

107TH CONGRESS
2^D SESSION

H. R. 5266

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 HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. BARTON of Texas (for himself and Mr. TAUZIN) (both by request) introduced the following bill; which was referred to the Committee on Energy and Commerce

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 2002”.

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. 411. Definitions.
 “Sec. 412. Allowance allocations.
 “Sec. 413. Phase I sulfur dioxide requirements.
 “Sec. 414. Phase II sulfur dioxide requirements.
 “Sec. 415. Allowances for states with emission rates at or below .8 lbs/mmbtu.
 “Sec. 416. Election for additional sources.
 “Sec. 417. Auctions, Reserve.
 “Sec. 418. Industrial sulfur dioxide emissions.
 “Sec. 419. Termination.

“Subpart 2—Sulfur Dioxide Allowance Program

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

“Subpart 3—Western Regional Air Partnership

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

“PART C—NITROGEN OXIDES EMISSIONS REDUCTIONS

“Subpart 1—Acid Rain Program

- “Sec. 441. Nitrogen Oxides Emission Reduction Program.
 “Sec. 442. Termination.

“Subpart 2—Nitrogen Oxides Allowance Program

- “Sec. 451. Definitions.
- “Sec. 452. Applicability.
- “Sec. 453. Limitations on total emissions.
- “Sec. 454. Allocations.

“Subpart 3—Ozone Season NO_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. 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 three years in which the unit had the highest
3 heat input for the period 1997 through 2001.

4 “(B) Notwithstanding subparagraph (A)—

5 “(i) if a unit commenced operation during
6 2000, then ‘baseline heat input’ means the av-
7 erage annual heat input used by the unit during
8 2000–2001; and

9 “(ii) if a unit commenced or commences
10 operation during 2001–2004, then ‘baseline
11 heat input’ means the manufacturer’s design
12 heat input capacity for the unit multiplied by
13 eighty percent for coal-fired units, fifty for com-
14 bined cycle combustion turbines, and five per-
15 cent for simple cycle combustion turbines.

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

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

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

1 “(iii) based on data for the unit reported
2 to the State where the unit is located as re-
3 quired by State law, if the unit was not re-
4 quired to report heat input during the year
5 under section 405 and did not report to the En-
6 ergy Information Administration; or

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

13 “(D) By July 1, 2003, the Administrator shall
14 promulgate regulations, without notice and oppor-
15 tunity for comment, specifying the format in which
16 the information under subparagraphs (B)(ii) and
17 (C)(ii), (iii), or (iv) shall be submitted. By January
18 1, 2004, the owner or operator of any unit under
19 subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which
20 allowances may be allocated under section 424, 434,
21 454, or 474 shall submit to the Administrator such
22 information. The Administrator is not required to al-
23 locate allowances under such sections to a unit for
24 which the owner or operator fails to submit informa-

1 tion in accordance with the regulations promulgated
2 under this subparagraph.

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

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

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

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

21 “(10) The term ‘cogeneration unit’ means, ex-
22 cept under subpart 1 of part B and subpart 1 of
23 part C, a unit that produces through the sequential
24 use of energy:

25 “(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
17 either—

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, a schedule and description of the
23 method or methods for compliance and certifi-
24 cation by the owner or operator that the facility

1 is in compliance with the requirements of that
2 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 adjacent properties under common control of the
2 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 ninety
16 percent, and fuel oil comprising no more than ten
17 percent, 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 ten 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 ‘source’ means, except for sec-
7 tions 410, 481, and 482, all buildings, structures, or
8 installations located on one or more adjacent prop-
9 erties under common control of the same person or
10 persons.

11 “(31) The term ‘State’ means—

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

17 “(B) under subpart 1 of part B and sub-
18 part 1 of part C, one of the 48 contiguous
19 States or the District of Columbia; or

20 “(C) under subpart 3 of part B, Arizona,
21 California, Colorado, Idaho, Nevada, New Mex-
22 ico, Oregon, Utah, and Wyoming.

23 “(32) 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 “(33) The term ‘utility unit’ shall have the
8 meaning set forth in section 411.

9 “(34) 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 pro-
22 vided elsewhere in subpart 1 of part B, or in an
23 amount calculated under section 424 or 434,

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

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

3 “(2) Notwithstanding any other provision of
4 law to the contrary, the calculation of the allocation
5 for any unit, and the determination of any values
6 used in such calculation, under sections 424, 434,
7 454, and 474 shall not be subject to judicial review.

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

12 “(b) ALLOWANCE TRANSFER SYSTEM.—Allowances
13 allocated, auctioned, or sold by the Administrator under
14 this title may be transferred among designated representa-
15 tives of the owners or operators of affected facilities under
16 this title and any other person, as provided by the allow-
17 ance system regulations promulgated by the Adminis-
18 trator. With regard to sulfur dioxide allowances, the Ad-
19 ministrator shall implement this subsection under 40 CFR
20 part 73 (2001), amended as appropriate by the Adminis-
21 trator. With regard to nitrogen oxides allowances and mer-
22 cury allowances, the Administrator shall implement this
23 subsection by promulgating regulations not later than
24 twenty-four months after the date of enactment of the
25 Clear Skies Act of 2002. The regulations under this sub-

1 section shall establish the allowance system prescribed
2 under this section, including, but not limited to, require-
3 ments for the allocation, transfer, and use of allowances
4 under this title. Such regulations shall prohibit the use
5 of any allowance prior to the calendar year for which the
6 allowance was allocated or auctioned and shall provide,
7 consistent with the purposes of this title, for the identifica-
8 tion of unused allowances, and for such unused allowances
9 to be carried forward and added to allowances allocated
10 in subsequent years, except as otherwise provided in sec-
11 tion 425. Such regulations shall provide, or shall be
12 amended to provide, that transfers of allowances shall not
13 be effective until certification of the transfer, signed by
14 a responsible official of the transferor, is received and re-
15 corded by the Administrator.

16 “(c) ALLOWANCE TRACKING SYSTEM.—The Admin-
17 istrator shall promulgate regulations establishing a system
18 for issuing, recording, and tracking allowances, which
19 shall specify all necessary procedures and requirements for
20 an orderly and competitive functioning of the allowance
21 system. Such system shall provide, by January 1, 2008,
22 for one or more facility-wide accounts for holding sulfur
23 dioxide allowances, nitrogen oxides allowances, and, if ap-
24 plicable, mercury allowances for all affected units at an
25 affected facility. With regard to sulfur dioxide allowances,

1 the Administrator shall implement this subsection under
2 40 CFR part 73 (2001), amended as appropriate by the
3 Administrator. With regard to nitrogen oxides allowances
4 and mercury allowances, the Administrator shall imple-
5 ment this subsection by promulgating regulations not later
6 than twenty-four months after the date of enactment of
7 the Clear Skies Act of 2002. All allowance allocations and
8 transfers shall, upon recordation by the Administrator, be
9 deemed a part of each unit's or facility's permit require-
10 ments pursuant to section 404, without any further permit
11 review and revision.

12 “(d) NATURE OF ALLOWANCES.—A sulfur dioxide al-
13 lowance, nitrogen oxides allowance, or mercury allowance
14 allocated, auctioned, or sold by the Administrator under
15 this title is a limited authorization to emit one ton of sul-
16 fur dioxide, one ton of nitrogen oxides, or one ounce of
17 mercury, as the case may be, in accordance with the provi-
18 sions of this title. Such allowance does not constitute a
19 property right. Nothing in this title or in any other provi-
20 sion of law shall be construed to limit the authority of
21 the United States to terminate or limit such authorization.
22 Nothing in this section relating to allowances shall be con-
23 strued as affecting the application of, or compliance with,
24 any other provision of this Act to an affected unit or facil-
25 ity, including the provisions related to applicable National

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

20 “(e) PROHIBITION.—

21 “(1) It shall be unlawful for any person to hold,
22 use, or transfer any allowance allocated, auctioned,
23 or sold by the Administrator under this title, except
24 in accordance with regulations promulgated by the
25 Administrator.

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

8 “(3) The owner or operator of a facility may
9 purchase allowances directly from the Administrator
10 to be used only to meet the requirements of sections
11 422, 432, 452, and 472, as the case may be, for a
12 specified year. Not later than thirty-six months after
13 the date of enactment of the Clear Skies Act of
14 2002, the Administrator shall promulgate regula-
15 tions providing for direct sales of sulfur dioxide al-
16 lowances, nitrogen oxides allowances, and mercury
17 allowances to an owner or operator of a facility. The
18 regulations shall provide that—

19 “(A) such allowances may be used only to
20 meet the requirements of section 422, 432, 452,
21 and 472, as the case may be, for such facility
22 and for a year specified by the Administrator,

23 “(B) each such sulfur dioxide allowance
24 shall be sold for \$4,000, each such nitrogen ox-
25 ides allowance shall be sold for \$4,000, and

1 each such mercury allowance shall be sold for
2 \$2,187.50, with such prices adjusted for infla-
3 tion based on the Consumer Price Index on the
4 date of enactment of the Clear Skies Act of
5 2002 and annually thereafter,

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

9 “(D) the allowances directly purchased for
10 use for a specified year shall be taken from,
11 and reduce, the amount of sulfur dioxide allow-
12 ances, nitrogen oxides allowances, or mercury
13 allowances, as the case may be, that would oth-
14 erwise be auctioned under section 423, 453, or
15 473 starting for the year after the specified
16 year and continuing for each subsequent year
17 as necessary,

18 “(E) if an owner or operator does not use
19 any such allowance in accordance with para-
20 graph (A)—

21 “(i) the owner or operator shall hold
22 the allowance for deduction by the Admin-
23 istrator, and

24 “(ii) the Administrator shall deduct
25 the allowance, without refund or other

1 form of recompense, and offer it for sale in
2 the auction from which it was taken under
3 subparagraph (D) or a subsequent relevant
4 auction as necessary, and

5 “(F) if the direct sales of allowances result
6 in the removal of all sulfur dioxide allowances,
7 nitrogen oxides allowances, or mercury allow-
8 ances, as the case may be, from auctions under
9 section 423, 453, or 473 for three consecutive
10 years, the Administrator shall conduct a study
11 to determine whether revisions to the relevant
12 allowance trading program are necessary and
13 shall report the results to the Congress.

14 “(4) Allowances may not be used prior to the
15 calendar year for which they are allocated or auc-
16 tioned. Nothing in this section or in the allowance
17 system regulations shall relieve the Administrator of
18 the Administrator’s permitting, monitoring and en-
19 forcement obligations under this Act, nor relieve af-
20 fected facilities of their requirements and liabilities
21 under the Act.

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

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

2 “(1) Nothing in this section affects—

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

5 “(B) the authority of the Federal Energy
6 Regulatory Commission under any provision of
7 law respecting unfair methods of competition or
8 anticompetitive acts or practices.

9 “(2) As used in this section, ‘antitrust laws’
10 means those Acts set forth in section 1 of the Clay-
11 ton Act (15 U.S.C. 12), as amended.

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

13 The acquisition or disposition of allowances pursuant to
14 this title including the issuance of securities or the under-
15 taking of any other financing transaction in connection
16 with such allowances shall not be subject to the provisions
17 of the Public Utility Holding Company Act of 1935.

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

23 “(j) INTERNATIONAL TRADING.—Not later than 24
24 months after the date of enactment of the Clear Skies Act
25 of 2002, the Administrator shall furnish to the Congress

1 a study evaluating the feasibility of international trading
2 of sulfur dioxide allowances, nitrogen oxides allowances,
3 and mercury allowances.

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

5 “(a) PERMIT PROGRAM.—The provisions of this title
6 shall be implemented, subject to section 403, by permits
7 issued to units and facilities subject to this title and en-
8 forced in accordance with the provisions of title V, as
9 modified by this title. Any such permit issued by the Ad-
10 ministrator, or by a State with an approved permit pro-
11 gram, shall prohibit—

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

16 “(2) exceedances of applicable emissions rates
17 under section 441,

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

20 “(4) contravention of any other provision of the
21 permit. No permit shall be issued that is incon-
22 sistent with the requirements of this title, and title
23 V as applicable.

24 “(b) COMPLIANCE PLAN.—Each initial permit appli-
25 cation shall be accompanied by a compliance plan for the

1 facility to comply with its requirements under this title.
2 Where an affected facility consists of more than one af-
3 fected unit, such plan shall cover all such units, and such
4 facility shall be considered a ‘facility’ under section
5 502(c). Nothing in this section regarding compliance plans
6 or in title V shall be construed as affecting allowances.

7 “(1) Submission of a statement by the owner or
8 operator, or the designated representative of the
9 owners and operators, of a unit subject to the emis-
10 sions limitation requirements of sections 412(c),
11 413, 414, and 441, that the unit will meet the appli-
12 cable emissions limitation requirements of such sec-
13 tions in a timely manner or that, in the case of the
14 emissions limitation requirements of sections 412(c),
15 413, and 414, the owners and operators will hold
16 sulfur dioxide allowances in the amount required by
17 section 412(c), shall be deemed to meet the proposed
18 and approved compliance planning requirements of
19 this section and title V, except that, for any unit
20 that will meet the requirements of this title by
21 means of an alternative method of compliance au-
22 thorized under section 413 (b), (c), (d), or (f), sec-
23 tion 416, and section 441 (d) or (e), the proposed
24 and approved compliance plan, permit application
25 and permit shall include, pursuant to regulations

1 promulgated by the Administrator, for each alter-
2 native method of compliance a comprehensive de-
3 scription of the schedule and means by which the
4 unit will rely on one or more alternative methods of
5 compliance in the manner and time authorized under
6 subpart 1 of part B or subpart 1 of part C.

7 “(2) Submission of a statement by the owner or
8 operator, or the designated representative, of a facil-
9 ity that includes a unit subject to the emissions limi-
10 tation requirements of sections 422, 432, 452, and
11 472 that the owner or operator will hold sulfur diox-
12 ide allowances, nitrogen oxide allowances, and mer-
13 cury allowances, as the case may be, in the amount
14 required by such sections shall be deemed to meet
15 the proposed and approved compliance planning re-
16 quirements of this section and title V with regard to
17 subparts A through D.

18 “(3) Recordation by the Administrator of trans-
19 fers of allowances shall amend automatically all ap-
20 plicable proposed or approved permit applications,
21 compliance plans and permits.

22 “(c) PERMITS.—The owner or operator of each facil-
23 ity under this title that includes an affected unit subject
24 to title V shall submit a permit application and compliance
25 plan with regard to the applicable requirements under sec-

1 tions 412(c), 422, 432, 441, 452, and 472 for sulfur diox-
2 ide emissions, nitrogen oxide emissions, and mercury emis-
3 sions from such unit to the permitting authority in accord-
4 ance with the deadline for submission of permit applica-
5 tions and compliance plans under title V. The permitting
6 authority shall issue a permit to such owner or operator,
7 or the designated representative of such owner or oper-
8 ator, that satisfies the requirements of title V and this
9 title.

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

15 “(e) PROHIBITION.—

16 “(1) It shall be unlawful for an owner or oper-
17 ator, or designated representative, required to sub-
18 mit a permit application or compliance plan under
19 this title to fail to submit such application or plan
20 in accordance with the deadlines specified in this
21 section or to otherwise fail to comply with regula-
22 tions implementing this section.

23 “(2) It shall be unlawful for any person to oper-
24 ate any facility subject to this title except in compli-
25 ance with the terms and requirements of a permit

1 application and compliance plan (including amend-
2 ments thereto) or permit issued by the Adminis-
3 trator or a State with an approved permit program.
4 For purposes of this subsection, compliance, as pro-
5 vided in section 504(f), with a permit issued under
6 title V which complies with this title for facilities
7 subject to this title shall be deemed compliance with
8 this subsection as well as section 502(a).

9 “(3) In order to ensure reliability of electric
10 power, nothing in this title or title V shall be con-
11 strued as requiring termination of operations of a
12 unit serving a generator for failure to have an ap-
13 proved permit or compliance plan under this section,
14 except that any such unit may be subject to the ap-
15 plicable enforcement provisions of section 113.

16 “(f) CERTIFICATE OF REPRESENTATION.—No per-
17 mit shall be issued under this section to an affected unit
18 or facility until the designated representative of the own-
19 ers or operators has filed a certificate of representation
20 with regard to matters under this title, including the hold-
21 ing and distribution of allowances and the proceeds of
22 transactions involving allowances.

23 **“SEC. 405. MONITORING, REPORTING, AND RECORD-**
24 **KEEPING REQUIREMENTS.**

25 “(a) APPLICABILITY.—

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

8 “(B) The Administrator shall, by regulations,
9 specify the requirements for CEMS under subpara-
10 graph (A), for any alternative monitoring system
11 that is demonstrated as providing information with
12 the same precision, reliability, accessibility, and
13 timelines as that provided by CEMS, and for record-
14 keeping and reporting of information from such sys-
15 tems. Such regulations may include limitations on
16 the use of alternative compliance methods by units
17 equipped with an alternative monitoring system as
18 may be necessary to preserve the orderly functioning
19 of the allowance system, and which will ensure the
20 emissions reductions contemplated by this title.
21 Where 2 or more units utilize a single stack, a sepa-
22 rate CEMS shall not be required for each unit, and
23 for such units the regulations shall require that the
24 owner or operator collect sufficient information to

1 permit reliable compliance determinations for each
2 such unit.

3 “(2)(A) The owner and operator of any facility
4 subject to this title shall be required to install and
5 operate CEMS to monitor the emissions from each
6 affected unit at the facility, and to quality assure
7 the data for—

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

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

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

16 “(B)(i) The Administrator shall, by regulations,
17 specify the requirements for CEMS under subpara-
18 graph (A), for any alternative monitoring system
19 that is demonstrated as providing information with
20 the same precision, reliability, accessibility, and
21 timeliness as that provided by CEMS, for record-
22 keeping and reporting of information from such sys-
23 tems, and if necessary under section 474, for moni-
24 toring, recordkeeping, and reporting of the mercury
25 content of fuel.

1 “(ii) Notwithstanding the requirements of
2 clause (i), the regulations under clause (i) may
3 specify an alternative monitoring system for deter-
4 mining mercury emissions to the extent that the Ad-
5 ministrator determines that CEMS for mercury with
6 appropriate vendor guarantees are not commercially
7 available.

8 “(iii) The regulations under clause (i) may in-
9 clude limitation on the use of alternative compliance
10 methods by units equipped with an alternative moni-
11 toring system as may be necessary to preserve the
12 orderly functioning of the allowance system, and
13 which will ensure the emissions reductions con-
14 templated by this title.

15 “(iv) Except as provided in clause (v), the reg-
16 ulations under clause (i) shall not require a separate
17 CEMS for each unit where two or more units utilize
18 a single stack and shall require that the owner or
19 operator collect sufficient information to permit reli-
20 able compliance determinations for such units.

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

1 “(b) DEADLINES.—

2 “(1) Upon commencement of commercial oper-
3 ation of each new utility unit under subpart I of
4 part B, the unit shall comply with the requirements
5 of subsection (a)(1).

6 “(2) By the later of January 1, 2009, or the
7 date on which the unit commences operation, the
8 owner or operator of each affected unit under sub-
9 part 2 of part B shall install and operate CEMS,
10 quality assure the data, and keep records and re-
11 ports in accordance with the regulations issued
12 under paragraph (a)(2) with regard to sulfur diox-
13 ide, opacity, and volumetric flow.

14 “(3) By the later of January 1 of the year be-
15 fore the first covered year or the date on which the
16 unit commences operation, the owner or operator of
17 each affected unit under subpart 3 of part B shall
18 install and operate CEMS, quality assure the data,
19 and keep records and reports in accordance with the
20 regulations issued under paragraph (a)(2) with re-
21 gard to sulfur dioxide and volumetric flow.

