 near-coastal waters);

19 “(F) status of mercury and its trans-
20 formation products in fish;

21 “(G) causes and effects of atmospheric
22 deposition, including changes in surface water
23 quality, forest and soil conditions;

24 “(H) occurrence and effects of coastal eu-
25 trophication and episodic acidification, particu-

1 larly with respect to high elevation watersheds;
2 and

3 “(I) reduction in atmospheric deposition
4 rates that should be achieved to prevent or re-
5 duce adverse ecological effects.

6 **“SEC. 483. EXEMPTION FROM MAJOR SOURCE**
7 **PRECONSTRUCTION REVIEW REQUIREMENTS**
8 **AND BEST AVAILABLE RETROFIT CONTROL**
9 **TECHNOLOGY REQUIREMENTS.**

10 “(a) MAJOR SOURCE EXEMPTION.—An affected unit
11 shall not be considered a major emitting facility or major
12 stationary source, or a part of a major emitting facility
13 or major stationary source for purposes of compliance with
14 the requirements of parts C and part D of title I. This
15 exemption only applies to units that are either subject to
16 the performance standards of section 481 or meet the fol-
17 lowing requirements within 3 years after the date of enact-
18 ment of the Clear Skies Act of 2003:

19 “(1) The owner or operator of the affected unit
20 properly operates, maintains and repairs pollution
21 control equipment to limit emissions of particulate
22 matter, or the owner or operator of the affected unit
23 is subject to an enforceable permit issued pursuant
24 to title V or a permit program approved or promul-
25 gated as part of an applicable implementation plan

1 to limit the emissions of particular matter from the
2 affected unit to 0.03 lb/mmBtu within 8 years after
3 the date of enactment of the Clear Skies Act of
4 2003, and

5 “(2) The owner or operator of the affected unit
6 uses good combustion practices to minimize emis-
7 sions of carbon monoxide.

8 “(b) CLASS I AREA PROTECTIONS.—Notwith-
9 standing the exemption in subsection (a), an affected unit
10 located within 50 km of a Class I area on which construc-
11 tion commences after the date of enactment of the Clear
12 Skies Act of 2003 is subject to those provisions under part
13 C of title I pertaining to the review of a new or modified
14 major stationary source’s impact on a Class I area.

15 “(c) PRECONSTRUCTION REQUIREMENTS.—Each
16 State shall include in its plan under section 110, as pro-
17 gram to provide for the regulation of the construction of
18 an affected unit that ensures that the following require-
19 ments are met prior to the commencement of construction
20 of an affected unit—

21 “(1) in an area designated as attainment or
22 unclassifiable under section 107(d), the owner or op-
23 erator of the affected unit must demonstrate to the
24 State that the emissions increase from the construc-
25 tion or operation of such unit will not cause, or con-

1 tribute to, air pollution in excess of any national am-
2 bient air quality standard;

3 “(2) in an area designated as nonattainment
4 under section 107(d), the State must determine that
5 the emissions increase from the construction or oper-
6 ation of such unit will not interfere with any pro-
7 gram to assure that the national ambient air quality
8 standards are achieved;

9 “(3) for a modified unit, the unit must comply
10 prior to beginning operation with either the perform-
11 ance standards of section 481 or best available con-
12 trol technology as defined in part C of title I for the
13 pollutants whose hourly emissions will increase at
14 the unit’s maximum capacity; and

15 “(4) the State must provide for an opportunity
16 for interested persons to comment on the Class I
17 area protections and preconstruction requirements
18 as set forth in this section.

19 “(d) DEFINITIONS.—For purposes of this section:

20 “(1) The term ‘affected unit’ means any unit
21 that is subject to emission limitations under subpart
22 2 of part B, subpart 2 of part C, or part D.

23 “(2) The term ‘construction’ includes the con-
24 struction of a new affected unit and the modification
25 of any affected unit.

1 “(3) The term ‘modification’ means any phys-
2 ical change in, or change in the method of operation
3 of, an affected unit that increases the maximum
4 hourly emissions of any pollutant regulated under
5 this Act above the maximum hourly emissions
6 achievable at that unit during the 5 years prior to
7 the change or that results in the emission of any
8 pollutant regulated under this Act and not pre-
9 viously 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 ments, 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. 3. OTHER AMENDMENTS.**

18 (a) Title I of the Clean Air Act is amended as follows:

19 (1) In section 103 by repealing subparagraphs
20 (E) and (F).