22 “(4) By the later of January 1, 2007 or the
23 date on which the unit commences operation, the
24 owner or operator of each affected unit under sub-
25 part 2 of part C shall install and operate CEMS,

1 quality assure the data, and keep records and re-
2 ports in accordance with the regulations issued
3 under paragraph (a)(2) with regard to nitrogen ox-
4 ides, and

5 “(5) By the later of January 1, 2009 or the
6 date on which the unit commences operation, the
7 owner or operator of each affected unit under part
8 D shall install and operate CEMS, quality assure
9 the data, and keep records and reports in accord-
10 ance with the regulations issued under paragraph
11 (a)(2) with regard to mercury.

12 “(c) UNAVAILABILITY OF EMISSIONS DATA.—If
13 CEMS data or data from an alternative monitoring system
14 approved by the Administrator under subsection (a) is not
15 available for any affected unit during any period of a cal-
16 endar year in which such data is required under this title,
17 and the owner or operator cannot provide information,
18 satisfactory to the Administrator, on emissions during
19 that period, the Administrator shall deem the unit to be
20 operating in an uncontrolled manner during the entire pe-
21 riod for which the data was not available and shall, by
22 regulation, prescribe means to calculate emissions for that
23 period. The owner or operator shall be liable for excess
24 emissions fees and offsets under section 406 in accordance
25 with such regulations. Any fee due and payable under this

1 subsection shall not diminish the liability of the unit's
2 owner or operator for any fine, penalty, fee or assessment
3 against the unit for the same violation under any other
4 section of this Act.

5 “(d) With regard to sulfur dioxide, nitrogen oxides,
6 opacity, and volumetric flow, the Administrator shall im-
7 plement subsections (a) and (c) under 40 CFR part 75
8 (2001), amended as appropriate by the Administrator.
9 With regard to mercury, the Administrator shall imple-
10 ment subsections (a) and (c) by issuing regulations not
11 later than January 1, 2008.

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

17 **“SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLI-**
18 **ANCE WITH OTHER PROVISIONS; ENFORCE-**
19 **MENT.**

20 “(a) EXCESS EMISSIONS PENALTY.—

21 “(1) The owner or operator of any unit subject
22 to the requirements of section 441 that emits nitro-
23 gen oxides for any calendar year in excess of the
24 unit's emissions limitation requirement shall be lia-
25 ble for the payment of an excess emissions penalty,

1 except where such emission were authorized pursu-
2 ant to section 110(f). That penalty shall be cal-
3 culated on the basis of the number of tons emitted
4 in excess of the unit’s emissions limitation require-
5 ment multiplied by \$2,000.

6 “(2) The owner or operator of any unit subject
7 to the requirements of section 412(c) that emits sul-
8 fur dioxide for any calendar year before 2008 in ex-
9 cess of the sulfur dioxide allowances the owner or
10 operator holds for use for the unit for that calendar
11 year shall be liable for the payment of an excess
12 emissions penalty, except where such emissions were
13 authorized pursuant to section 110(f). That penalty
14 shall be calculated as follows:

15 “(A) the product of the unit’s excess emis-
16 sions (in tons) multiplied by the clearing price
17 of sulfur dioxide allowances sold at the most re-
18 cent auction under section 417, if within thirty
19 days after the date on which the owner or oper-
20 ator was required to hold sulfur dioxide
21 allowances—

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

1 “(ii) the Administrator receives the
2 penalty required under this subparagraph.

3 “(B) if the requirements of clause (A)(i) or
4 (A)(ii) are not met, three hundred percent of
5 the product of the unit’s excess emissions (in
6 tons) multiplied by the clearing price of sulfur
7 dioxide allowances sold at the most recent auc-
8 tion under section 417.

9 “(3) If the units at a facility that are subject
10 to the requirements of section 412(c) emit sulfur di-
11 oxide for any calendar year after 2007 in excess of
12 the sulfur dioxide allowances that the owner or oper-
13 ator of the facility holds for use for the facility for
14 that calendar year, the owner or operator shall be
15 liable for the payment of an excess emissions pen-
16 alty, except where such emissions were authorized
17 pursuant to section 110(f). That penalty shall be
18 calculated under paragraph (4)(A) or (4)(B).

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

1 that calendar year, the owner or operator shall be
2 liable for the payment of an excess emissions pen-
3 alty, except where such emissions were authorized
4 pursuant to section 110(f). That penalty shall be
5 calculated as follows:

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

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

20 “(ii) the Administrator receives the
21 penalty required under this subparagraph.

22 “(B) if the requirements of clause (A)(i) or
23 (A)(ii) are not met, three hundred percent of
24 the product of the units’ excess emissions (in
25 tons or, for mercury emissions, in ounces) mul-

1 multiplied by the clearing price of sulfur dioxide al-
2 lowances, nitrogen oxides allowances, or mer-
3 cury allowances, as the case may be, sold at the
4 most recent auction under section 423, 453, or
5 473.

6 “(5) Any penalty under paragraph 1, 2, 3, or
7 4 shall be due and payable without demand to the
8 Administrator as provided in regulations issued by
9 the Administrator. With regard to the penalty under
10 paragraph 1, the Administrator shall implement this
11 paragraph under 40 CFR 77 (2001), amended as
12 appropriate by the administrator. With regard to the
13 penalty under paragraphs 2, 3, and 4, the Adminis-
14 trator shall implement this paragraph by issuing
15 regulations no later than twenty-four months after
16 the date of enactment of the Clear Skies Act of
17 2002. Any such payment shall be deposited in the
18 United States Treasury. Any penalty due and pay-
19 able under this section shall not diminish the liabil-
20 ity of the unit’s owner or operator for any fine, pen-
21 alty or assessment against the unit for the same vio-
22 lation under any other section of this Act.

23 “(b) EXCESS EMISSIONS OFFSET.—

24 “(1) The owner or operator of any unit subject
25 to the requirements of section 412(c) that emits sul-

1 fur dioxide during any calendar year before 2008 in
2 excess of the sulfur dioxide allowances held for the
3 unit for the calendar year shall be liable to offset the
4 excess emissions by an equal tonnage amount in the
5 following calendar year, or such longer period as the
6 Administrator may prescribe. The Administrator
7 shall deduct sulfur dioxide allowances equal to the
8 excess tonnage from those held for the facility for
9 the calendar year, or succeeding years during which
10 offsets are required, following the year in which the
11 excess emissions occurred.

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

1 “(3) If the units at a facility that are subject
2 to the requirements of section 422, 432, 452, or 472
3 emit sulfur dioxide, nitrogen oxides, or mercury for
4 any calendar year in excess of the sulfur dioxide al-
5 lowances, nitrogen oxides allowances, or mercury al-
6 lowances, as the case may be, that the owner or op-
7 erator of the facility holds for use for the facility for
8 that calendar year, the owner or operator shall be
9 liable to offset the excess emissions by an equal
10 amount of tons or, for mercury, ounces in the fol-
11 lowing calendar year, or such longer period as the
12 Administrator may prescribe. The Administrator
13 shall deduct sulfur dioxide allowances, nitrogen oxide
14 allowances, or mercury allowances, as the case may
15 be, equal to the excess emissions in tons or, for mer-
16 cury, ounces from those held for the facility for the
17 year, or succeeding years during which offsets are
18 required, following the year in which the excess
19 emissions occurred.

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

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

4 “(1) to pay the penalty under subsection (a); or
5 “(2) to offset excess emissions as required by
6 subsection (b).

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

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

19 “(g) Violation by any person subject to this title of
20 any prohibition of, requirement of, or regulation promul-
21 gated pursuant to this title shall be a violation of this Act.
22 In addition to the other requirements and prohibitions
23 provided for in this title, the operation of any affected unit
24 or the affected units at a facility to emit sulfur dioxide,
25 nitrogen oxides, or mercury in violation of section 412(c),

1 422, 432, 452, and 472, as the case may be, shall be
2 deemed a violation, with each ton or, in the case of mer-
3 cury, each ounce emitted in excess of allowances held con-
4 stituting a separate violation.

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

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

16 “(b) **APPLICATION.**—The owner or operator making
17 an election under subsection (a) shall submit an applica-
18 tion for the election to the Administrator for approval.

19 “(c) **APPROVAL.**—If an application for an election
20 under subsection (b) meets the requirements of subsection
21 (a), the Administrator shall approve the designation as an
22 affected unit under subpart 2 of part B and subpart 2
23 of part C and, if applicable, under part D, subject to the
24 requirements in subsections (d) through (g).

25 “(d) **ESTABLISHMENT OF BASELINE.**—

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

9 “(2) The baselines for heat input and sulfur di-
10 oxide, nitrogen oxides, and mercury emission rates,
11 as the case may be, for the unit shall be the unit’s
12 heat input and the emission rates of sulfur dioxide,
13 nitrogen oxides, and mercury for a year starting
14 after approval of the designation under subsection
15 (c). The Administrator shall issue regulations requir-
16 ing all the unit’s baselines to be based on the same
17 year and specifying minimum requirements con-
18 cerning the percentage of the unit’s operating hours
19 for which quality assured CEMS data must be avail-
20 able during such year.

21 “(e) EMISSION LIMITATIONS.—After approval of the
22 designation of the unit under paragraph (c), the unit shall
23 become:

24 “(1) an affected unit under subpart 2 of part
25 B, and shall be allocated sulfur dioxide allowances

1 under paragraph (f), starting the later of January 1,
2 2010, or January 1 of the year after the year on
3 which the unit's baselines are based under sub-
4 section (d);

5 “(2) an affected unit under subpart 2 of part
6 C, and shall be allocated nitrogen oxides allowances
7 under paragraph (f), starting the later of January 1,
8 2008, or January 1 of the year after the year on
9 which the unit's baselines are based under sub-
10 section (d); and

11 “(3) if applicable, an affected unit under part
12 D, and shall be allocated mercury allowances, start-
13 ing the later of January 1, 2010, or January 1 of
14 the year after the year on which the unit's baselines
15 are based under subsection (d).

16 “(f) ALLOCATIONS AND AUCTION AMOUNTS.—

17 “(1) The Administrator shall promulgate regu-
18 lations determining the allocations of sulfur dioxide
19 allowances, nitrogen oxides allowances, and, if appli-
20 cable, mercury allowances for each year during
21 which a unit is an affected unit under subsection (e).
22 The regulations shall provide for allocations equal to
23 fifty percent of the following amounts, as adjusted
24 under paragraph (2)—

1 “(A) the lesser of the unit’s baseline heat
2 input under subsection (d) or the unit’s heat
3 input for the year before the year for which the
4 Administrator is determining the allocations;
5 multiplied by

6 “(B) the lesser of—

7 “(i) the unit’s baseline sulfur dioxide
8 emission rate, nitrogen oxides emission
9 rate, or mercury emission rate, as the case
10 may be;

11 “(ii) the unit’s sulfur dioxide emission
12 rate, nitrogen oxides emission rate, or mer-
13 cury emission rate, as the case may be,
14 during 2002, as determined by the Admin-
15 istrator based, to the extent available, on
16 information reported to the State where
17 the unit is located; or

18 “(iii) the unit’s most stringent State
19 or federal emission limitation for sulfur di-
20 oxide, nitrogen oxides, or mercury applica-
21 ble to the year on which the unit’s baseline
22 heat input is based under subsection (d).

23 “(2) The Administrator shall reduce the alloca-
24 tions under paragraph (1) by 1.0 percent in the first
25 year for which the Administrator is allocating allow-

1 ances to the unit, by an additional 1.0 percent of the
2 allocations under paragraph (1) each year starting
3 in the second year through the twentieth year, and
4 by an additional 2.5 percent of the allocations under
5 paragraph (1) each year starting in the twenty-first
6 year and each year thereafter. The Administrator
7 shall make corresponding increases in the amounts
8 of allowances auctioned under sections 423, 453,
9 and 473.

10 “(g) WITHDRAWAL.—The Administrator shall pro-
11 mulgate regulations withdrawing from the approved des-
12 ignation under subsection (c) any unit that qualifies as
13 an affected EGU under subpart 2 of part B, subpart 2
14 of part C, or part D after the approval of the designation
15 of the unit under subsection (c).

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

19 **“SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCEN-**
20 **TIVES.**

21 “(a) DEFINITION.—For purposes of this section,
22 ‘clean coal technology’ means any technology, including
23 technologies applied at the precombustion, combustion, or
24 post combustion stage, at a new or existing facility which
25 will achieve significant reductions in air emissions of sul-

1 fur dioxide or oxides of nitrogen associated with the utili-
2 zation of coal in the generation of electricity, process
3 steam, or industrial products, which is not in widespread
4 use as of the date of enactment of this title.

5 “(b) REVISED REGULATIONS FOR CLEAN COAL
6 TECHNOLOGY DEMONSTRATIONS.—

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

22 “(2) TEMPORARY PROJECTS.—Installation, op-
23 eration, cessation, or removal of a temporary clean
24 coal technology demonstration project that is oper-
25 ated for a period of five years or less, and which

1 complies with the State implementation plans for the
2 State in which the project is located and other re-
3 quirements necessary to attain and maintain the na-
4 tional ambient air quality standards during and
5 after the project is terminated, shall not subject
6 such facility to the requirements of section 111 or
7 part C or D of title I.

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

16 “(4) EPA REGULATIONS.—Not later than 12
17 months after November 15, 1990, the Administrator
18 shall promulgate regulations or interpretive rulings
19 to revise requirements under section 111 and parts
20 C and D, as appropriate, to facilitate projects con-
21 sistent in this subsection. With respect to parts C
22 and D, such regulations or rulings shall apply to all
23 areas in which EPA is the permitting authority. In
24 those instances in which the State is the permitting
25 authority under part C or D, any State may adopt

1 and submit to the Administrator for approval revi-
2 sions to its implementation plan to apply the regula-
3 tions or rulings promulgated under this subsection.

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

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

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

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

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

1 **“SEC. 409. AUCTIONS.**

2 “(a) Commencing in 2005 and in each year there-
3 after, the Administrator shall conduct auctions, as re-
4 quired under sections 423, 424, 426, 453, 454, 473, and
5 474, at which allowances shall be offered for sale in ac-
6 cordance with regulations promulgated by the Adminis-
7 trator no later than twenty-four months after the date of
8 enactment of the Clear Skies Act of 2002. Such regula-
9 tions may provide allowances to be offered for sale before
10 or during the year for which such allowances may be used
11 to meet the requirement to hold allowances under section
12 422, 452, and 472. Such regulations shall specify the fre-
13 quency and timing of auctions and may provide for more
14 than one auction of sulfur dioxide allowances, nitrogen ox-
15 ides allowances, or mercury allowances during a year.
16 Each auction shall be open to any person. A person wish-
17 ing to bid for allowances in the auction shall submit to
18 the Administrator (by a date set, and on a bid schedule
19 provided, by the Administrator) offers to purchase speci-
20 fied numbers of allowances at specified prices. Allowances
21 purchased at the auction may be used for any purpose
22 and at any time after the auction, subject to the provisions
23 of this title.

24 “(b) **DEFAULT AUCTION PROCEDURES.**—If the Ad-
25 ministrator is required to conduct an auction of allowances
26 under subsection (a) before regulations have been promul-

1 gated under that subsection, such auction shall be con-
2 ducted as follows:

3 “(1) The auction shall be held on the first busi-
4 ness day in October of the year in which the auction
5 is required or, in the absence of such a requirement,
6 of the year before the first year for which the allow-
7 ances may be used to meet the requirements of sec-
8 tion 403(e)(2).

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

10 “(3) In order to bid for allowances included in
11 the auction, a person shall submit, and the Adminis-
12 trator must receive by the date three business days
13 before the auction, one or more offers to purchase
14 a specified amount of such allowances at a specified
15 price on a sealed bid schedule to be provided by the
16 Administrator. The bidder shall state in the bid
17 schedule that the bidder is willing to purchase at the
18 specified price fewer allowances than the specified
19 amount and shall identify the account in the Allow-
20 ance Tracking System under section 403(e) in which
21 the allowances purchased are to be placed. Each bid
22 must include a certified check or, using a form to be
23 provided by the Administrator, a letter of credit for
24 the specified amount of allowances multiplied by the
25 bid price payable to the U.S. EPA. The bid sched-

1 ule, and check or letter of credit, shall be sent to the
2 address specified on the bid schedule.

3 “(4) The Administrator shall auction the allow-
4 ances by—

5 “(A) determining whether each bid meets
6 the requirements of paragraph (3);

7 “(B) listing the bids (including the speci-
8 fied amounts of allowances and the specified bid
9 prices) meeting the requirements of paragraph
10 (3) in order, from highest to lowest bid price;

11 “(C) for each bid price, summing the
12 amounts of allowances specified in the bids list-
13 ed under subparagraph (B) with the same or a
14 higher bid price;

15 “(D) identifying the bid price with the
16 highest sum of allowances under subparagraph
17 (C) that does not exceed the total amount of al-
18 lowances available for auction;

19 “(E) setting as the sales price in the
20 auction—

21 “(i) the bid price identified under sub-
22 paragraph (D) if that bid price has a sum
23 of allowances under subparagraph (C)
24 equal to the total amount of allowances
25 available for auction; or

1 “(ii) the next lowest bid price after
2 the bid price identified under subpara-
3 graph (D), if the bid price identified under
4 subparagraph (D) has a sum of allowances
5 under subparagraph (C) less than the total
6 amount of allowances available for auction;
7 and

8 “(F) starting with the first bid listed
9 under subparagraph (B) and ending with the
10 bid listed immediately before the bid with a bid
11 price equal to the sales price, selling the
12 amounts of allowances specified in each bid to
13 the person who submitted the bid.

14 “(i) If the amount of remaining allow-
15 ances available for auction equals or is less
16 than the amount of allowances specified in
17 the bid with a bid price equal to the sales
18 price, the Administrator shall sell the
19 amount of remaining allowances to the
20 person who submitted that bid.

21 “(ii) If there is more than one bid
22 with a bid price equal to the sales price
23 and the amount of remaining allowances
24 available for auction is less than the total
25 of the amounts of allowances specified in

1 such bids, the Administrator shall sell the
2 amount of the remaining allowances to the
3 persons who submitted those bids on a pro
4 rata basis.

5 “(5) After the auction, the Administrator will
6 publish the names of winning and losing bidders,
7 their bids, and the sales price. The Administrator
8 will provide the successful bidders notice of the al-
9 lowances that they have purchased within thirty
10 days after payment is collected by the Adminis-
11 trator. After the conclusion of the auction, the Ad-
12 ministrator will return payment to unsuccessful bid-
13 ders and the appropriate portion of payment to suc-
14 cessful bidders who offered to purchase a larger
15 amount of allowances than the amount that they are
16 sold or to pay a bid price exceeding the sales price
17 and will add any unsold allowances to the next rel-
18 evant auction.

19 “(c) The Administrator may by delegation or contract
20 provide for the conduct of auctions under the Administra-
21 tor’s supervision by other departments or agencies of the
22 United States Government or by nongovernmental agen-
23 cies, groups, or organizations.

24 “(d) The proceeds from any auction conducted under
25 this title shall be deposited in the United States Treasury.

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

4 “(a) EVALUATION.—

5 “(1) The Administrator, in consultation with
6 the Secretary of Energy, shall study whether the
7 limitations on the total annual amounts of allow-
8 ances available starting in 2018 for sulfur dioxide
9 under section 423, nitrogen oxides under section
10 453, and mercury under section 473 should be ad-
11 justed.

12 “(2) As part of the study, the Administrator
13 shall address the following factors concerning the
14 pollutants under paragraph (a)(1)—

15 “(A) the need for further emission reduc-
16 tions from affected EGUs under subpart 2 of
17 part B, subpart 2 of part C, or part D and
18 other sources to attain or maintain the national
19 ambient air quality standards;

20 “(B) whether the benefits of the limita-
21 tions on the total annual amounts of allowances
22 available starting in 2018 justify the costs and
23 whether adjusting any of the limitations would
24 provide additional benefits which justify the
25 costs of such adjustment, taking into account
26 both quantifiable and non-quantifiable factors;

1 “(C) the marginal cost effectiveness of re-
2 ducing emissions for each pollutant;

3 “(D) the relative marginal cost effective-
4 ness of reducing sulfur dioxide and nitrogen
5 oxide emissions from affected EGUs under sub-
6 part 2 of part B and subpart 2 of part C, as
7 compared to the marginal cost effectiveness of
8 controls on other sources of sulfur dioxide, ni-
9 trogen oxides and other pollutants that can be
10 controlled to attain or maintain national ambi-
11 ent air quality standards;

12 “(E) the feasibility of attaining the limita-
13 tions on the total annual amounts of allowances
14 available starting in 2018 given the available
15 control technologies and the ability to install
16 control technologies by 2018, and the feasibility
17 of attaining alternative limitations on the total
18 annual amounts of allowances available starting
19 in 2018 under paragraph (a)(1) for each pollut-
20 ant, including the ability to achieve alternative
21 limitations given the available control tech-
22 nologies, and the feasibility of installing the
23 control technologies needed to meet the alter-
24 native limitation by 2018;

1 “(F) the results of the most current re-
2 search and development regarding technologies
3 and strategies to reduce the emissions of one or
4 more of these pollutants from affected EGUs
5 under subpart 2 of part B, subpart 2 of part
6 C, or part D, as applicable and the results of
7 the most current research and development re-
8 garding technologies for other sources of the
9 same pollutants;

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

20 “(H) the most current scientific informa-
21 tion relating to emissions, transformation and
22 deposition of these pollutants, including studies
23 evaluating—

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

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

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

7 “(iii) the extent to which effective
8 control programs in other countries would
9 prevent air pollution generated in those
10 countries from contributing to nonattain-
11 ment, or interfering with the maintenance
12 of any national ambient air quality stand-
13 ards;

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

18 “(v) speciated monitoring data for
19 particulate matter and the effect of various
20 elements of fine particulate matter on pub-
21 lic health;

22 “(I) the most current scientific information
23 relating to emissions, transformation and depo-
24 sition of mercury, including studies
25 evaluating—

1 “(i) known and potential human
2 health and environmental effects of mer-
3 cury;

4 “(ii) whether emissions of mercury
5 from affected EGUs under part D con-
6 tribute significantly to elevated levels of
7 mercury in fish;

8 “(iii) human population exposure to
9 mercury; and

10 “(iv) the relative marginal cost effec-
11 tiveness of reducing mercury emissions
12 from affected EGUs under part D, as com-
13 pared to the marginal cost effectiveness of
14 controls on other sources of mercury;

15 “(J) a comparison of the extent to which
16 sources of mercury not located in the United
17 States contributed to adverse affects on terres-
18 trial or aquatic systems as opposed to the con-
19 tribution from affected EGUs under part D,
20 and the extent to which effective mercury con-
21 trol programs in other countries could minimize
22 such impairment; and

23 “(K) an analysis of the effectiveness and
24 efficiency of the sulfur dioxide allowance pro-
25 gram under subpart 2 of part B, the nitrogen

1 oxides allowance program under subpart 2 of
2 part C, and the mercury allowance program
3 under part D.

4 “(3) As part of the study, the Administrator
5 shall take into account the most current information
6 available pursuant to the review of the air quality
7 criteria for particulate matter under section 108.

8 “(b) PEER REVIEW PROCEDURES.—The draft results
9 of the study under subsection (a) and related technical
10 documents shall be subject to an independent and external
11 peer review in accordance with this section. Any docu-
12 ments that are to be considered by the Administrator in
13 the study must be independently peer reviewed no later
14 than July 1, 2008. The peer review required under this
15 section shall not be subject to the Federal Advisory Com-
16 mittee Act (5 U.S.C. App.). The Administrator shall—

17 “(1) conduct the peer review in an open man-
18 ner. Such peer review shall—

19 “(A) be conducted through a formal panel
20 that is broadly representative and involves
21 qualified specialists who—

22 “(i) are selected primarily on the basis
23 of their technical expertise relevant to the
24 analyses required under this section and to
25 the decision whether or not to adjust the

1 total annual amounts of allowances avail-
2 able starting in 2018 under paragraph
3 (a)(1);

4 “(ii) are independent of the agency;

5 “(iii) disclose to the agency prior tech-
6 nical or policy positions they have taken on
7 the issues under consideration; and

8 “(iv) disclose to the agency their
9 sources of personal and institutional fund-
10 ing from the private or public sectors;

11 “(B) contain a balanced presentation of all
12 considerations, including minority reports;

13 “(C) provide adequate protections for con-
14 fidential business information and trade secrets,
15 including requiring panel members or partici-
16 pants to enter into confidentiality agreements;

17 “(D) afford an opportunity for public com-
18 ment; and

19 “(E) be complete by no later than January
20 1, 2009.

21 “(2) respond, in writing, to all significant peer
22 review and public comments; and

23 “(3) certify that—

1 “(A) each peer review participant has the
2 expertise an independence required under this
3 section; and

4 “(B) the agency has adequately responded
5 to the peer review comments as requires under
6 this section.

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

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

21 **REDUCTIONS**

22 **“Subpart 1—Acid Rain Program**

23 **“SEC. 411. DEFINITIONS.**

24 “For purposes of this subpart:

1 “(1) The term ‘actual 1985 emission rate’, for
2 electric utility units means the annual sulfur dioxide
3 or nitrogen oxides emission rate in pounds per mil-
4 lion Btu as reported in the NAPAP Emissions In-
5 ventory, Version, 2 National Utility reference File.
6 For nonutility units, the term ‘actual 1985 emission
7 rate’ means the annual sulfur dioxide or nitrogen ox-
8 ides emission rate in pounds per million Btu as re-
9 ported in the NAPAP Emission Inventory, Version
10 2.

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

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

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

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

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

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

1 pursuant to paragraph (3). For non-utility
2 units, the baseline in the NAPAP Emissions In-
3 ventory, Version 2. The Administrator, in the
4 Administrator's sole discretion, may exclude pe-
5 riods during which a unit is shutdown for a
6 continuous period of four calendar months or
7 longer, and make appropriate adjustments
8 under this paragraph. Upon petition of the
9 owner or operator of any unit, the Adminis-
10 trator may make appropriate baseline adjust-
11 ments for accidents that caused prolonged out-
12 ages.

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

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

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

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

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

19 “(B) For each calendar year beginning in
20 2010, allocations of allowances made by the Ad-
21 ministrator pursuant to section 412 and sub-
22 sections (b)(1), (3), and (4); (c)(1), (2), (3),
23 and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1),
24 (2), (3), (4), and (5); (h)(1) and (3); (i) and (j)
25 of section 414.

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

4 “(7) The term ‘commenced’ as applied to con-
5 struction of any new electric utility unit means that
6 an owner or operator has undertaken a continuous
7 program of construction or that an owner or oper-
8 ator has entered into a contractual obligation to un-
9 dertake and complete, within a reasonable time, a
10 continuous program of construction.

11 “(8) The term ‘commenced commercial oper-
12 ation’ means to have begun to generate electricity
13 for sale.

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

16 “(10) The term ‘existing unit’ means a unit (in-
17 cluding units subject to section 111) that com-
18 menced commercial operation before November 15,
19 1990. Any unit that commenced commercial oper-
20 ation before November 15, 1990 which is modified,
21 reconstructed, or repowered after November 15,
22 1990 shall continue to be an existing unit for the
23 purposes of this subpart. For the purposes of this
24 subpart, existing units shall not include simple com-

1 bustion turbines, or units which serve a generator
2 with a nameplate capacity of 25 MWe or less.

3 “(11) The term ‘independent power producer’
4 means any person who owns or operates, in whole or
5 in part, one or more new independent power produc-
6 tion facilities.

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

9 “(A) is used for the generation of electric
10 energy, 80 percent or more of which is sold at
11 wholesale;

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

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

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

23 “(14) The term ‘life-of-the-unit, firm power
24 contractual arrangement’ means a unit participation
25 power sales agreement under which a utility or in-

1 industrial customer reserves, or is entitled to receive,
2 a specified amount or percentage of capacity and as-
3 sociated energy generated by a specified generating
4 unit (or units) and pays its proportional amount of
5 such unit's total costs, pursuant to a contract
6 either—

7 “(A) for the life of the unit;

8 “(B) for a cumulative term of no less than
9 30 years, including contracts that permit an
10 election for early termination; or

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

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

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

23 “(17) The term ‘Phase II bonus allowance allo-
24 cations’ means, for calendar year 2000 through
25 2009, inclusive, and only for such years, allocations

1 made by the Administrator pursuant to section 412,
2 subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as
3 otherwise provided therein), and (h)(2) of section
4 414, and section 415.

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

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

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

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

5 “(i) a unit that serves a generator in
6 any State that produces electricity for sale,
7 or

8 “(ii) a unit that, during 1985, served
9 a generator in any State that produced
10 electricity for sale.

11 “(B) Notwithstanding subparagraph (A), a
12 unit described in subparagraph (A) that—

13 “(i) was in commercial operations
14 during 1985, but

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

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

1 trical output to any utility power distribution
2 system for sale.

3 **“SEC. 412. ALLOWANCE ALLOCATION.**

4 “(a) Except as provided in sections 414(a)(2),
5 415(a)(3), and 416, beginning January 1, 2000, the Ad-
6 ministrator shall not allocate annual missions of sulfur di-
7 oxide from utility units in excess of 8.90 million tons ex-
8 cept that the Administrator shall not to take into account
9 unused allowances carried forward by owners and opera-
10 tors of affected units or by other persons holding such al-
11 lowances, following the year for which they were allocated.
12 If necessary to meeting he restrictions imposed in the pre-
13 ceding sentence, he Administrator shall reduce, pro rata,
14 the basic Phase II allowance allocations for each unit sub-
15 ject to the requirements of section 414. Subject to the pro-
16 visions of section 417, the Administrator shall allocate al-
17 lowances for each affected until at an affected source an-
18 nually, as provided in paragraphs (2) and(3) and section
19 404. Except as provided in sections 416, the removal of
20 an existing affected unit or source from commercial oper-
21 ation at any time after November 15, 1990 (whether be-
22 fore or after January 1, 1995, or January 1, 2000), shall
23 not terminate or otherwise affect the allocation of allow-
24 ances pursuant to section 413 or 414 to which the unit
25 is entitled. Prior to June 1, 1998, the Administrator shall

1 publish a revised final statement of allowance allocations,
2 subject to the provisions of section 414(a)(2).

3 “(b) NEW UTILITY UNITS.—

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

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

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

21 “(c) PROHIBITIONS.—

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

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

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

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

16 “(d) In order to insure electric reliability, regulations
17 establishing a system for issuing, recording, and tracking
18 allowances under section 403(b) and this subpart shall not
19 prohibit or affect temporary increases and decreases in
20 emissions within utility systems, power pools, or utilities
21 entering into allowance pool agreements, that result from
22 their operations, including emergencies and central dis-
23 patch, and such temporary emissions increases and de-
24 creases shall not require transfer of allowances among
25 units nor shall it require recordation. The owners or oper-

1 ators of such units shall act through a designated rep-
2 resentative. Notwithstanding the preceding sentence, the
3 total tonnage of emissions in any calendar year (calculated
4 at the end thereof) from all units in such a utility system,
5 power pool, or allowance pool agreements shall not exceed
6 the total allowances for such units for the calendar year
7 concerned, including for calendar years after 2007, allow-
8 ances held for such units by the owner or operator of the
9 sources where the units are located.

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

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

22 “(2) if such multiple holders have expressly pro-
23 vided for a different distribution of allowances by
24 contract, that allowances under this subpart and the
25 proceeds of transactions involving such allowances

1 will be deemed to be held or distributed in accord-
2 ance with the contract.

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

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

17 “(a) EMISSION LIMITATIONS.—

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

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

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

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

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

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

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

1 to 200,000 multiplied by the unit's pro rata share
2 of the total number of allowances allocated for all
3 units on Table A in the 3 States (other than units
4 at Kyger Creek, Clifty Creek, and Joppa Steam)
5 pursuant to paragraph (1). Such allowances shall be
6 excluded from the calculation of the reserve under
7 paragraph (2).

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

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

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

24 “(3) calculation of the annual average tonnage
25 for calendar years 1985, 1986, and 1987, emitted by

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

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

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

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

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

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

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

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

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

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

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

1 the transfer, and that specifies the emissions reduc-
2 tion requirements imposed pursuant to this title.

3 “(2) Such extension proposal shall—

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

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

15 “(C) specify the unit’s or units’ baseline,
16 actual 1985 emissions rate, allowable 1985
17 emissions rate, and projected utilization for cal-
18 endar years 1995 through 1999;

19 “(D) require CEMS on both the eligible
20 phase I extension unit or units and the transfer
21 unit or units beginning no later than January
22 1, 1995; and

23 “(E) specify the emission limitation and
24 number of allowances expected to be necessary

1 for annual operation after the qualifying phase
2 I technology has been installed.

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

13 “(4) In order to determine the number of pro-
14 posals eligible for allocations from the reserve under
15 subsection (a)(2) and the number of the allowances
16 remaining available after each proposal is acted
17 upon, the Administrator shall reduce the total num-
18 ber of allowances remaining available in the reserve
19 by the number of allowances calculated according to
20 subparagraph (A), (B) and (C) until either no allow-
21 ances remain available in the reserve for further al-
22 location or all approved proposals have been acted
23 upon. If no allowances remain available in the re-
24 serve for further allocation before all proposals have
25 been acted upon by the Administrator, any pending

1 proposals shall be disapproved. The Administrator
2 shall calculate allowances equal to—

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

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

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

1 “(5) Each eligible Phase I extension unit shall
2 receive allowances determined under subsection
3 (a)(1) or (c) of this section. In addition, for calendar
4 year 1995, the Administrator shall allocate to each
5 eligible Phase I extension unit, from the allowance
6 reserve created pursuant to subsection (a)(2), allow-
7 ances equal to the difference between the lesser of
8 the average annual emissions in calendar years 1988
9 and 1989 or its projected emission tonnage for cal-
10 endar year 1995 and the product of the unit’s base-
11 line multiplied by an emission rate of 2.50 lbs/
12 mmBtu, divided by 2,000. In calendar year 1996,
13 the Administrator shall allocate for each eligible
14 unit, from the allowance reserve created pursuant to
15 subsection (a)(2), allowances equal to the difference
16 between the lesser of the average annual emissions
17 in calendar years 1988 and 1989 or its projected
18 emissions tonnage for calendar year 1996 and the
19 product of the unit’s baseline multiplied by an emis-
20 sion rate of 2.50 lbs/mmBtu, divided by 2,000. It
21 shall be unlawful for any source or unit subject to
22 an approved extension plan under this subsection to
23 emit sulfur dioxide in excess of the emissions limita-
24 tions provided for in the permit and approved exten-
25 sion plan, unless the owner or operator of each unit

1 governed by the permit and approved plan holds al-
2 lowances to emit not less than the unit's total an-
3 nual emissions.

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

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

1 to the amount of such excess from such unit's an-
2 nual allowance allocation.

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

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

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

1 ceding sentence, except that for the purposes of ap-
2 plying this subsection to any such unit, the prior
3 year concerned as specified below, shall be any year
4 after January 1, 1995 but prior to January 1, 2000.

5 “(2) In the case of an affected unit under this section
6 described in subparagraph (A), the allowances allocated
7 under this subsection for early reductions in any prior year
8 may not exceed the amount which (A) the product of the
9 unit’s baseline multiplied by the unit’s 1985 actual sulfur
10 dioxide emission rate (in lbs. per mmBtu), divided by
11 2,000 exceeds (B) the allowances specified for such unit
12 in Table A. In the case of an affected unit under section
13 414 described in subparagraph (A), the allowances award-
14 ed under this subsection for early reductions in any prior
15 year may not exceed the amount by which (i) the product
16 of the quality of fossil fuel consumed by the unit (in
17 mmBtu) in the prior year multiplied by the lesser of 2.50
18 or the most stringent emission rate (in lbs. per mmBtu)
19 applicable to the unit under the applicable implementation
20 plan, divided by 2,000 exceeds (ii) the unit’s actual ton-
21 nage of sulfur dioxide emission for the prior year con-
22 cerned. Allowances allocated under this subsection for
23 units referred to in subparagraph (A) may be allocated
24 only for emission reductions achieved as a result of phys-
25 ical changes or changes in the method of operation made

1 after November 15, 1990, including changes in the type
2 or quality of fossil fuel consumed.

3 “(3) In no event shall the provisions of this para-
4 graph be interpreted as an event of force majeure or a
5 commercial impracticability or in any other way as a basis
6 for excused nonperformance by a utility system under a
7 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 |
| Georgia | Bowen | 7 | 31,680 |
| | | 1 | 56,320 |
| | | 2 | 54,770 |
| | | 3 | 71,750 |
| | Hammond | 4 | 71,740 |
| | | 1 | 8,780 |
| | | 2 | 9,220 |
| | | 3 | 8,910 |
| | J. McDonough | 4 | 37,640 |
| | | 1 | 19,910 |
| | | 2 | 20,600 |
| | Wansley | 1 | 70,770 |
| | | 2 | 65,430 |
| | Yates | 1 | 7,210 |
| 2 | | 7,040 | |
| 3 | | 6,950 | |
| 4 | | 8,910 | |
| 5 | | 9,410 | |
| 6 | | 24,760 | |
| 7 | | 21,480 | |

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

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

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

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

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

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

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

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

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

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

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

3 “(1) DEFINITIONS.—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-

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

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

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

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

15 “(A) IN GENERAL.—The regulations under
16 paragraph (4) of this subsection shall provide
17 that for each ton of sulfur dioxide emissions
18 avoided by an electric utility, during the appli-
19 cable period, through the use of qualified en-
20 ergy conservation measures or qualified renew-
21 able energy, the Administrator shall allocate a
22 single allowance to such electric utility, on a
23 first-come-first-served basis from the Conserva-
24 tion and Renewable Energy Reserve established

1 under subsection (g), up to a total of 300,000
2 allowances for allocation from such Reserve.

3 “(B) REQUIREMENTS FOR ISSUANCE.—

4 The Administrator shall allocate allowances to
5 an electric utility under this subsection only if
6 all of the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(G) PROHIBITIONS.—

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

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

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

17 “(4) REGULATIONS.—The Administrator
18 shall implement this subsection under 40 CFR
19 part 73 (2001), amended as appropriate by the
20 Administrator. Such regulations shall list en-
21 ergy conservation measures and renewable en-
22 ergy sources which may be treated as qualified
23 energy conservation measures and qualified re-
24 newable energy for purposes of this subsection.
25 Allowances shall only be allocated if all require-

1 ments of this subsection and the rules promul-
2 gated to implement this subsection are complied
3 with. The Administrator shall review the deter-
4 minations of each State regulatory authority
5 under this subsection to encourage consistency
6 from electric utility and from State to State in
7 accordance with the Administrator’s rules. The
8 Administrator shall publish the findings of this
9 review no less than annually.