21 (2) In section 107—

22 (A) By amending subparagraph (A) of
23 subsection (d)(1) as follows:

24 (i) strike “or” at the end of clause

25 (ii);

1 (ii) strike the period at the end of
2 clause (iii) and insert “, or”;

3 (iii) add the following clause (iv) after
4 clause (iii):

5 “(iv) notwithstanding clauses (i)
6 through (iii), an area may be designated
7 transitional for the PM 2.5 national pri-
8 mary or secondary ambient air quality
9 standards or the 8-hour ozone national pri-
10 mary or secondary ambient air quality
11 standard if the Administrator has per-
12 formed air quality modeling and, in the
13 case of an area that needs additional local
14 control measures, the State has performed
15 supplemental air quality modeling, dem-
16 onstrating that the area will attain the ap-
17 plicable standard or standards no later
18 than December 31, 2015, and such mod-
19 eling demonstration and all necessary local
20 controls have been approved into the State
21 implementation plan no later than Decem-
22 ber 31, 2004.”.

23 (iv) add at the end a sentence to read
24 as follows: “For purposes of the PM 2.5
25 national primary or secondary ambient air

1 quality standards, the time period for the
2 State to submit the designations shall be
3 extended to no later than December 31,
4 2003.”.

5 (B) By amending clause (i) of subsection
6 (d)(1)(B) by adding at the end a sentence to
7 read as follows: “The Administrator shall not
8 be required to designate areas for the revised
9 PM 2.5 national primary or secondary ambient
10 air quality standards prior to 6 months after
11 the States are required to submit recommenda-
12 tions under section 107(d)(1)(A), but in no
13 event shall the period for designating such
14 areas be extended beyond December 31, 2004.”.

15 (3) In section 110 as follows:

16 (A) By amending clause (i) of subsection
17 (a)(2)(D) by inserting “except as provided in
18 subsection (q),” before the word “prohibiting”.

19 (B) By adding the following new sub-
20 sections at the end thereof:

21 “(q) REVIEW OF CERTAIN PLANS.—(1) The Admin-
22 istrator shall, in reviewing, under clause (i) of subsection
23 (a)(2)(D), any plan with respect to affected units, within
24 the meaning of section 126(d)(1)—

1 “(A) consider, among other relevant factors,
2 emissions reductions required to occur by the attain-
3 ment date or dates of any relevant nonattainment
4 areas in the other State or States;

5 “(B) not require submission of plan provisions
6 mandating emissions reductions from such affected
7 units, unless the Administrator determines that—

8 “(i) emissions from such units may be re-
9 duced at least as cost-effectively as emissions
10 from each other principal category of sources of
11 sulfur dioxide or nitrogen oxides, including in-
12 dustrial boilers, on-road mobile sources, and
13 off-road mobile sources, and any other category
14 of sources that the Administrator may identify,
15 and

16 “(ii) reductions in such emissions will im-
17 prove air quality in the other State’s or States’
18 nonattainment areas at least as cost-effectively
19 as reductions in emissions from each other prin-
20 cipal category of sources of sulfur dioxide or ni-
21 trogen oxides, to the maximum extent that a
22 methodology is reasonably available to make
23 such a determination;

1 “(C) develop and appropriate peer reviewed
2 methodology for making determinations under sub-
3 paragraph (B) by December 31, 2006; and

4 “(D) not require submission of plan provisions
5 subjecting affected units, within the meaning of sec-
6 tion 126(d)(1), to requirements with an effective
7 date prior to January 1, 2012.

8 “(2) In making the determination under clause (ii)
9 of subparagraph (B) of paragraph (1), the Administrator
10 will use the best available peer- reviewed models and meth-
11 odology that consider the proximity of the source or
12 sources to the other State or States and incorporate other
13 source characteristics.

14 “(3) Nothing in paragraph (1) shall be interpreted
15 to require revisions to the provisions of 40 CFR 51.121
16 and 51.122 (2001), as would be amended in the notice
17 of proposed rulemaking at 67 Federal Register 8396 (Feb-
18 ruary 22, 2002)”.