10 “(g) CONSERVATION AND RENEWABLE ENERGY RE-
11 SERVE.—The Administrator shall establish a Conservation
12 and Renewable Energy Reserve under this subsection. Be-
13 ginning on January 1, 1995, the Administrator may allo-
14 cate from the Conservation and Renewable Energy Re-
15 serve an amount equal to a total of 300,000 allowances
16 for emissions of sulfur dioxide pursuant to section 411.
17 In order to provide 300,000 allowances for such reserve,
18 in each year beginning in calendar year 2000 and until
19 calendar year 2009, inclusive, the Administrator shall re-
20 duce each unit’s basic Phase II allowance allocation on
21 the basis of its pro rata share of 30,000 allowances.
22 Notwithstanding the prior sentence, if allowances remain
23 in the reserve one year after the date of enactment of the
24 Clear Skies Act of 2002, the Administrator shall allocate
25 such allowances for affected units under section 414 on

1 a pro rata basis. For purposes of this subsection, for any
2 unit subject to the emissions limitation requirements of
3 section 414, the term ‘pro rata basis’ refers to the ratio
4 which the reductions made in such unit’s allowances in
5 order to establish the reserve under this subsection bears
6 to the total of such reductions for all such units.

7 “(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR
8 UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL
9 BASELINE.—

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

14 “(A) has an emission rate below 1.0 lbs/
15 mmBtu,

16 “(B) has decreased its sulfur dioxide emis-
17 sions rate by 60 percent or greater since 1980,
18 and

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

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

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

5 “(2) ALLOWANCE ALLOCATION.—Whenever a
6 unit referred to in paragraph (1) elects to calculate
7 its baseline as provided in clause (ii) of paragraph
8 (1), the Administrator shall allocate allowances for
9 the unit pursuant to section 412(a), this section,
10 and section 414 (as Basic Phase II allowance alloca-
11 tions) in an amount equal to the baseline selected
12 multiplied by the lower of the average annual emis-
13 sion rate for such unit in 1989, or 1.0 lbs./mmBtu.
14 Such allowance allocation shall be in lieu of any allo-
15 cation of allowances under this section and section
16 414.

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

18 “(a) APPLICABILITY.—

19 “(1) After January 1, 2000, each existing util-
20 ity unit as provided below is subject to the limita-
21 tions or requirements of this section. Each utility
22 unit subject to an annual sulfur dioxide tonnage
23 emission limitation under this section is an affected
24 unit under this subpart. Each source that includes
25 one or more affected units is an affected source. In

1 the case of an existing unit that was not in oper-
2 ation during calendar year 1985, the emission rate
3 for a calendar year after 1985, as determined by the
4 Administrator, shall be used in lieu of the 1985 rate.
5 The owner or operator of any unit operated in viola-
6 tion of this section shall be fully liable under this
7 Act for fulfilling the obligations specified in section
8 406.

9 “(2) In addition to basic Phase II allowance al-
10 locations, in each year beginning in calendar year
11 2000 and ending in calendar year 2009, inclusive,
12 the Administrator shall allocate up to 530,000
13 Phase II bonus allowances pursuant to subsections
14 (b)(2),(c)(4), (d)(3)(A) and (B), and (h)(2) of this
15 section and section 415.

16 “(3) In addition to basic Phase II allowances
17 allocations and Phase II bonus allowance allocations,
18 beginning January 1, 2000, the Administrator shall
19 allocate for each unit listed on Table A in section
20 413 (other than units at Kyger Creek, Clifty Creek,
21 and Joppa Stream) and located in the States of Illi-
22 nois, Indiana, Ohio, Georgia, Alabama, Missouri,
23 Pennsylvania, West Virginia, Kentucky , or Ten-
24 nessee allowances in an amount equal to 50,000
25 multiplied by the unit’s pro rata share of the total

1 number of basic allowances allocated for all units
2 listed on Table A (other than units at Kyger Creek,
3 Clifty Creek, and Joppa Stream). Allowances allo-
4 cated pursuant to this paragraph shall not be sub-
5 ject to the 8,900,000 ton limitation in section
6 412(a).

7 “(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND
8 1.20 LBS/MMBTU.—

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

1 “(2) In addition to allowances allocated pursu-
2 ant to paragraph (1) and section 412(a) as basic
3 Phase II allowance allocations, beginning January 1,
4 2000, and for each calendar year thereafter until
5 and including 2009, the Administrator shall allocate
6 annually for each unit subject to the emissions limi-
7 tation requirements of paragraph (1) with an actual
8 1985 emissions rate greater than 1.20 lbs/mmBtu
9 and less than 2.50 lbs/mmBtu and a baseline capac-
10 ity factor of less than 60 percent, allowances from
11 the reserve created pursuant to subsection (a)(2) in
12 an amount equal to 1.20 lbs/mmBtu multiplied by
13 50 percent of the difference, on a Btu basis, between
14 the unit’s baseline and the unit’s fuel consumption
15 at a 60 percent capacity factor.

16 “(3) After January 1, 2000, it shall be unlawful
17 for any existing utility unit with an actual 1985
18 emissions rate equal to or greater than 1.20 lbs/
19 mmBtu whose annual average fuel consumption dur-
20 ing 1985, 1986, and 1987 on a Btu basis exceeded
21 90 percent in the form of lignite coal which is lo-
22 cated in a State in which, as of July 1, 1989, no
23 county or portion of a county was designated non-
24 attainment under section 107 of this Act for any
25 pollutant subject to the requirements of section 109

1 of this Act to exceed an annual sulfur dioxide ton-
2 nage limitation equal to the product of the unit's
3 baseline multiplied by the lesser of the unit's actual
4 1985 emissions rate or its allowable 1985 emissions
5 rate, divided by 2,000, unless the owner or operator
6 of such unit holds allowances to emit not less than
7 the unit's total annual emissions or, for a year after
8 2007, unless the owner or operator of the source
9 that includes such unit holds allowances to emit not
10 less than the total annual emissions of all affected
11 units at the source.

12 “(4) After January 1, 2000, the Administrator
13 shall allocate annually for each unit, subject to the
14 emissions limitation requirements of paragraph (1),
15 which is located in a State with an installed elec-
16 trical generating capacity of more than 30,000,000
17 kw in 1988 and for which was issued a prohibition
18 order or a proposed prohibition order (from burning
19 oil), which unit subsequently converted to coal be-
20 tween January 1, 1980 and December 31, 1985, al-
21 lowances equal to the difference between (A) the
22 product of the unit's annual fuel consumption, on a
23 Btu basis, at a 65 percent capacity factor multiplied
24 by the lesser of its actual or allowable emissions rate
25 during the first full calendar year after conversion,

1 divided by 2,000, and (B) the number of allowances
2 allocated for the unit pursuant to paragraph (1):
3 *Provided*, That the number of allowances allocated
4 pursuant to this paragraph shall not exceed an an-
5 nual total of five thousand. If necessary to meeting
6 the restriction imposed in the preceding sentence the
7 Administrator shall reduce, pro rata, the annual al-
8 lowances allocated for each unit under this para-
9 graph.

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

12 “(1) Except as otherwise provided in paragraph
13 (3), after January 1, 2000, it shall be unlawful for
14 a coal or oil-fired existing utility unit that serves a
15 generator with nameplate capacity of less than 75
16 MWe and an actual 1985 emission rate equal to, or
17 greater than, 1.20 lbs/mmBtu and which is a unit
18 owned by a utility operating company whose aggre-
19 gate nameplate fossil fuel steam-electric capacity is,
20 as of December 31, 1989, equal to, or greater than,
21 250 MWe to exceed an annual sulfur dioxide emis-
22 sions limitation equal to the product of the unit’s
23 baseline multiplied by an emission rate equal to 1.20
24 lbs/mmBtu, divided by 2,000 unless the owner or op-
25 erator of such unit holds allowances to emit not less

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

6 “(2) After January 1, 2000, it shall be unlawful
7 for a coal or oil-fired existing utility unit that serves
8 a generator with nameplate capacity of less than 75
9 MWe and an actual 1985 emission rate equal to, or
10 greater than, 1.20 lbs/mmBtu (excluding units sub-
11 ject to section 111 of the Act or to a federally en-
12 forceable emissions limitation for sulfur dioxide
13 equivalent to an annual rate of less than 1.20 lbs/
14 mmBtu) and which is a unit owned by a utility oper-
15 ating company whose aggregate nameplate fossil fuel
16 steam-electric capacity is, as of December 31, 1989,
17 less than 250 MWe, to exceed an annual sulfur diox-
18 ide tonnage emissions limitation equal to the product
19 of the unit's baseline multiplied by the lesser of its
20 actual 1985 emissions rate or its allowable 1985
21 emissions rate, divided by 2,000, unless the owner or
22 operator of such unit holds allowances to emit not
23 less than the unit's total annual emissions or, for a
24 year after 2007, unless the owner or operator of the
25 source that includes such unit holds allowances to

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

3 “(3) After January 1, 2000 it shall be unlawful
4 for any existing utility unit with a nameplate capac-
5 ity below 75 MWe and an actual 1985 emissions
6 rate equal to, or greater than, 1.20 lbs/mmBtu
7 which became operational on or before December 31,
8 1965, which is owned by a utility operating company
9 with, as of December 31, 1989, a total fossil fuel
10 steam-electric generating capacity greater than 250
11 MWe, and less than 450 MWe which serves fewer
12 than 78,000 electrical customers as of November 15,
13 1990, to exceed an annual sulfur dioxide emissions
14 tonnage limitation equal to the product of its base-
15 line multiplied by the lesser of its actual or allowable
16 1985 emission rate, divided by 2,000, unless the
17 owner or operator holds allowances to emit not less
18 than the units 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 to
21 emit not less than the total annual emissions of all
22 affected units at the source. After January 1, 2010,
23 it shall be unlawful for each unit subject to the
24 emissions limitation requirements of this paragraph
25 to exceed an annual emissions tonnage limitation

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

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

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

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

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

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

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

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

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

1 equal to the product of the unit's baseline multiplied
2 by—

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

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

13 “(2) After January 1, 2000, it shall be unlawful
14 for any existing coal-fired utility unit the lesser of
15 whose actual or allowable 1985 sulfur dioxide emis-
16 sions rate is equal to, or greater than, 0.60 lbs/
17 mmBtu and less than 1.20 lbs/mmBtu to exceed an
18 annual sulfur dioxide tonnage emissions limitation
19 equal to the product of the unit's baseline multiplied
20 by (A) the lesser of its actual 1985 emissions rate
21 or its allowable 1985 emissions rate, and (B) a nu-
22 merical factor of 120 percent, divided by 2,000, un-
23 less the owner or operator of such unit holds allow-
24 ances to emit not less than the unit's total annual
25 emissions or, for a year after 2007, unless the owner

1 or operator of the source that includes such unit
2 holds allowances to emit not less than the total an-
3 nual emissions of all affected units at the source.

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

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

20 “(ii) the number of allowances allocated
21 for the unit pursuant to paragraph (1) and sec-
22 tion 403(a)(1) as basic Phase II allowance allo-
23 cations.

24 “(B) In addition to allowances allocated pursu-
25 ant to paragraph (2) and section 412(a) as basic

1 Phase II allowance allocations, at the election of the
2 designated representative of the operating company,
3 beginning January 1, 2000, and for each calendar
4 year thereafter until and including 2009, the Admin-
5 istrator shall allocate annually for each unit subject
6 to the emissions limitation requirements of para-
7 graph (2) allowances from the reserve created pursu-
8 ant to subsection (a)(2) in an amount equal to the
9 amount by which—

10 “(i) the product of the lesser of the unit’s
11 actual 1985 emissions rate or its allowable
12 1985 emissions rate multiplied by the unit’s
13 baseline adjusted to reflect operation at a 60
14 percent capacity factor, divided by 2,000, ex-
15 ceeds

16 “(ii) the number of allowances allocated
17 for the unit pursuant to paragraph (2) and sec-
18 tion 412(a) as basic Phase II allowance alloca-
19 tions.

20 “(C) An operating company with units subject
21 to the emissions limitation requirements of this sub-
22 section may elect the allocation of allowances as pro-
23 vided under subparagraphs (A) and (B). Such elec-
24 tion shall apply to the annual allowance allocation
25 for each and every unit in the operating company

1 subject to the emissions limitation requirements of
2 this subsection. The Administrator shall allocate al-
3 lowances pursuant to subparagraphs (A) and (B)
4 only in accordance with this subparagraph.

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

18 “(5) For the purposes of this section, in the
19 case of an oil- and gas-fired unit which has been
20 awarded a clean coal technology demonstration grant
21 as of January 1, 1991, by the United States Depart-
22 ment of Energy, beginning January 1, 2002, the Ad-
23 ministrator shall allocate for the unit allowances in
24 an amount equal to the unit’s baseline multiplied by
25 1.20 lbs/mmBtu, divided by 2,000.

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

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

20 “(1) After January 1, 2000, it shall be unlawful
21 for any oil and gas-fired existing utility unit the less-
22 er of whose actual or allowance 1985 emission rate
23 is less than 0.60 lbs/mmBtu and whose average an-
24 nual fuel consumption during the period 1980
25 through 1989 on a Btu basis was 90 percent or less

1 in the form of natural gas to exceed an annual sul-
2 fur dioxide tonnage emissions limitation equal to the
3 product of the unit's baseline multiplied by—

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

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

11 unless the owner or operator of the source that in-
12 cludes such unit holds allowances to emit not less
13 than the total annual emissions of all affected units
14 at the source.

15 “(2) In addition to allowances allocated pursu-
16 ant to paragraph (1) as basic Phase II allowance al-
17 locations and section 412(a), beginning January 1,
18 2000, the Administrator shall, in the case of any
19 unit operated by a utility that furnishes electricity,
20 electric energy, steam, and natural gas within an
21 area consisting of a city and 1 contiguous county,
22 and in the case of any unit owned by a State author-
23 ity, the output of which unit is furnished within that
24 same area consisting of a city and 1 contiguous
25 county, the Administrator shall allocate for each unit

1 in the utility its pro rata share of 7,000 allowances
2 and for each unit in the State authority its pro rata
3 share of 2,000 allowances.

4 “(g) UNITS THAT COMMENCE OPERATION BETWEEN
5 1986 AND DECEMBER 31, 1995.—

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

22 “(2) After January 1, 2000, the Administrator
23 shall allocate allowances pursuant to section 411 to
24 each unit which is listed in table B of this paragraph

1 in an annual amount equal to the amount specified
 2 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 |

3 Notwithstanding any other paragraph of this sub-
 4 section, for units subject to this paragraph, the Ad-
 5 ministrator shall not allocate allowances pursuant to
 6 any other paragraph of this subsection, provided
 7 that the owner or operator of a unit listed on Table
 8 B may elect an allocation of allowances under an-
 9 other paragraph of this subsection in lieu of an allo-
 10 cation under this paragraph.

11 “(3) Beginning January 1, 2000, the Adminis-
 12 trator shall allocate to the owner or operator of any
 13 utility unit that commences commercial operation, or
 14 has commenced commercial operation, on or after
 15 October 1, 1990, but not later than December 31,
 16 1992 allowances in an amount equal to the product
 17 of the unit’s annual fuel consumption, on a Btu
 18 basis, at a 65 percent capacity factor multiplied by
 19 the lesser of 0.30 lbs/mmBtu or the unit’s allowable

1 sulfur dioxide emission rate (converted, if necessary,
2 to pounds per mmBtu), divided by 2,000.

3 “(4) Beginning January 1, 2000, the Adminis-
4 trator shall allocate to the owner or operator of any
5 utility unit that has commenced construction before
6 December 31, 1990 and that commences commercial
7 operation between January 1, 1993 and December
8 31, 1995, allowances in an amount equal to 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 0.30 lbs/mmBtu or the unit’s allow-
12 able sulfur dioxide emission rate (converted, if nec-
13 essary, to pounds per mmBtu), divided by 2,000.

14 “(5) After January 1, 2000, it shall be unlawful
15 for any existing utility unit that has completed con-
16 version from predominantly gas fired existing oper-
17 ation to coal fired operation between January 1,
18 1985 and December 31, 1987, for which there has
19 been allocated a proposed or final prohibition order
20 pursuant to section 301(b) of the Powerplant and
21 Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et
22 seq, repealed 1987) to exceed an annual sulfur diox-
23 ide tonnage emissions limitation equal to the product
24 of the unit’s annual fuel consumption, on a Btu
25 basis, at a 65 percent capacity factor multiplied by

1 the lesser of 1.20 lbs/mmBtu or the unit’s allowable
2 1987 sulfur dioxide emissions rate, divided by 2,000,
3 unless the owner or operator of such unit has ob-
4 tained allowances equal to its actual emissions or,
5 for a year after 2007, unless the owner or operator
6 of the source that includes such unit holds allow-
7 ances to emit not less than the total annual emis-
8 sions of all affected units at the source.

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

17 “(A) an applicable power sales agreement
18 has been executed;

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

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

7 “(D) the facility has been selected as a
8 winning bidder in a utility competitive bid solie-
9 itation.

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

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

1 “(2) In addition to allowances allocated pursu-
2 ant to paragraph (1) and section 412(a) as basic
3 Phase II allowance allocations, beginning January 1,
4 2000, and for each calendar year thereafter until
5 and including 2009, the Administrator shall allocate
6 annually for each unit subject to the emissions limi-
7 tation requirements of paragraph (1) allowances
8 from the reserve created pursuant to subsection
9 (a)(2) in an amount equal to the unit’s baseline mul-
10 tplied by 0.050 lbs/mmBtu, divided by 2,000.

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

18 “(i) UNITS IN HIGH GROWTH STATES.—

19 “(1) In addition to allowances allocated pursu-
20 ant to this section and section 412(a) as basic Phase
21 II allowance allocations, beginning January 1, 2000,
22 the Administrator shall allocate annually allowances
23 for each unit, subject to an emissions limitation re-
24 quirement under this section, and located in a State
25 that—

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

7 “(B) had an installed electrical generating
8 capacity of more than 30,000,000 kw in 1988,
9 in an amount equal to the difference between
10 (A) the number of allowances that would be al-
11 located for the unit pursuant to the emissions
12 limitation requirements of this section applica-
13 ble to the unit adjusted to reflect the unit’s an-
14 nual average fuel consumption on a Btu basis
15 of any three consecutive calendar years between
16 1980 and 1989 (inclusive) as elected by the
17 owner or operator and (B) the number of allow-
18 ances allocated for the unit pursuant to the
19 emissions limitation requirements of this sec-
20 tion: *Provided*, That the number of allowances
21 allocated pursuant to this subsection shall not
22 exceed an annual total of 40,000. If necessary
23 to meeting the 40,000 allowance restriction im-
24 posed under this subsection the Administrator
25 shall reduce, pro rata, the additional annual al-

1 allowances allocated to each unit under this sub-
2 section.

3 “(2) Beginning January 1, 2000, in addition to
4 allowances allocated pursuant to this section and
5 section 403(a)(1) as basic Phase II allowance alloca-
6 tions, the Administrator shall allocate annually for
7 each unit subject to the emissions limitation require-
8 ments of subsection (b)(1)—

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

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

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

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

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

1 “(i) the number of allowances that
2 would be allocated for the unit pursuant to
3 the emissions limitation requirements of
4 subsection (b)(1) adjusted to reflect the
5 unit’s annual average fuel consumption on
6 a Btu basis for any three consecutive years
7 between 1980 and 1989 (inclusive) as
8 elected by the owner or operator, and

9 “(ii) the number of allowances allo-
10 cated for the unit pursuant to the emis-
11 sions limitation requirements of subsection
12 (b)(1): *Provided*, That the number of al-
13 lowances allocated pursuant to this para-
14 graph shall not exceed an annual total of
15 5,000. If necessary to meeting the 5,000
16 allowance restriction imposed in the last
17 clause of the preceding sentence the Ad-
18 ministrator shall reduce, pro rata, the ad-
19 ditional allowances allocated to each unit
20 pursuant to this paragraph.

21 “(j) CERTAIN MUNICIPALLY OWNED POWER
22 PLANTS.—Beginning January 1, 2000, in addition to al-
23 lowances allocated pursuant to this section and section
24 412(a) as basic Phase II allowance allocations, the Admin-
25 istrator shall allocate annually for each existing munic-

1 pally owned oil and gas-fired utility unit with nameplate
2 capacity equal to, or less than, 40 MWe, the lesser of
3 whose actual or allowable 1985 sulfur dioxide emission
4 rate is less than 1.20 lbs/mmBtu, allowances in an amount
5 equal to the product of the unit's annual fuel consumption
6 on a Btu basis at a 60 percent capacity factor multiplied
7 by the lesser of its allowable 1985 emission rate or its
8 actual 1985 emission rate, divided by 2,000.

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

11 “(a) ELECTION OF GOVERNOR.—In addition to basic
12 Phase II allowance allocations, upon the election of the
13 Governor of any State, with a 1985 state-wide annual sul-
14 fur dioxide emissions rate equal to or less than, 0.80 lbs/
15 mmBtu, averaged over all fossil fuel-fired utility steam
16 generating units, beginning January 1, 2000, and for each
17 calendar year thereafter until and including 2009, the Ad-
18 ministrator shall allocate, in lieu of other Phase II bonus
19 allowance allocations, allowances from the reserve created
20 pursuant to section 414(a)(2) to all such units in the State
21 in an amount equal to 125,000 multiplied by the unit's
22 pro rata share of electricity generated in calendar year
23 1985 at fossil fuel-fired utility steam units in all States
24 eligible for the election.

1 “(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant
2 to section 412(a), each Governor of a State eligible to
3 make an election under paragraph (a) shall notify the Ad-
4 ministrator of such election. In the event that the Gov-
5 ernor of any such state fails to notify the Administrator
6 of the Governor’s elections, the Administrator shall allo-
7 cate allowances pursuant to section 414.

8 “(c) ALLOWANCES AFTER JANUARY 1, 2010.—After
9 January 1, 2010, the Administrator shall allocate allow-
10 ances to units subject to the provisions of this section pur-
11 suant to section 414.

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

13 “(a) APPLICABILITY.—The owner or operator of any
14 unit that is not, nor will become, an affected unit under
15 section 412(b), 413, or 414, that emits sulfur dioxide, may
16 elect to designate that unit or source to become an af-
17 fected unit and to receive allowances under this subpart.
18 An election shall be submitted to the Administrator for
19 approval, along with a permit application and proposed
20 compliance plan in accordance with section 404. The Ad-
21 ministrator shall approve a designation that meets the re-
22 quirements of this section, and such designated unit shall
23 be allocated allowances, and be an affected unit for pur-
24 poses of this subpart.

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

8 “(c) EMISSION LIMITATIONS.—

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

20 “(2) For a unit for which an election, along
21 with a permit application and compliance plan, is
22 submitted to the Administrator under paragraph (a)
23 on or after January 1, 2002, annual emissions limi-
24 tations for sulfur dioxide shall be equal to the prod-
25 uct of the baseline multiplied by the lesser of the

1 unit's 1985 actual or allowable emission rate in lbs/
2 mmBtu, or, if the unit did not operate in 1985, by
3 the lesser of the unit's actual or allowable emission
4 rate for a calendar year after 1985 (as determined
5 by the Administrator), divided by 4,000.

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

14 “(e) LIMITATION.—Any unit designated under this
15 section shall not transfer or bank allowances produced as
16 a result of reduced utilization or shutdown, except that,
17 such allowances may be transferred or carried forward for
18 use in subsequent years to the extent that the reduced
19 utilization or shutdown results from the replacement of
20 thermal energy from the unit designated under this sec-
21 tion, with thermal energy generated by any other unit or
22 units subject to the requirements of this subpart, and the
23 designated unit's allowances are transferred or carried for-
24 ward for use at such other replacement unit or units. In
25 no case may the Administrator allocate to a source des-

1 igned under this section allowances in an amount great-
2 er than the emissions resulting from operation of the
3 source in full compliance with the requirements of this
4 Act. No such allowances shall authorize operation of a unit
5 in violation of any other requirements of this Act.

6 “(f) IMPLEMENTATION.—The Administrator shall
7 implement this section under 40 CFR part 74 (2001),
8 amended as appropriate by the Administrator.

9 **“SEC. 417. AUCTIONS, RESERVE.**

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

13 “(1) 2.8 percent of the allocation of allowances
14 for each year from 1995 through 1999 inclusive; and

15 “(2) 2.8 percent of the basic Phase II allowance
16 allocation of allowances for each year beginning in
17 the year 2000

18 which would (but for this subsection) be issued for each
19 affected unit at an affected source. The Administrator
20 shall record such withholding for purposes of transferring
21 the proceeds of the allowance sales under this subsection.
22 The allowances so withheld shall be deposited in the Re-
23 serve under this section.

24 “(b) AUCTION SALES.—

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

9 “(2) ANNUAL AUCTIONS.—Commencing in
10 1993 and in each year thereafter until 2010, the Ad-
11 ministrators shall conduct auctions at which the al-
12 lowances referred to in paragraph (1) shall be of-
13 fered for sale in accordance with regulations promul-
14 gated by the Administrator. The allowances referred
15 to in paragraph (1) shall be offered for sale at auc-
16 tion in the amounts specified in table C. The auction
17 shall be open to any person. A person wishing to bid
18 for such allowances shall submit (by a date set by
19 the Administrator) to the Administrator (on a sealed
20 bid schedule provided by the Administrator) offers to
21 purchase specified numbers of allowance at speci-
22 fied prices. Such regulations shall specify that the
23 auctioned allowances shall be allocated and sold on
24 the basis of bid price, starting with the highest-
25 priced bid and continuing until all allowances for

1 sale at such auction have been allocated. The regula-
 2 tions shall not permit that a minimum price be set
 3 for the purchase of withheld allowances. Allowances
 4 purchased at the auction may be used for any pur-
 5 pose and at any time after the auction, subject to
 6 the provisions of this subpart and subpart 2.

“TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR
 AUCTION

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

7 “(3) PROCEEDS.—

8 “(A) Notwithstanding section 3302 of title
 9 31 of the United States Code or any other pro-
 10 vision of law, within 90 days of receipt, the Ad-
 11 ministrator shall transfer the proceeds from the
 12 auction under this section, on a pro rata basis,
 13 to the owners or operators of the affected units
 14 at an affected source from whom allowances
 15 were withheld under subsection (b). No funds
 16 transferred from a purchaser to a seller of al-
 17 lowances under this paragraph shall be held by

1 any officer or employee of the United States or
2 treated for any purpose as revenue to the
3 United States or the Administrator.

4 “(B) At the end of each year, any allow-
5 ances offered for sale but not sold at the auc-
6 tion shall be returned without charge, on a pro
7 rata basis, to the owner or operator of the af-
8 fected units from whose allocation the allow-
9 ances were withheld. With 170 days after the
10 date of enactment of the Clear Skies Act of
11 2002, any allowance withheld under paragraph
12 (a)(2) but not offered for sale at an auction
13 shall be returned without charge, on a pro rata
14 basis, to the owner or operator of the affected
15 units from whose allocation the allowances were
16 withheld.

17 “(4) RECORDING BY EPA.—The Administrator
18 shall record and publicly report the nature, prices
19 and results of each auction under this subsection, in-
20 cluding the prices of successful bids, and shall
21 record the transfers of allowances as a result of each
22 auction in accordance with the requirements of this
23 section. The transfer of allowances at such auction
24 shall be recorded in accordance with the regulations

1 promulgated by the Administrator under this sub-
2 part.

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

9 “(d) TERMINATION OF AUCTIONS.—The Adminis-
10 trator shall terminate the withholding of allowances and
11 the auction sales under this section on December 31,
12 2009. Pursuant to regulations under this section, the Ad-
13 ministrator may be delegation or contract provide for the
14 conduct of sales or auctions under the Administrator’s su-
15 pervision by other departments or agencies of the United
16 States Government or by nongovernmental agencies,
17 groups, or organizations.

18 “(e) The Administrator shall implement this section
19 under 40 CFR part 73 (2001), amended as appropriate
20 by the Administrator.

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

22 “(a) REPORT.—Not later than January 1, 1995 and
23 every 5 years thereafter, the Administrator shall transmit
24 to the Congress a report containing an inventory of na-
25 tional annual sulfur dioxide emissions from industrial

1 sources (as defined in section 411(11)), including units
2 subject to section 414(g)(2), for all years for which data
3 are available, as well as the likely trend in such emission
4 over the following twenty-year period. The reports shall
5 also contain estimates of the actual emission reduction in
6 each year resulting from promulgation of the diesel fuel
7 desulfurization regulations under section 214.

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

1 the best system of continuous emission reduction which
2 (taking into consideration the cost of achieving such emis-
3 sion reduction, and any nonair quality health and environ-
4 mental impact and energy requirements) the Adminis-
5 trator determines has been adequately demonstrated for
6 that category of sources.

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

10 **“SEC. 419. TERMINATION.**

11 “Starting January 1, 2010, the owners or operators
12 of affected units and affected facilities under sections
13 412(b) and (c) and 416 and shall no longer be subject
14 to the requirements of sections 412 through 417.

15 **“Subpart 2—Sulfur Dioxide Allowance Program**

16 **“SEC. 421. DEFINITIONS.**

17 “For purposes of this subpart—

18 “(1) The term ‘affected EGU’ means—

19 “(A) for a unit serving a generator before
20 the date of enactment of the Clear Skies Act of
21 2002, a unit in a State serving a generator with
22 a nameplate capacity of greater than 25
23 megawatts that produced or produces electricity
24 for sale during 2001 or any year thereafter, ex-
25 cept for a cogeneration unit that produced or

1 produces electricity for sale equal to less than
2 one-third of the potential electrical output of
3 the generator that it served or serves during
4 2001 and each year thereafter; and

5 “(B) for a unit commencing service of a
6 generator on or after the date of enactment of
7 the Clear Skies Act of 2002, a unit in a State
8 serving a generator that produces electricity for
9 sale during any year starting with the year the
10 unit commences service of a generator, except
11 for a gas-fired unit serving one or more genera-
12 tors with total nameplate capacity of 25
13 megawatts or less, or a cogeneration unit that
14 produces electricity for sale equal to less than
15 one-third of the potential electrical output of
16 the generator that it serves, during each year
17 starting with the year the unit commences serv-
18 ices of a generator.

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

1 “(2) The term ‘coal-fired’ with regard to a unit
2 means, for purposes of section 424, combusting coal
3 or any coal-derived fuel alone or in combination with
4 any amount of any other fuel in any year during
5 1997 through 2001 or, for a unit that commenced
6 operation during 2001–2004, a unit designed to
7 combust coal or any coal-derived fuel alone or in
8 combination with any other fuel.

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

12 “(4) The term ‘general account’ means an ac-
13 count in the Allowance Tracking System under sec-
14 tion 403(c) established by the Administrator for any
15 person under 40 CFR § 73.31(c) (2001), amended
16 as appropriate by the Administrator.

17 “(5) The term ‘oil-fired’ with regard to a unit
18 means, for purposes of section 424, combusting fuel
19 oil for more than ten percent of the unit’s total heat
20 input, and combusting no coal or coal-derived fuel,
21 in any year during 1997 through 2001 or, for a unit
22 that commenced operation during 2001–2004, a unit
23 designed to combust oil for more than ten percent
24 of the unit’s total heat input and not to combust any
25 coal or coal-derived fuel coal.

1 “(6) The term ‘unit account’ means an account
 2 in the Allowance Tracking System under section
 3 403(c) established by the Administrator for any unit
 4 under 40 CFR § 73.31(a) and (b) (2001), amended
 5 as appropriate by the Administrator.

6 **“SEC. 422. APPLICABILITY.**

7 “Starting January 1, 2010, it shall be unlawful for
 8 the affected EGUs at a facility to emit a total amount
 9 of sulfur dioxide during the year in excess of the number
 10 of sulfur dioxide allowances held for such facility for that
 11 year by the owner or operator of the facility.

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 EGU’S

| 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 |

“TABLE A.—TOTAL SO₂ ALLOWANCES ALLOCATED OR
AUCTIONED FOR EGU’S—Continued

| Year | SO ₂ allow- ances allocated | SO ₂ allow- ances auctioned |
|------------|--|--|
| 2021 | 2,640,000 | 360,000 |
| 2022 | 2,610,000 | 390,000 |
| 2023 | 2,580,000 | 420,000 |
| 2024 | 2,550,000 | 450,000 |
| 2025 | 2,520,000 | 480,000 |
| 2026 | 2,490,000 | 510,000 |
| 2027 | 2,460,000 | 540,000 |
| 2028 | 2,430,000 | 570,000 |
| 2029 | 2,400,000 | 600,000 |
| 2030 | 2,325,000 | 675,000 |
| 2031 | 2,250,000 | 750,000 |
| 2032 | 2,175,000 | 825,000 |
| 2033 | 2,100,000 | 900,000 |
| 2034 | 2,025,000 | 975,000 |
| 2035 | 1,950,000 | 1,050,000 |
| 2036 | 1,875,000 | 1,125,000 |
| 2037 | 1,800,000 | 1,200,000 |
| 2038 | 1,725,000 | 1,275,000 |
| 2039 | 1,650,000 | 1,350,000 |
| 2040 | 1,575,000 | 1,425,000 |
| 2041 | 1,500,000 | 1,500,000 |
| 2042 | 1,425,000 | 1,575,000 |
| 2043 | 1,350,000 | 1,650,000 |
| 2044 | 1,275,000 | 1,725,000 |
| 2045 | 1,200,000 | 1,800,000 |
| 2046 | 1,125,000 | 1,875,000 |
| 2047 | 1,050,000 | 1,950,000 |
| 2048 | 975,000 | 2,025,000 |
| 2049 | 900,000 | 2,100,000 |
| 2050 | 825,000 | 2,175,000 |
| 2051 | 750,000 | 2,250,000 |
| 2052 | 675,000 | 2,325,000 |
| 2053 | 600,000 | 2,400,000 |
| 2054 | 525,000 | 2,475,000 |
| 2055 | 450,000 | 2,550,000 |
| 2056 | 375,000 | 2,625,000 |
| 2057 | 300,000 | 2,700,000 |
| 2058 | 225,000 | 2,775,000 |
| 2059 | 150,000 | 2,850,000 |
| 2060 | 75,000 | 2,925,000 |
| 2061 | 0 | 3,000,000 |

1 “SEC. 424. EGU ALLOCATIONS.

2 “(a) By January 1, 2007, the Administrator shall
3 promulgate regulations determining allocations of sulfur

1 dioxide allowances for affected EGUs for each year during
2 2010 through 2060. The regulations shall provide that:

3 “(1)(A) Ninety-five percent of the total amount
4 of sulfur dioxide allowances allocated each year to
5 affected EGUs under section 423 shall be allocated
6 based on the sulfur dioxide allowances that were al-
7 located under subpart 1 for 2010 or thereafter and
8 are held in unit accounts and general accounts in
9 the Allowance Tracking System under section
10 403(c).

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

15 “(i) The Administrator shall determine the
16 amount of sulfur dioxide allowances allocated
17 under subpart 1 for 2010, and each subsequent
18 year, that are recorded in each unit account
19 and each general account in the Allowance
20 Tracking System as of 12:00 noon, Eastern
21 Standard time, on the date 180 days after en-
22 actment of the Clear Skies Act of 2002. The
23 Administrator shall determine this amount in
24 accordance with 40 CFR part 73 (2001),
25 amended as appropriate by the Administrator,

1 except that the Administrator shall discount all
2 sulfur dioxide allowances allocated for 2011 or
3 later at a rate of 7 percent per year.

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

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

1 “(2)(A) Three and one-half percent of the total
2 amount of sulfur dioxide allowances allocated each
3 year for affected EGUs under section 423 shall be
4 allocated for units at a facility that are affected
5 EGUs as of December 31, 2004, that commenced
6 operation before January 1, 2001, and that are not
7 allocated any sulfur dioxide allowances under sub-
8 part 1.

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

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

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

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

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

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

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

17 “(3)(A) One and one-half percent of the total
18 amount of sulfur dioxide allowances allocated each
19 year for affected EGUs under section 423 shall be
20 allocated for units that are affected EGUs as of De-
21 cember 31, 2004, that commence operation on or
22 after January 1, 2001 and before January 1, 2005,
23 and that are not allocated any sulfur dioxide allow-
24 ances 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) For each year 2010 through 2060, if the Admin-
7 istrator has not promulgated the regulations determining
8 allocations under paragraph (a) by July 1 that is eighteen
9 months before January 1 of such year, then:

10 “(1) The Administrator shall—

11 “(A) allocate, for such year, to each unit
12 with coal as its primary or secondary fuel or re-
13 sidual oil as its primary fuel listed in the Ad-
14 ministrators’ Emissions Scorecard 2000, Ap-
15 pendix B, Table B1 an amount of sulfur dioxide
16 allowances determined by multiplying eighty
17 percent of the allocation amount under section
18 423 by the ratio of such unit’s heat input in the
19 Emissions Scorecard 2000, Appendix B, Table
20 B1 to the total of the heat input in the Emis-
21 sions Scorecard 2000, Appendix B, Table B1
22 for all units with coal as their primary or sec-
23 ondary fuel or residual oil as their primary fuel;

24 “(B) record in each facility’s account in
25 the Allowance Tracking System under section

1 403(c) for such year the total of the amounts
2 of sulfur dioxide allowances for the units at
3 such facility determined under subparagraph
4 (A); and

5 “(C) auction an amount of sulfur dioxide
6 allowances equal to five percent of the alloca-
7 tion amount under section 423 and conduct the
8 auction on the first business day in October fol-
9 lowing the respective promulgation deadline
10 under subsection (b) and in accordance with
11 section 400.

12 “(2) Notwithstanding any other provision of
13 law to the contrary, the determination of the amount
14 of sulfur dioxide allowances under subparagraph
15 (1)(A) and the recording of sulfur dioxide allowances
16 under subparagraph (1)(B) shall not be subject to
17 judicial review.

18 “(3) Notwithstanding the provisions to the con-
19 trary in section 423, the Administrator shall not al-
20 locate or record fifteen percent of the allocation
21 amount under section 423 for such year.

22 **“SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES**
23 **ALLOCATED UNDER SUBPART 1.**

24 “(a) After allocating allowances under section
25 424(a)(1), the Administrator shall remove from the unit

1 accounts and general accounts in the Allowance Tracking
2 System under section 403(c) and from the Special Allow-
3 ances Reserve under section 418 all sulfur dioxide allow-
4 ances allocated or deposited under subpart 1 for 2010 or
5 later.

6 “(b) The Administrator shall promulgate regulations
7 as necessary to assure that the requirement to hold allow-
8 ances under section 422 may be met using sulfur dioxide
9 allowances allocated under subpart 1 for 1995 through
10 2009.

11 **“SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION**
12 **CONTROL TECHNOLOGY.**

13 “(a) RESERVE.—The Administrator shall establish a
14 reserve of 250,000 sulfur dioxide allowances comprising
15 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur
16 dioxide allowances for 2011, and 83,333 sulfur dioxide al-
17 lowances for 2012.