19 “(r) TRANSITIONAL AREAS.—

20 “(1) MAINTENANCE.—(A) By December 31,
21 2010, each area designated as transitional pursuant
22 to section 107(d)(1) shall submit an updated emis-
23 sion inventory and an analysis of whether growth in
24 emissions, including growth in vehicle miles traveled,

1 will interfere with attainment by December 31,
2 2015.

3 “(B) No later than December 31, 2011, the Ad-
4 ministrator shall review each transitional area’s
5 maintenance analysis, and, if the Administrator de-
6 termines that growth in emissions will interfere with
7 attainment by December 31, 2015, the Adminis-
8 trator shall consult with the State and determine
9 what action, if any, is necessary to assure that at-
10 tainment will be achieved by 2015.

11 “(2) PREVENTION OF SIGNIFICANT DETERIORA-
12 TION.—Each area designated as transitional pursu-
13 ant to section 107(d)(1) shall be treated as an at-
14 tainment or unclassifiable area for purposes of the
15 prevention of significant deterioration provisions of
16 part C of this title.

17 “(3) CONSEQUENCES OF FAILURE TO ATTAIN
18 BY 2015.—No later than June 30, 2016, the Admin-
19 istrator shall determine whether each area des-
20 igned as transitional for the 8-hour ozone stand-
21 ard or for the PM 2.5 standard has attained that
22 standard. If the Administrator determines that a
23 transitional area has not attained the standard, the
24 area shall be redesignated as nonattainment within
25 1 year of the determination and the State shall be

1 required to submit a State implementation plan revision
2 satisfying the provisions of section 172 within
3 3 years of redesignation as nonattainment.”.

4 (4) By adding to section 111(b)(1) a new sub-
5 paragraph (C) to read as follows:

6 “(C) No standards of performance promul-
7 gated under this section shall apply to units
8 subject to regulations promulgated pursuant to
9 section 481.”.

10 (5) By amending section 112 as follows:

11 (A) Paragraph (1) of subsection (c) is
12 amended to read as follows:

13 “(1) IN GENERAL.—Not later than 12 months
14 after November 15, 1990, the Administrator shall
15 publish, and shall from time to time, but not less
16 often than every 8 years, revise, if appropriate, in
17 response to public comment or new information, a
18 list of all categories and subcategories of major
19 sources and area sources (listed under paragraph
20 (3)) of the air pollutants listed pursuant to sub-
21 section (b). Electric utility steam generating units
22 not subject to section 3005 of the Solid Waste Dis-
23 posal Act shall not be included in any category or
24 subcategory listed under this subsection. The Ad-
25 ministrator shall have the authority to regulate the

1 emission of hazardous air pollutants listed under
2 section 112(b), other than mercury compounds, by
3 electric utility steam generating units in accordance
4 with the regime set forth in section 112(f)(2)
5 through (4). Any such regulations shall be promul-
6 gated within, and shall not take effect before, the
7 date 8 years after the commencement date of the
8 mercury allowance requirement of section 472. To
9 the extent practicable, the categories and subcat-
10 egories listed under this subsection shall be con-
11 sistent with the list of source categories established
12 pursuant to section 111 and part C. Nothing in the
13 preceding sentence limits the Administrator's au-
14 thority to establish subcategories under this section,
15 as appropriate.”.

16 (B) Subparagraph (A) of subsection (n)(1)
17 is amended to read as follows:

18 “(A) The Administrator shall perform a
19 study of the hazards to public health reasonably
20 anticipated to occur as a result of emissions by
21 electric utility steam generating units of pollut-
22 ants listed under subsection (b) after imposition
23 of the requirements of this Act. The Adminis-
24 trator shall report the results of this study to

1 the Congress within 3 years after November 15,
2 1990.”.

3 (6) Section 126 is amended as follows:

4 (A) By replacing “section 110(a)(2)(D)(ii)
5 or this section” in subsection (b) with “section
6 110(a)(2)(D)(i)”.

7 (B) By replacing “this section and the pro-
8 hibition of section 110(a)(2)(D)(ii)” in sub-
9 section (e)(1) with “the prohibition of section
10 110(a)(2)(D)(i)”.

11 (C) In the flush language at end of sub-
12 section (c) by striking “section
13 110(a)(2)(D)(ii)” and inserting “section
14 110(a)(2)(D)(i)” and deleting the last sentence.