18 “(b) APPLICATION.—By July 1, 2004 an owner or
19 operator of an affected EGU that commenced operation
20 before 2001 and that during 2001 combusted Eastern bi-
21 tuminous may submit an application to the Administrator
22 for sulfur dioxide allowances from the reserve under sub-
23 section (a). The application shall include:

24 “(1) A statement that the owner or operator
25 will install and commence operation of specified sul-

1 fur dioxide control technology at the unit within 24
2 months after approval of the application under sub-
3 section (c) if the unit is allocated the sulfur dioxide
4 allowances requested under paragraph (4). The
5 owner or operator shall provide description of the
6 control technology.

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

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

1 technology described in paragraph (1) and emissions
2 monitored at a location at the unit downstream of
3 such control technology, while the unit is combusting
4 fuel in accordance with paragraph (2).

5 “(4) A request that EPA allocate for the unit
6 a specified number of sulfur dioxide allowances from
7 the reserve under subsection (a) for the period start-
8 ing with the commencement of operation of the sul-
9 fur dioxide technology under paragraph (1) through
10 2009.

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

15 “(c) APPROVAL OR DISAPPROVAL.—Through adju-
16 dicative determinations subject to notice and opportunity
17 for comment, the Administrator shall—

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

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

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

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

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

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

20 “(d) MONITORING.—An owner or operator whose ap-
21 plication is approved under subsection (c) shall install, and
22 quality assure data from, a CEMS for sulfur dioxide lo-
23 cated upstream of the sulfur dioxide control technology
24 under paragraph (b)(1) at the unit and a CEMS for sulfur
25 dioxide located downstream of such control technology at

1 the unit during the period starting with the commence-
2 ment of operation of such control technology through
3 2009. The installation of the CEMS and the quality assur-
4 ance of data shall be in accordance with subparagraph
5 (a)(2)(B) and subsections (c) through (e) of section 405,
6 except that, where two or more units utilize a single stock,
7 separate monitoring shall be required for each unit.

8 “(e) ALLOCATIONS.—By July 1, 2010, for the units
9 for which applications are approved under paragraph (c),
10 the Administrator shall allocate sulfur dioxides allow-
11 ances as follows:

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

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

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

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

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

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

21 **“SEC. 431. DEFINITIONS.**

22 “For purposes of this subpart—

23 “(1) The term ‘adjusted baseline heat input’
24 means the average annual heat input used by a unit
25 during the three years in which the unit had the

1 highest heat input for the period from the eighth
2 through the fourth year before the first covered
3 year.

4 “(A) Notwithstanding paragraph (1), if a
5 unit commences operation during such period
6 and—

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

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

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

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

1 “(ii) reported to the Energy Informa-
2 tion Administrator for the unit, if the unit
3 was not required to report heat input
4 under section 405;

5 “(iii) based on data for the unit re-
6 ported to the State where the unit is lo-
7 cated as required by State law, if the unit
8 was not required to report heat input dur-
9 ing the year under section 405 and did not
10 report to the Energy Information Adminis-
11 tration; or

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

19 “(2) The term ‘affected EGU’ means an af-
20 fected EGU under subpart 2 that is in a State and
21 that—

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

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

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

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

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

15 “(ii) the third year after the year 2013 or
16 later when the Administrator determines by
17 regulation that the total annual sulfur dioxide
18 emissions of all affected EGUs in the States are
19 reasonably projected to exceed 271,000 tons in
20 2018 or any year thereafter. The Administrator
21 may make such determination only if all the
22 States submit to the Administrator a petition
23 requesting that the Administrator issue such
24 determination and make all affected EGUs in

1 the States subject to the requirements of sec-
2 tions 432 through 434; and

3 “(B) each year after the ‘covered year’
4 under subparagraph (A).

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

12 **“SEC. 432. APPLICABILITY.**

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

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

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

1 **“SEC. 434. EGU ALLOCATIONS.**

2 “(a) By January 1 of the year before the first covered
3 year, the Administrator shall promulgate regulations de-
4 termining, for each covered year, the allocations of sulfur
5 dioxide allowances for the units at a facility that are af-
6 fected EGUs as of December 31 of the fourth year before
7 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) For each covered year, if the Administrator has
26 not promulgated the regulations determining allocations

1 under paragraph (a) by July 1 that is eighteen months
2 before January 1 of such year, then:

3 “(1) The Administrator shall—

4 “(A) allocate, for such year, to each af-
5 fected EGU with coal as its primary or sec-
6 ondary fuel or residual oil as its primary fuel
7 listed in the Administrator’s Emissions Score-
8 card 2000, Appendix B, Table B1 an amount
9 of sulfur dioxide allowances determined by mul-
10 tiplying eighty percent of the allocation amount
11 under section 433 by the ratio of such unit’s
12 heat input in the Emissions Scorecard 2000,
13 Appendix B, Table B1 to the total of the heat
14 input in the Emissions Scorecard 2000, Appen-
15 dix B, Table B1 for all affected EGUs with coal
16 as their primary or secondary fuel or residual
17 oil as their primary fuel;

18 “(B) record in each facility’s account in
19 the Allowance Tracking System under section
20 403(c) for such year the sum of the amounts of
21 sulfur dioxide allowances for the units at such
22 facility determined under subparagraph (A);
23 and

24 “(C) auction an amount of sulfur dioxide
25 allowances equal to five percent of the alloca-

1 tion amount under section 433 and conduct the
2 auction on the first business day in October fol-
3 lowing the respective promulgation deadline
4 under subsection (b) and in accordance with
5 section 409.

6 “(2) Notwithstanding any other provision of
7 law to the contrary, the determination of the amount
8 of sulfur dioxide allowances under subparagraph
9 (1)(A) and the recording of sulfur dioxide allowances
10 under subparagraph (1)(B) shall not be subject to
11 judicial review.

12 “(3) Notwithstanding the provisions to the con-
13 trary in section 433, the Administrator shall not al-
14 locate or record fifteen percent of the allocation
15 amount under section 433 for such year.

16 **“PART C—NITROGEN OXIDES EMISSION**
17 **REDUCTIONS**

18 **“Subpart 1—Acid Rain Program**

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

21 “(a) **APPLICABILITY.**—On the date that a coal-fired
22 utility unit becomes an affected unit pursuant to sections
23 413 or 414, or on the date a unit subject to the provisions
24 of section 413(d), must meet the SO₂ reduction require-
25 ments, each such unit shall become an affected unit for

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

3 “(b) EMISSION LIMITATIONS.—

4 “(1) The Administrator shall by regulation es-
5 tablish annual allowable emission limitations for ni-
6 trogen oxides for the types of utility boilers listed
7 below, which limitations shall not exceed the rates
8 listed below: Provided, That the Administrator may
9 set a rate higher than that listed for any type of
10 utility boiler if the Administrator finds that the
11 maximum listed rate for that boiler type cannot be
12 achieved using low NO_x burner technology. The Ad-
13 ministrator shall implement this paragraph under 40
14 CFR § 76.5 (2001). The maximum allowable emis-
15 sion rates are as follows:

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

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

1 “(2) The Administrator shall, by regulation, es-
2 tablish allowable emission limitations on a lb/
3 mmBtu, annual average basis, for nitrogen oxides
4 for the following types of utility boilers:

5 “(A) wet bottom wall-fired boilers;

6 “(B) cyclones;

7 “(C) units applying cell burner technology;

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

9 The Administrator shall base such rates on the de-
10 gree of reduction achievable through the retrofit ap-
11 plication of the best system of continuous emission
12 reduction, taking into account available technology,
13 costs and energy and environmental impacts; and
14 which is comparable to the costs of nitrogen oxides
15 controls set pursuant to subsection (b)(1). The Ad-
16 ministrator may revise the applicable emission limi-
17 tations for tangentially fired and dry bottom, wall-
18 fired boilers (other than cell burners) to be more
19 stringent if the Administrator determines that more
20 effective low NO_x burned technology is available:
21 Provided, That, no unit that is an affected unit pur-
22 suant to section 413 and that is subject to the re-
23 quirements of subsection (b)(1), shall be subject to
24 the revised emission limitations, if any. The Admin-

1 istrator shall implement that paragraph under 40
2 CFR §§ 76.6 and 76.7 (2001).

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

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

12 “(2) a unit subject to subsection (b)(2) canot
13 meet the applicable rate using the technology on
14 which the Administrator based the applicable emis-
15 sion limitation.

16 The permitting authority shall base such determination
17 upon a showing satisfactory to the permitting authority,
18 in accordance with regulations established by the Adminis-
19 trator, that the owner or operator—

20 “(A) has properly installed appropriate control
21 equipment designed to meet the applicable emission
22 rate;

23 “(B) has properly operated such equipment for
24 a period of fifteen months (or such other period of
25 time as the Administrator determines through the

1 regulations), and provides operating and monitoring
2 data for such period demonstrating that the unit
3 cannot meet the applicable emission rate; and

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

9 “(i) that permits the unit during the dem-
10 onstration period referred to in subparagraph
11 (2) above, to emit at a rate in excess of the ap-
12 plicable emission rate;

13 “(ii) at the conclusion of the demonstra-
14 tion period to revise the operating permit to re-
15 flect the alternative emission rate demonstrated
16 in paragraphs (2) and (3) above.

17 Units subject to subsection (b)(1) for which an alternative
18 emission limitation is established shall not be required to
19 install any additional control technology beyond low NO_x
20 burners. Nothing in this section shall preclude an owner
21 or operator from installing and operating an alternative
22 NO_x control technology capable of achieving the applica-
23 ble emission limitation. The Administrator shall imple-
24 ment this subsection under 40 CFR part 76 (2001),
25 amended as appropriate by the Administrator.

1 “(d) EMISSIONS AVERAGING.—In lieu of complying
2 with the applicable emission limitations under subsection
3 (b)(1), (2), or (c), the owner or operator of two or more
4 units subject to one or more of the applicable emission
5 limitations set pursuant to these sections, may petition the
6 permitting authority for alternative contemporaneous an-
7 nual emission limitations for such units that ensure that
8 (1) the actual annual emission rate in pounds of nitrogen
9 oxides per million Btu averaged over the units in question
10 is a rate that is less than or equal to (2) Btu-weighted
11 average annual emission rate for the same units if they
12 had been operated, during the same period of time, in
13 compliance with limitations set in accordance with the ap-
14 plicable emission rates set pursuant to subsections (b)(1)
15 and (2). If the permitting authority determines, in accord-
16 ance with regulations issued by the Administrator that the
17 conditions in the paragraph above can be met, the permit-
18 ting authority shall issue operating permits for such units,
19 in accordance with section 404 and title V, that allow al-
20 ternative contemporaneous annual emission limitations.
21 Such emission limitations shall only remain in effect while
22 both units continue operation under the conditions speci-
23 fied in their respective operating permits. The Adminis-
24 trator shall implement this subsection under 40 CFR part
25 76 (2001), amended as appropriate by the Administrator.

1 **“SEC. 442. TERMINATION.**

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

5 **“Subpart 2—Nitrogen Oxides Allowance Program**

6 **“SEC. 451. DEFINITIONS.**

7 “For purposes of this subpart:

8 “(1) The term ‘affected EGU’ means—

9 “(A) for a unit serving a generator before
10 the date of enactment of the Clear Skies Act of
11 2002, a unit in a State serving a generator with
12 a nameplate capacity of greater than 25
13 megawatts that produced or produces electricity
14 for sale during 2001 or any year thereafter, ex-
15 cept for a cogeneration unit that produced or
16 produces electricity for sale equal to less than
17 one-third of the potential electrical output of
18 the generator that it served or serves during
19 2001 and each year thereafter; and

20 “(B) for a unit commencing service of a
21 generator on or after the date of enactment of
22 the Clear Skies Act of 2002, a unit in a State
23 serving a generator that produces electricity for
24 sale during any year starting with the year the
25 unit commences service of a generator, except
26 for a gas-fired unit serving one or more genera-

1 tors with total nameplate capacity of 25
2 megawatts or less, or a cogeneration unit that
3 produces electricity for sale equal to less than
4 one-third of the potential electrical output of
5 the generator that it serves, during each year
6 starting with the unit commences service of a
7 generator.

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

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

24 “(3) The term ‘Zone 2 State’ means Alaska,
25 American Samoa, Arizona, California, Colorado, the

1 Commonwealth of Northern Mariana Islands, the
2 Commonwealth of Puerto Rico, Guam, Hawaii,
3 Idaho, Montana, Nebraska, North Dakota, New
4 Mexico, Nevada, Oregon, South Dakota, Texas west
5 of Interstate 35, Utah, the Virgin Islands, Wash-
6 ington, and Wyoming.

7 **“SEC. 452. APPLICABILITY.**

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

14 “(2) Only nitrogen oxides allowances under section
15 453(a) shall be held in order to meet the requirements
16 of paragraph (1), except as provided under section 465.

17 “(b)(1) Starting January 1, 2008, it shall be unlaw-
18 ful for the affected EGUs at a facility in a Zone 2 State
19 to emit a total amount of nitrogen oxides during a year
20 in excess of the number of nitrogen oxides allowances held
21 for such facility for that year by the owner or operator
22 of the facility.

23 “(2) Only nitrogen oxides allowances under section
24 453(b) shall be held in order to meet the requirements
25 of paragraph (1).

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

2 “(a) For affected EGUs in the Zone 1 States for
3 2008 and each year thereafter, the Administrator shall al-
4 locate nitrogen oxides allowances under section 454(a),
5 and conduct auctions of nitrogen oxides allowances under
6 section 409, in the amounts in Table A.

“TABLE A.—TOTAL NO_x ALLOWANCE ALLOCATED OR
AUCTIONED FOR EGU’S 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 |

“TABLE A.—TOTAL NO_x ALLOWANCE ALLOCATED OR AUCTIONED FOR EGU’S IN ZONE 1—Continued

| Year | NO _x allowances allocated | NO _x allowances auctioned |
|------------|--------------------------------------|--------------------------------------|
| 2044 | 435,750 | 726,250 |
| 2045 | 406,700 | 755,300 |
| 2046 | 377,650 | 784,350 |
| 2047 | 348,600 | 813,400 |
| 2048 | 319,550 | 842,450 |
| 2049 | 290,500 | 871,500 |
| 2050 | 261,450 | 300,550 |
| 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) For affected EGUs in the Zone 2 States for
2 2008 and each year thereafter, the Administrator shall al-
3 locate nitrogen oxides allowances under section 454(b),
4 and conduct auctions of nitrogen oxides allowances under
5 section 409, in the amounts in Table B.

“TABLE B.—TOTAL NO_x ALLOWANCES ALLOCATED FOR EGU’S 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 |

“TABLE B.—TOTAL NO_x ALLOWANCES ALLOCATED FOR
EGU’S IN ZONE 2—Continued

| Year | NO _x allowance allocated | NO _x allowance auctioned |
|------------|--|--|
| 2022 | 457,300 | 80,700 |
| 2023 | 451,920 | 86,080 |
| 2024 | 446,540 | 91,460 |
| 2025 | 441,160 | 96,840 |
| 2026 | 435,780 | 102,220 |
| 2027 | 430,400 | 107,600 |
| 2028 | 416,950 | 121,050 |
| 2029 | 403,500 | 134,500 |
| 2030 | 390,050 | 147,950 |
| 2031 | 376,600 | 161,400 |
| 2032 | 363,150 | 174,850 |
| 2033 | 349,700 | 188,300 |
| 2034 | 336,250 | 201,750 |
| 2035 | 322,800 | 215,200 |
| 2036 | 309,350 | 228,650 |
| 2037 | 295,900 | 242,100 |
| 2038 | 282,450 | 255,550 |
| 2039 | 269,000 | 269,000 |
| 2040 | 255,550 | 282,450 |
| 2041 | 242,100 | 295,900 |
| 2042 | 228,650 | 309,350 |
| 2043 | 215,200 | 322,800 |
| 2044 | 201,750 | 336,250 |
| 2045 | 188,300 | 349,700 |
| 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) By January 1, 2006, the Administrator
4 shall promulgate regulations determining the alloca-
5 tion of nitrogen oxides allowances for each year dur-

1 ing 2008 through 2058 for units at a facility in a
2 Zone 1 State that are affected EGUs as of Decem-
3 ber 31, 2004. The regulations shall determine the al-
4 location for such units for each year by multiplying
5 the allocation amount under section 453(a) by the
6 ratio of the total amount of baseline heat input of
7 such units at the facility to the total amount of
8 baseline heat input of all affected EGUs in the Zone
9 1 States.

10 “(2)(A) For each year 2008 through 2058, if
11 the Administrator has not promulgated the regula-
12 tions determining allocation under paragraph (a)(1),
13 but has promulgated the regulations under section
14 403(b) providing for the transfer of nitrogen oxides
15 allowances and section 403(c) establishing the Allow-
16 ance Tracking system for nitrogen oxides allowances,
17 by July 1 that is eighteen months before January 1
18 of such year, then:

19 “(i) The Administrator shall—

20 “(I) allocate, for such year, to each
21 unit in the Zone 1 States listed in the Ad-
22 ministrator’s Emissions Scorecard 2000,
23 Appendix B, Table B1 an amount of nitro-
24 gen oxides allowances determined by multi-
25 plying eighty percent of the allocation

1 amount under section 453(a) by the ratio
2 of such unit's heat input in the Emissions
3 Scorecard 2000, Appendix B, Table B1 to
4 the total of the heat input in the Emis-
5 sions Scorecard 2000, Appendix B, Table
6 B1 for all units in the Zone 1 States;

7 “(II) record in each facility's account
8 in the Allowance Tracking System under
9 section 403(c) for such year the total of
10 the amounts of nitrogen oxides allowances
11 for the units at such facility determined
12 under subelause (I); and

13 “(III) auction an amount of nitrogen
14 oxides allowances equal to five percent of
15 the allocation amount under section 453(a)
16 and conduct the auction on the first busi-
17 ness day in October following the respec-
18 tive promulgation deadline under subpara-
19 graph (A) and in accordance with section
20 409.

21 “(ii) Notwithstanding any other provision
22 of law to the contrary, the determination of the
23 amount of nitrogen oxides allowances under
24 subelause (i)(I) and the recording of nitrogen

1 oxides allowances under subclause (i)(II) shall
2 not be subject to judicial review.

3 “(iii) Notwithstanding the provisions to the
4 contrary in section 453, the Administrator shall
5 not allocate or record fifteen percent of the allo-
6 cation amount under section 453(a) for such
7 year.

8 “(B) For each year 2008 through 2058, if the
9 Administrator has not promulgated the regulations
10 determining allocations under paragraph (a)(1), and
11 has not promulgated the regulations under section
12 403(b) providing for the transfer of nitrogen oxides
13 allowances and section 403(c) establishing the Allow-
14 ance Tracking System for nitrogen oxides allow-
15 ances, by July 1 that is eighteen months before Jan-
16 uary 1 of such year, then it shall be unlawful for an
17 affected EGU in the Zone 1 States to emit nitrogen
18 oxides during such year in excess of 0.14 lb/mmBtu.

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

20 “(1) By January 1, 2006, the Administrator
21 shall promulgate regulations determining the alloca-
22 tion of nitrogen oxides allowances for each year dur-
23 ing 2008 through 2058 for units at a facility in a
24 Zone 2 State that are affected EGUs as of Decem-
25 ber 31, 2004. The regulations shall determine the al-

1 location for such units for each year by multiplying
2 the allocation amount under section 453(b) by the
3 ratio of the total amount of baseline heat input of
4 such units at the facility to the total amount of
5 baseline heat input of all affected EGUs in the Zone
6 2 States.

7 “(2)(A) For each year 2008 through 2058, if
8 the Administrator has not promulgated the regula-
9 tions determining allocations under paragraph
10 (b)(1), but has promulgated the regulations under
11 section 403(b) providing for the transfer of nitrogen
12 oxides allowances and section 403(c) establishing the
13 Allowance Tracking System for nitrogen oxides al-
14 lowances, by July 1 that is eighteen months before
15 January 1 of such years, then:

16 “(i) The Administrator shall—

17 “(I) allocate, for such year, to each
18 unit in the Zone 2 States listed in the Ad-
19 ministrator’s Emissions Scorecard 2000,
20 Appendix B, Table B1 an amount of nitro-
21 gen oxides allowances determined by
22 mutiplying eighty percent of the allocation
23 amount under section 453(b) by the ratio
24 of such unit’s heat input in the Emissions
25 Scorecard 2000, Appendix B, Table B1 to

1 the total of the heat input in the Emis-
2 sions Scorecard 2000, Appendix B, Table
3 B1 for all units in the Zone 2 States;

4 “(II) record in each facility’s account
5 in the Allowance Tracking System under
6 section 403(c) for such year the total of
7 the amounts of nitrogen oxides allowances
8 for the units at such facility determined
9 under subclause (I); and

10 “(III) auction an amount of nitrogen
11 oxides allowances equal to five percent of
12 the allocation amount under section 453(b)
13 and conduct the auction on the first busi-
14 ness day in October following the respec-
15 tive promulgation deadline under subpara-
16 graph (A) and in accordance with section
17 409.

18 “(ii) Notwithstanding any other provision
19 of law to the contrary, the determination of the
20 amount of nitrogen oxides allowances under
21 subclause (i)(I) and the recording of nitrogen
22 oxides allowances under subclause (i)(II) shall
23 not be subject to judicial review.

24 “(iii) Notwithstanding the provisions to the
25 contrary in section 453, the Administrator shall

1 not allocate or record fifteen percent of the allo-
2 cation amount under section 453(b) for such
3 year.

4 “(B) For each year 2008 through 2058, if the
5 Administrator has not promulgated the regulations
6 determining allocations under paragraph (b)(1), and
7 has not promulgated the regulations under section
8 403(b) providing for the transfer of nitrogen oxides
9 allowances and section 403(c) establishing the Allow-
10 ance Tracking System for nitrogen oxides allow-
11 ances, by July 1 that is eighteen months before Jan-
12 uary 1 of such year, then it shall be unlawful for
13 any affected EGU in the Zone 2 States to emit ni-
14 trogen oxides during such year in excess of 0.25 lb/
15 mmBtu.

16 **“Subpart 3—Ozone Season No_x Budget Program**

17 **“SEC. 461. DEFINITIONS.**

18 “For purposes of this subpart:

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

20 “(A) with regard to Connecticut, Delaware,
21 the District of Columbia, Maryland, Massachu-
22 setts, New Jersey, New York, Pennsylvania,
23 and Rhode Island, the period May 1 through
24 September 30 for each year starting in 2003;
25 and

1 “(B) with regard to all other States, the
2 period May 30, 2004 through September 30,
3 2004 and the period May 1 through September
4 30 for each year thereafter.

5 “(2) The term ‘State’ means Connecticut, Dela-
6 ware, the District of Columbia, Illinois, Indiana,
7 Kennedy, Maryland, Massachusetts, New Jersey,
8 New York, North Carolina, Ohio, Pennsylvania,
9 Rhode Island, South Carolina, Tennessee, Virginia,
10 and West Virginia and the fine grid portions of Ala-
11 bama, Georgia, Michigan, and Missouri.

12 “(3) The term ‘fine grid portions of Alabama,
13 Georgia, Michigan, and Missouri’ means the areas in
14 Alabama, Georgia, Michigan, and Missouri subject
15 to 40 CFR § 51.121 (2001), as it would be amended
16 in the notice of proposed rulemaking at 67 Federal
17 Register 8396 (February 22, 2002).

18 **“SEC. 462. GENERAL PROVISIONS.**

19 “The provisions of sections 402 through 406 and sec-
20 tion 409 shall not apply to this subpart.

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

22 “(a) Except as provided in subsection (b), the appli-
23 cable implementation plan for each State shall be con-
24 sistent with the requirements, including the State’s nitro-
25 gen oxides budget and compliance supplement pool, in 40

1 CFR §§ 51.121 and 51.122 (2001), as it would be amend-
2 ed in the notice of proposed rulemaking at 67 Federal
3 Register 8396 (February 22, 2002).

4 “(b) Notwithstanding any provision to the contrary
5 in 40 CFR § 51.121 (2001), the applicable implementation
6 plan for each State shall require full implementation of
7 the required emission control measures starting no later
8 than the first ozone season.

9 **“SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION**
10 **OF NO_x TRADING PROGRAM.**

11 “(a) Starting January 1, 2008, the Administrator
12 shall not administer any nitrogen oxides trading program
13 in any State’s applicable implementation plan under sec-
14 tion 463.

15 “(b) Nothing in subsection (a) shall preclude a State
16 from administering any nitrogen oxides trading program
17 in the State’s applicable implementation plan under sec-
18 tion 463.

19 **“SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES**
20 **ALLOWANCES.**

21 “The Administrator shall promulgate regulations as
22 necessary to assure that the requirement to hold allow-
23 ances under section 452(a)(1) may be met using nitrogen
24 oxides allowances allocated for an ozone season before
25 2008 under a nitrogen oxides trading program that the

1 Administrator administers in a State's applicable imple-
2 mentation plan under section 463.

3 **“PART D—MERCURY EMISSIONS REDUCTIONS**

4 **“SEC. 471. DEFINITIONS.**

5 “For purposes of this subpart:

6 “(1) The term ‘adjusted baseline heat input’
7 with regard to a unit means the unit’s baseline heat
8 input multiplied by—

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

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

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

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

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

3 “(2) The term ‘affected EGU’ means—

4 “(A) for a unit serving a generator before
5 the date of enactment of the Clear Skies Act of
6 2002, a coal-fired unit in a State serving a gen-
7 erator with a nameplate capacity of greater
8 than 25 megawatts that produced or produces
9 electricity for sale during 2001 or any year
10 thereafter, except for a cogeneration unit that
11 produced or produces electricity for sale equal
12 to less than one-third of the potential electrical
13 output of the generator that it served or serves
14 during 2001 and each year thereafter; and

15 “(B) for a unit commencing service of a
16 generator on or after the date of enactment of
17 the Clear Skies Act of 2002, a coal-fired unit
18 in a State serving a generator that produces
19 electricity for sale during any year starting with
20 the year the unit commences service of a gener-
21 ator, except for a cogeneration unit that pro-
22 duces electricity for sale equal to less than one-
23 third of the potential electrical output of the
24 generator that it serves, during each year start-

1 ing with the year the unit commences service of
2 a generator.

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

9 **“SEC. 472. APPLICABILITY.**

10 “Starting January 1, 2010, it shall be unlawful for
11 the affected EGUs at a facility in a State to emit a total
12 amount of mercury during the year in excess of the num-
13 ber of mercury allowances held for such facility for that
14 year by the owner or operator of the facility.

15 **“SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.**

16 “For affected EGUs for 2010 and each year there-
17 after, the Administrator shall allocate mercury allowances
18 under section 474, and conduct auctions of mercury allow-
19 ances under section 409, in the amounts in table A.

“TABLE A.—TOTAL MERCURY ALLOWANCES
ALLOCATED OR AUCTIONED FOR EGU’S

| 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 |

“TABLE A.—TOTAL MERCURY ALLOWANCES
ALLOCATED OR AUCTIONED FOR EGU’S—Continued

| Year | Mercury allowances allocated | Mercury allowances auctioned |
|------------|------------------------------------|------------------------------------|
| 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 |
| 2059 | 24,000 | 456,000 |
| 2060 | 12,000 | 468,000 |
| 2061 | 0 | 480,000 |

1 **“SEC. 474. EGU ALLOCATIONS.**

2 “(a) By January 1, 2007, the Administrator shall
3 promulgate regulations determining allocations of mercury
4 allowances for each year during 2010 through 2060 for
5 units at a facility that are affected EGUs as of December
6 31, 2004. The regulations shall provide that the Adminis-
7 trator shall allocate each year for such units an amount
8 determined by multiplying the allocation amount in section
9 473 by the ratio of the total amount of the adjusted base-
10 line heat input of such units at the facility to the total
11 amount of adjusted baseline heat input of all affected
12 EGUs.

13 “(b)(1) For each year 2010 through 2060, if the Ad-
14 ministrator has not promulgated the regulations deter-
15 mining allocations under paragraph (a), but has promul-
16 gated the regulations under section 403(b) providing for
17 the transfer of mercury allowances and section 403(c) es-
18 tablishing the Allowance Tracking System for mercury al-
19 lowances, by July 1 that is eighteen months before Janu-
20 ary 1 of such year, then:

21 “(A) The Administrator shall—

22 “(i) allocate, for such year, to each unit
23 with coal as its primary or secondary fuel listed
24 in the Administrator’s Emissions Scorecard
25 2000, Appendix B, Table B1 an amount of
26 mercury allowances determined by multiplying

1 eighty percent of the allocation amount under
2 section 473 by the ratio of such unit's heat
3 input in the Emissions Scorecard 2000, Appen-
4 dix B, Table B1 to the total of the heat input
5 in the Emissions Scorecard 2000, Appendix B,
6 Table B1 for all units with coal as their pri-
7 mary or secondary fuel;

8 “(ii) record in each facility's account in the
9 Allowance Tracking System under section
10 403(c) for such year the total of the amounts
11 of mercury allowances for the units at such fa-
12 cility determined under clause (i); and

13 “(iii) auction an amount of mercury allow-
14 ances equal to five percent of the allocation
15 amount under section 473 and conduct the auc-
16 tion on the first business day in October fol-
17 lowing the respective promulgation deadline
18 under paragraph (1) and in accordance with
19 section 409.

20 “(B) Notwithstanding any other provision of
21 law to the contrary, the determination of the amount
22 of mercury allowances under subparagraph (1)(A)
23 and the recording of mercury allowances under sub-
24 paragraph (1)(B) shall not be subject to judicial re-
25 view.

1 “(C) Notwithstanding the provisions to the con-
 2 trary in section 473, the Administrator shall not al-
 3 locate or record fifteen percent of the allocation
 4 amount under section 473 for such year.

5 “(2) For each year 2010 through 2060, if the Admin-
 6 istrator has not promulgated the regulations determining
 7 allocations under paragraph (a), and has not promulgated
 8 the regulations under section 403(b) providing for the
 9 transfer of mercury allowances and section 403(c) estab-
 10 lishing the Allowance Tracking System for mercury allow-
 11 ances, by July 1 that is eighteen months before January
 12 1 of such year, then it shall be unlawful for any affected
 13 EGU to emit mercury during such year in excess of 30
 14 percent of the mercury content (in ounces per mmBtu)
 15 of the coal and coal-derived fuel combusted by the unit.

16 **“PART E—NATIONAL EMISSION STANDARDS;**
 17 **RESEARCH; ENVIRONMENTAL ACCOUNT-**
 18 **ABILITY; MAJOR SOURCE PRECON-**
 19 **STRUCTION REVIEW AND BEST AVAILABLE**
 20 **RETROFIT CONTROL TECHNOLOGY RE-**
 21 **QUIREMENTS**

22 **“SEC. 481. NATIONAL EMISSION STANDARDS FOR AF-**
 23 **FFECTED UNITS.**

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

1 “(1) The term ‘commenced,’ with regard to con-
2 struction, means that an owner or operator has ei-
3 ther undertaken a continuous program of construc-
4 tion or has entered into a contractual obligation to
5 undertake and complete, within a reasonable time, a
6 continuous program of construction. For boilers and
7 integrated gasification combined cycle plants, this
8 term does not include undertaking such a program
9 or entering into such an obligation more than 36
10 months prior to the date on which the unit begins
11 operation. For combustion turbines, this term does
12 not include undertaking such a program or entering
13 into such an obligation more than 18 months prior
14 to the date on which the unit begins operation.

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

17 “(3) The term ‘affected unit’ means any unit
18 that is subject to emission limitations under subpart
19 2 of part B, subpart 2 of part C, or part D.

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

22 “(5) The term ‘new affected unit’ means any
23 affected unit, the construction or reconstruction of
24 which is commenced after the date of enactment of
25 the Clear Skies Act of 2002, except that for the pur-

1 pose of any revision of a standard pursuant to sub-
2 section (e), ‘new affected unit’ means any affected
3 unit, the construction or reconstruction of which is
4 commenced after the public of regulations (or, if ear-
5 lier, proposed regulations) prescribing a standard
6 under this section that will apply to such unit.

7 “(6) The term ‘reconstruction’ means the re-
8 placement of components of a unit to such an extent
9 that:

10 “(A) the fixed capital cost of the new com-
11 ponents exceeds 50 percent of the fixed capital
12 cost that would be required to construct a com-
13 parable entirely new unit; and

14 “(B) it is technologically and economically
15 feasible to meet the applicable standards set
16 forth in this section.

17 “(7) The term ‘simple cycle combustion turbine’
18 means a stationary combustion turbine that does not
19 extract heat from the combustion turbine exhaust
20 gases.

21 “(b) EMISSION STANDARDS.—

22 “(1) IN GENERAL.—No later than twelve
23 months after the date of enactment of the Clear
24 Skies Act of 2002, the Administrator shall promul-
25 gate regulations prescribing the standards in sub-

1 sections (c) through (d) for the specified affected
2 units and establishing requirements to ensure com-
3 pliance with these standards, including monitoring,
4 recordkeeping, and reporting requirements.

5 “(2) MONITORING.—

6 “(A) The owner or operator of any affected
7 unit subject to the standards for sulfur dioxide,
8 nitrogen oxides, or mercury under this section
9 shall meet the requirements of section 405, ex-
10 cept that, where two or more units utilize a sin-
11 gle stack, separate monitoring shall be required
12 for each affected unit for the pollutants for
13 which the unit is subject to such standards.

14 “(B) The Administrator shall, by regula-
15 tion, require—

16 “(i) the owner or operator of any af-
17 fected unit subject to the standards for
18 sulfur dioxide, nitrogen oxides, or mercury
19 under this section to—

20 “(I) install and operate CEMS
21 for monitoring output, including elec-
22 tricity and useful thermal energy, on
23 the affected unit and to quality assure
24 the data; and

1 “(II) comply with recordkeeping
2 and reporting requirements, including
3 provisions for reporting output data in
4 megawatt hours.

5 “(ii) the owner or operator of any af-
6 fected unit subject to the standards for
7 particulate matter under this section to—

8 “(I) install and operate CEMS
9 for monitoring particulate matter on
10 the affected unit and to quality assure
11 the data;

12 “(II) comply with recordkeeping
13 and reporting requirements; and

14 “(III) comply with alternative
15 monitoring, quality assurance, record-
16 keeping, and reporting requirements
17 for any period of time for which the
18 Administrator determines that CEMS
19 with appropriate vendor guarantees
20 are not commercially available for
21 particulate matter.

22 “(3) COMPLIANCE.—For boilers, integrated
23 gasification combined cycle plants, and combustion
24 turbines that are gas-fired or coal fired, the Admin-
25 istrator shall require that the owner or operator

1 demonstrate compliance with the standards daily,
2 using a 30-day rolling average, except that in the
3 case of mercury, the compliance period shall be the
4 calendar year. For combustion turbines that are not
5 gas-fired or coal-fired, the Administrator shall re-
6 quire that the owner or operator demonstrate com-
7 pliance with the standards hourly, using a 4-hour
8 rolling average.

9 “(c) BOILERS AND INTEGRATED GASIFICATION COM-
10 BINED CYCLE PLANTS.—

11 “(1) After the effective date of standards pro-
12 mulgated under subsection (b), no owner or operator
13 shall cause any boiler or integrated gasification com-
14 bined cycle plant that is a new affected unit to dis-
15 charge into the atmosphere any gases which
16 contain—

17 “(A) sulfur dioxide in excess of 2.0 lb/
18 MWh;

19 “(B) nitrogen oxides in excess of 1.0 lb/
20 MWh;

21 “(C) particulate matter in excess of 0.20
22 lb/MWh; or

23 “(D) if the unit is coal-fired, mercury in
24 excess of 0.015 lb/GWh, unless—

1 “(i) mercury emissions from the unit
2 are reduced by 80 percent;

3 “(ii) flue gas desulfurization (FGD)
4 and selective catalytic reduction (SCR) are
5 applied to the unit and are operated so as
6 to optimize capture of mercury; or

7 “(iii) a technology is applied to the
8 unit and operated so as to optimize cap-
9 ture of mercury, and the permitting au-
10 thority determines that the technology is
11 equivalent in terms of mercury capture to
12 the application of FGD and SCR.

13 “(2) Notwithstanding subparagraph (1)(D), in-
14 tegrated gasification combined cycle plants with a
15 combined capacity of less than 5 GW are exempt
16 from the mercury requirement under subparagraph
17 (1)(D) if they are constructed as part of a dem-
18 onstration project under the Secretary of Energy
19 that will include a demonstration of removal of sig-
20 nificant amounts of mercury as determined by the
21 Secretary of Energy in conjunction with the Admin-
22 istrator as part of the solicitation process.

23 “(3) After the effective date of standards pro-
24 mulgated under subsection (b), no owner or operator
25 shall cause any oil-fired boiler that is an existing af-

1 affected unit to discharge into the atmosphere any
2 gases which contain particulate matter in excess of
3 0.30 lb/MWh.

4 “(d) COMBUSTION TURBINES.—

5 “(1) After the effective date of standards pro-
6 mulgated under subsection (b), no owner or operator
7 shall cause any gas-fired combustion turbine that is
8 a new affected unit to discharge into the atmosphere
9 any gases which contain nitrogen oxides in excess
10 of—

11 “(A) 0.56 lb/MWh (15 ppm at 15 percent
12 oxygen), if the unit is a simple cycle combustion
13 turbine;

14 “(B) 0.084 lb/MWh (3.5 ppm at 15 per-
15 cent oxygen), if the unit is not a simple cycle
16 combustion turbine and either uses add-on con-
17 trols or is located within 50 km of a class I
18 area;

19 “(C) 0.21 lb/MWh (9 ppm at 15 percent
20 oxygen), if the unit is not a simple cycle turbine
21 and neither uses add-on controls nor is located
22 within 50 km of a class I area.

23 “(2) After the effective date of standards pro-
24 mulgated under subsection (b), no owner or operator
25 shall cause any coal-fired combustion turbine that is

1 a new affected unit to discharge into the atmosphere
2 any gases which contain sulfur dioxide, nitrogen ox-
3 ides, particulate matter, or mercury in excess of the
4 emission limits under subparagraphs (c)(1) (A)
5 through (D).

6 “(3) After the effective date of standards pro-
7 mulgated under subsection (b), no owner or operator
8 shall cause any combustion turbine that is not gas-
9 fired or coal-fired and that is a new affected unit to
10 discharge into the atmosphere any gases which
11 contain—

12 “(A) sulfur dioxide in excess of 2.0lb/

13 MWh;

14 “(B) nitrogen oxides in excess of—

15 “(i) 0.289 lb/MWh (12 ppm at 15
16 percent oxygen), if the unit is not a simple
17 cycle combustion turbine, is dual-fuel capa-
18 ble, and uses add-on controls; or is not a
19 simple cycle combustion turbine and is lo-
20 cated within 50 km of a class I area;

21 “(ii) 1.01 lb/MWh (42 ppm at 15 per-
22 cent oxygen), if the unit is a simple cycle
23 combustion turbine; is not a simple cycle
24 combustion turbine and is not dual-fuel ca-
25 pable; or is not a simple cycle combustion

1 turbine, is dual-fuel capable, and does not
2 use add-on controls.