15 (D) By amending subsection (d) to read as
16 follows:

17 “(d)(1) For purposes of this subsection, the term ‘af-
18 fected unit’ means any unit that is subject to emission
19 limitations under subpart 2 of part B, subpart 2 of part
20 C, or part D.

21 “(2) To the extent that any petition submitted under
22 subsection (b) after the date of enactment of the Clear
23 Skies Act of 2003 seeks a finding for any affected unit,
24 then, notwithstanding any provision in subsections (a)
25 through (c) to the contrary—

1 “(A) in determining whether to make a finding
2 under subsection (b) for any affected unit, the Ad-
3 ministrators shall consider, among other relevant fac-
4 tors, emissions reductions required to occur by the
5 attainment date or dates of any relevant nonattain-
6 ment areas in the petitioning State or political sub-
7 division;

8 “(B) the Administrator may not determine that
9 affected units emit, or would emit, any air pollutant
10 in violation of the prohibition of section
11 110(a)(2)(D)(i) unless that Administrator deter-
12 mines that—

13 “(i) such emissions may be reduced at
14 least as cost-effectively as emissions from each
15 other principal category of sources of sulfur di-
16 oxide or nitrogen oxides, including industrial
17 boilers, on-road mobile sources, and off-road
18 mobile sources, and any other category of
19 sources that the Administrator may identify;
20 and

21 “(ii) reductions in such emissions will im-
22 prove air quality in the petitioning State’s non-
23 attainment area or areas at least as cost-effec-
24 tively as reductions in emissions from each
25 other principal category of sources of sulfur di-

1 oxide or nitrogen oxides to the maximum extent
2 that a methodology is reasonably available to
3 make such a determination.

4 In making the determination under clause (ii), the
5 Administrator shall use the best available peer-re-
6 viewed models and methodology that consider the
7 proximity of the source or sources to the petitioning
8 State or political subdivision and incorporate other
9 sources characteristics.

10 “(C) The Administrator shall develop an appro-
11 priate peer reviewed methodology for making deter-
12 minations under subparagraph (B) by December 31,
13 2006.

14 “(D) The Administrator shall not make any
15 findings with respect to an affected unit under this
16 section prior to January 1, 2009. For any petition
17 submitted prior to January 1, 2007, the Adminis-
18 trator shall make a finding or deny the petition by
19 the January 31, 2009.

20 “(E) The Administrator, by rulemaking, shall
21 extend the compliance and implementation deadlines
22 in subsection (c) to the extent necessary to assure
23 that no affected unit shall be subject to any such
24 deadline prior to January 1, 2012.”.

1 (b) TITLE III.—Section 307(d)(1)(G) of title III of
2 the Clean Air Act is amended to read as follows:

3 “(G) the promulgation or revision of any
4 regulation under title IV,”.

5 (c) NOISE POLLUTION.—Title IV of the Clean Air
6 Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)
7 is redesignated as title VII and amended by renumbering
8 sections 401 through 403 as sections 701 through 703,
9 respectively.

10 (d) SECTION 406.—Title IV of the Clean Air Act
11 Amendments of 1990 (relating to acid deposition control)
12 is amended by repealing section 406 (industrial SO₂ emis-
13 sions).

14 (e) MONITORING.—Section 821(a) of title VIII of the
15 Clean Air Act Amendments of 1990 (miscellaneous provi-
16 sions) is amended by modifying section 821(a) to read as
17 follows:

18 “(a) MONITORING.—The Administrator of the Envi-
19 ronmental Protection Agency shall promulgate regulations
20 within 18 months after November 15, 1990, to require
21 that all affected sources subject to subpart 1 of part B
22 of title IV of the Clean Air Act as of December 31, 2009,
23 shall also monitor carbon dioxide emissions according to
24 the same timetable as in section 405(b). The regulations
25 shall require that such data be reported to the Adminis-

1 trator. The provisions of section 405(e) of title IV of the
2 Clean Air Act shall apply for purposes of this section in
3 the same manner and to the same extent as such provision
4 applies to the monitoring and data referred to in section
5 405. The Administrator shall implement this subsection
6 under 40 CFR part 75 (2002), amended as appropriate
7 by the Administrator.”.

○