3 “(C) particulate matter in excess of 0.20
4 lb/MWh.

5 “(e) PERIODIC REVIEW AND REVISION.—

6 “(1) The Administrator shall, at least every 8
7 years following the promulgation of standards under
8 subsection (b), review and, if appropriate, revise
9 such standards to reflect the degree of emission limi-
10 tation achievable through the application of the best
11 system of emission reduction which (taking into ac-
12 count the cost of achieving such reduction and any
13 nonair quality health and environmental impacts and
14 energy requirements) the Administrator determines
15 has been adequately demonstrated. When implemen-
16 tation and enforcement of any requirement of this
17 Act indicate that emission limitations and percent
18 reductions beyond those required by the standards
19 promulgated under this section are achieved in prac-
20 tice, the Administrator shall, when revising stand-
21 ards promulgated under this section, consider the
22 emission limitations and percent reductions achieved
23 in practice.

24 “(2) Notwithstanding the requirements of para-
25 graph (1) the Administrator need not review any

1 standard promulgated under subsection (b) if the
2 Administrator determines that such review is not ap-
3 propriate in light of readily available information on
4 the efficacy of such standard.

5 “(f) EFFECTIVE DATE.—Standard promulgated pur-
6 suant to this section shall become effective upon promul-
7 gation.

8 “(g) DELEGATION.—

9 “(1) Each State may develop and submit to the
10 Administration a procedure for implementing and
11 enforcing standards promulgated under this section
12 for affected units located in such State. If the Ad-
13 ministrator finds the State procedure is adequate,
14 the Administrator shall delegate to such State any
15 authority the Administrator has under this Act to
16 implement and enforce such standards.

17 “(2) Nothing in this subsection shall prohibit
18 the Administrator from enforcing any applicable
19 standard under this section.

20 “(h) VIOLATIONS.—After the effective date of stand-
21 ards promulgated under this section, it shall be unlawful
22 for any owner or operator of any affected unit to operate
23 such unit in violation of any standard applicable to such
24 unit.

1 “(i) COORDINATION WITH OTHER AUTHORITIES.—
2 For purposes of sections 111(e), 113, 114, 116, 120, 303,
3 304,307 and other provisions for the enforcement of this
4 Act, each standard established pursuant to this section
5 shall be treated in the same manner as a standard of per-
6 formance under section 111, and each affected unit sub-
7 ject to standards under this section shall be treated in the
8 same manner as a stationary source under section 111.

9 “(j) STATE AUTHORITY.—Nothing in this section
10 shall preclude or deny the right of any State or political
11 subdivision thereof to adopt or enforce any regulations, re-
12 quirement, limitation, or standard relating to affected
13 units that is more stringent than a regulation, require-
14 ment, limitation or standard in effect under this section
15 or under any other provision of this Act.

16 “(k) OTHER AUTHORITY UNDER THIS ACT.—Noth-
17 ing in this section shall diminish the authority of the Ad-
18 ministrator or a State to establish any other requirements
19 applicable to affected units under any other authority of
20 law, including the authority to establish for any air pollut-
21 ant a national ambient air quality standard, except that
22 no new affected unit subject to standards under this sec-
23 tion shall be subject to standards under section 111 of
24 this Act.

1 **“SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND**
2 **ASSESSMENT.**

3 “(a) PURPOSES.—The Administrator, in collabora-
4 tion with the Secretary of Energy and the Secretary of
5 the Interior, shall conduct a comprehensive program of re-
6 search and environmental monitoring and assessment to
7 enhance scientific understanding of the human health and
8 environmental effects of particulate matter and mercury
9 and to demonstrate the efficacy of emission reductions
10 under this title. The purposes of such a program are to—

11 “(1) expand current research and knowledge of
12 the contribution of emissions from electricity genera-
13 tion to exposure and health effects associated with
14 particulate matter and mercury;

15 “(2) enhance current research and development
16 of promising multi-pollutant control strategies and
17 CEMS for mercury;

18 “(3) produce peer-reviewed scientific and tech-
19 nology information to inform the review of emissions
20 levels under section 410;

21 “(4) improve environmental monitoring and as-
22 sessment of sulfur dioxide, nitrogen oxides and mer-
23 cury, and their transformation products, to track
24 changes in human health and the environment at-
25 tributable to emission reductions under this title;
26 and

1 “(5) periodically provide peer-reviewed reports
2 on the costs, benefits, and effectiveness of emission
3 reductions achieved under this title.

4 “(b) RESEARCH.—The Administrator shall enhance
5 planned and ongoing laboratory and field research and
6 modeling analyses, and conduct new research and analyses
7 to produce peer-reviewed information concerning the
8 human health and environmental effects of mercury and
9 particulate matter and the contribution of U.S. electrical
10 generating units to those effects. Such information shall
11 be included in the report under subsection (d). In addition,
12 such research and analyses shall—

13 “(1) improve understanding of the rates and
14 processes governing chemical and physical trans-
15 formations of mercury in the atmosphere, including
16 speciation of emissions from electricity generation
17 and the transport of these species;

18 “(2) improve understanding of the contribution
19 of mercury emissions from electricity generation to
20 mercury in fish and other biota, including—

21 “(A) the response of and contribution to
22 mercury in the biota owing to atmospheric dep-
23 osition of mercury from U.S. electricity genera-
24 tion on both local and regional scales;

1 “(B) long-term contributions of mercury
2 from U.S. electricity generation on mercury ac-
3 cumulations in ecosystems, and the effects of
4 mercury reductions in that sector on the envi-
5 ronment and public health;

6 “(C) the role and contribution of mercury,
7 from U.S. electricity generating facilities and
8 anthropogenic and natural sources to fish con-
9 tamination and to human exposure, particularly
10 with respect to sensitive populations;

11 “(D) the contribution of U.S. electricity
12 generation to population exposure to mercury in
13 freshwater fish and seafood and quantification
14 of linkages between U.S. mercury emissions and
15 domestic mercury exposure and its health ef-
16 fects; and

17 “(E) the contribution of mercury from
18 U.S. electricity generation in the context of
19 other domestic and international sources of
20 mercury, including transport of global anthro-
21 pogenic and natural background levels;

22 “(3) improve understanding of the health ef-
23 fects of fine particulate matter components related
24 to electricity generation emissions (as distinct from
25 other fine particle fractions and indoor air expo-

1 sures) and the contribution of U.S. electrical gener-
2 ating units to those effects including—

3 “(A) the chronic effects of fine particulate
4 matter from electricity generation in sensitive
5 population groups; and

6 “(B) personal exposure to fine particulate
7 matter from electricity generation; and

8 “(4) improve understanding, by way of a review
9 of the literature, of methods for valuing human
10 health and environmental benefits associated with
11 fine particulate matter and mercury.

12 “(c) INNOVATIVE CONTROL TECHNOLOGIES.—The
13 Administrator shall collaborate with the Secretary of En-
14 ergy to enhance research and development, and conduct
15 new research that facilitates research into and develop-
16 ment of innovative technologies to control sulfur dioxide,
17 nitrogen oxides, mercury, and particulate matter at a
18 lower cost than existing technologies. Such research and
19 development shall provide updated information on the cost
20 and feasibility of technologies. Such information shall be
21 included in the report under subsection (d). In addition,
22 the research and development shall—

23 “(1) upgrade cost and performance models to
24 include results from ongoing and future electricity

1 generation and pollution control demonstrations by
2 the Administrator and the Secretary of Energy;

3 “(2) evaluate the overall environmental implica-
4 tions of the various technologies tested including the
5 impact on the characteristics of coal combustion res-
6 idues;

7 “(3) evaluate the impact of the use of selective
8 catalytic reduction on mercury emissions from the
9 combustion of all coal types;

10 “(4) evaluate the potential of integrated gasifi-
11 cation combined cycle to adequately control mercury;

12 “(5) expand current programs by the Adminis-
13 trator to conduct research and promote, lower cost
14 CEMS capable of providing real-time measurements
15 of both speciated and total mercury and integrated
16 compact CEMS that provide cost-effective real-time
17 measurements of sulfur dioxide, nitrogen oxides, and
18 mercury;

19 “(6) expand lab- and pilot-scale mercury and
20 multi-pollutant control programs by the Secretary of
21 Energy and the Administrator, including develop-
22 ment of enhanced sorbents and scrubbers for use on
23 all coal types;

24 “(7) characterize mercury emissions from low-
25 rank coals, for a range of traditional control tech-

1 nologies, like scrubbers and selective catalytic reduc-
2 tion; and

3 “(8) improve low cost combustion modifications
4 and controls for dry-bottom boilers.

5 “(d) EMISSIONS LEVELS EVALUATION REPORT.—
6 Not later than January 1, 2008, the Administrator, in
7 consultation with the Secretary of Energy, shall prepare
8 a peer reviewed report to inform review of the emissions
9 levels under section 410. The report shall be based on the
10 best available peer-reviewed scientific and technology in-
11 formation. It shall address cost, feasibility, human health
12 and ecological effects, and net benefits associated with
13 emissions levels under this title.

14 “(e) ENVIRONMENTAL ACCOUNTABILITY.—

15 “(1) The Administrator shall conduct a pro-
16 gram of environmental monitoring and assessment
17 to track on a continuing basis, changes in human
18 health and the environment attributable to the emis-
19 sion reductions required under this title. Such a pro-
20 gram shall—

21 “(A) develop and employ methods to rou-
22 tinely monitor, collect, and compile data on the
23 status and trends of mercury and its trans-
24 formation products in emissions from affected
25 facilities, atmospheric deposition, surface water

1 quality, and biological systems. Emphasis shall
2 be placed on those methods that—

3 “(i) improve the ability to routinely
4 measure mercury in dry deposition proc-
5 esses;

6 “(ii) improve understanding of the
7 spatial and temporal distribution of mer-
8 cury deposition in order to determine
9 source-receptor relationships and patterns
10 of long-range, regional, and local deposi-
11 tion;

12 “(iii) improve understanding of aggre-
13 gate exposures and additive effects of
14 methylmercury and other pollutants; and

15 “(iv) improve understanding of the ef-
16 fectiveness and cost of mercury emissions
17 controls;

18 “(B) modernize and enhance the national
19 air quality and atmospheric deposition moni-
20 toring networks in order to cost-effectively ex-
21 pand and integrate, where appropriate, moni-
22 toring capabilities for sulfur, nitrogen, and mer-
23 cury to meet the assessment and reporting re-
24 quirements of this section;

1 “(C) perform and enhance long-term moni-
2 toring of sulfur, nitrogen, and mercury, and pa-
3 rameters related to acidification, nutrient en-
4 richment, and mercury bioaccumulation in
5 freshwater and marine biota;

6 “(D) maintain and upgrade models that
7 describe the interactions of emissions with the
8 atmosphere and resulting air quality implica-
9 tions and models that describe the response of
10 ecosystems to atmospheric deposition; and

11 “(E) assess indicators of ecosystems health
12 related to sulfur, nitrogen, and mercury, includ-
13 ing characterization of the causes and effects of
14 episodic exposure to air pollutants and evalua-
15 tion of recovery.

16 “(2) REPORTING REQUIREMENTS.—Not later
17 than twenty-four months after the date of enactment
18 of the Clear Skies Act of 2002, and not later than
19 every four years thereafter, the Administrator shall
20 provide a peer reviewed report to the Congress on
21 the costs, benefits, and effectiveness of emission re-
22 duction programs under this title. The report shall
23 address the relative contribution of emission reduc-
24 tions from U.S. electricity generation under this title

1 compared to the emission reductions achieved under
2 other titles 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 RECON-**
7 **STRUCTION REVIEW REQUIREMENTS AND**
8 **BEST AVAILABLE RETROFIT CONTROL TECH-**
9 **NOLOGY REQUIREMENTS.**

10 “(a) MAJOR SOURCE EXEMPTION.—An affected unit
11 may 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 part 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 three years after the date of
18 enactment of the Clear Skies Act of 2002:

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 eight years
3 after the date of enactment of the Clear Skies Act
4 of 2002, 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 2002 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, a 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 which increases the hourly emis-
4 sions of any air pollutant at the unit’s maximum ca-
5 pacity.”.

6 **SEC. 3. OTHER AMENDMENTS.**

7 (a) Title I of the Clean Air Act is amended by—

8 (1) removing from section 103 subparagraphs
9 (j)(3)(E) and (j)(3)(F); and

10 (2) modifying section 107 by amending—

11 (A) subparagraph (D)(1)(A) by—

12 (i) deleting the ‘or’ at the end of
13 clause (ii);

14 (ii) replacing the period with ‘, or’ at
15 the end of clause (iii);

16 (iii) adding clause (iv) to read as fol-
17 lows:

18 “(iv) notwithstanding clauses (i)–(iii),
19 an area may be designated transitional for
20 the fine particles national primary ambient
21 air quality standard or the 8-hour ozone
22 national primary ambient air quality
23 standard if the Administrator has per-
24 formed air quality modeling and, in the
25 case of an area that needs additional local

1 control measures, the State has performed
2 supplemental air quality modeling, dem-
3 onstrating that the area will attain that
4 standard no later than December 31,
5 2015, and such modeling demonstration
6 and all necessary local controls have been
7 approved into the state implementation
8 plan no later than December 31, 2004.”;
9 and

10 (iv) adding to the flush language at
11 the end a sentence to read as follows:
12 “However, for purposes of the fine par-
13 ticles national primary ambient air quality
14 standard and the 8-hour ozone national
15 primary ambient air quality standard, the
16 time period for the State to submit the
17 designations shall be extended to no later
18 than November 30, 2003.”;

19 (B) clause (d)(1)(B)(i) by adding at the
20 end a sentence to read as follows: “*Provided,*
21 *however,* That the Administrator shall not be
22 required to designate areas for the revised fine
23 particles national primary ambient air quality
24 standard and 8-hour ozone fine particles na-
25 tional primary ambient air quality standard

1 prior to 6-months after the States are required
2 to submit recommendations under section
3 107(d)(1)(A), but in no event shall the period
4 for designating such areas be extended beyond
5 November 30, 2004.”;

6 (3) modifying section 110 by—

7 (A) amending clause (a)(2)(D)(i) to read
8 as follows:

9 “(D) contain adequate provisions—

10 “(i)(I) except as provided in subclause
11 (II), prohibiting, consistent with the provi-
12 sions of this title, any source or other type
13 of emissions activity within the State from
14 emitting any air pollutant in amounts
15 which will—

16 “(aa) contribute significantly to
17 nonattainment in, or interfere with
18 maintenance by, any other State with
19 respect to any such national primary
20 or secondary ambient air quality
21 standard, or

22 “(bb) interfere with measures re-
23 quired to be included in the applicable
24 implementation plan for any other
25 State under part C to prevent signifi-

1 cant deterioration of air quality or to
2 protect visibility,

3 “(II) The Administrator, in reviewing,
4 under subclause (I), any plan with respect
5 to which emissions from affected units,
6 within the meaning of section 126(d)(1),
7 are substantial—

8 “(aa) shall consider, among other
9 relevant factors, emissions reductions
10 required to occur by the attainment
11 date or dates of any relevant non-at-
12 tainment areas in the other State or
13 States; and

14 “(bb) may not require submission
15 of plan provisions—

16 “(i) subjecting affected
17 units, within the meaning of sec-
18 tion 126(d)(1), to requirements
19 with an effective date prior to
20 January 1, 2012; or

21 “(ii) mandating an amount
22 of emissions reductions based on
23 the Administrator’s determina-
24 tion that emissions reductions
25 are available from such affected

1 units, unless the Administrator
2 determines that emissions from
3 such units may be reduced at
4 least as cost-effectively as emis-
5 sions from each other principal
6 category of sources of sulfur di-
7 oxide or nitrogen oxides, includ-
8 ing industrial boilers, on-road
9 mobile sources, and off-road mo-
10 bile sources, and any other cat-
11 egory of sources that the Admin-
12 istrator may identify, and that
13 reductions in such emissions will
14 improve air quality in the peti-
15 tioning State's nonattainment
16 area(s) at least as cost-effectively
17 as reductions in emissions from
18 each other principal category of
19 sources of sulfur dioxide or nitro-
20 gen oxides, to the maximum ex-
21 tent that a methodology is rea-
22 sonably available to make such a
23 determination.

24 The Administrator shall develop an appro-
25 priate peer reviewed methodology for mak-

1 ing such determinations by December 31,
2 2006. In making this determination, the
3 Administrator will use the best available
4 peer reviewed models and methodology
5 that consider the proximity of the source
6 or sources to the petitioning State or polit-
7 ical subdivision and incorporate other
8 source characteristics.

9 “(III) Nothing in subclause (II) shall
10 be interpreted to require revisions to the
11 provisions of 40 CFR 51.121 and 51.122
12 (2001), as would be amended in the notice
13 of proposed rulemaking at 67 Federal Reg-
14 ister 8396 (February 22, 2002).”.

15 (B) adding a new subsection (q) to read as
16 follows:

17 “(q) TRANSITIONAL AREAS.—

18 “(1) MAINTENANCE.—

19 “(A) By December 31, 2010, each area
20 designated as transitional pursuant to section
21 107(d)(1) shall submit an updated emission in-
22 ventory and an analysis of whether growth in
23 emissions, including growth in vehicle miles
24 traveled, will interfere with attainment by De-
25 cember 31, 2015.

1 “(B) No later than December 31, 2011,
2 the Administrator shall review each transitional
3 area’s maintenance analysis, and, if the Admin-
4 istrator determines that growth in emissions
5 will interfere with attainment by December 31,
6 2015, the Administrator will consult with the
7 State and determine what action, if any, is nec-
8 essary to assure that attainment will be
9 achieved by 2015.

10 “(2) PREVENTION OF SIGNIFICANT DETERIORA-
11 TION.—Each area designated as transitional pursu-
12 ant to section 107(d)(1) shall be treated as an at-
13 tainment or unclassifiable area for purposes of the
14 prevention of significant deterioration provisions of
15 part C of this subchapter.

16 “(3) CONSEQUENCES OF FAILURE TO ATTAIN
17 BY 2015.—No later than June 30, 2016, EPA shall
18 determine whether each area designated as transi-
19 tional for the 8-hour ozone standard or for the fine
20 particles standard has attained that standard. If
21 EPA determines that a transitional area has not at-
22 tained the standard, the area shall be redesignated
23 as nonattainment within 1 year of the determination
24 and the State shall be required to submit a state im-
25 plementation plan revision satisfying the provisions

1 of section 172 within 3 years of redesignation as
2 nonattainment.”;

3 (4) adding to section 111 a new subparagraph
4 (b)(1)(C) to read as follows:

5 “(C) No standards of performance promul-
6 gated under this section shall apply to units
7 subject to regulations promulgated pursuant to
8 section 481.”;

9 (5) modifying section 112 by amending—

10 (A) paragraph (c)(1) to read as follows:

11 “(c) LIST OF SOURCE CATEGORIES.—

12 “(1) IN GENERAL.—Not later than 12 months
13 after November 15, 1990, the Administrator shall
14 publish, and shall from time to time, but not less
15 often than every 8 years, revise, if appropriate, in
16 response to public comment or new information, a
17 list of all categories and subcategories of major
18 sources and area sources (listed under paragraph
19 (3)) of the air pollutants listed pursuant to sub-
20 section (b). *Provided, however,* That electric utility
21 steam generating units not subject to Resource Con-
22 servation and Recovery Act section 3005 shall not
23 be included in any category or subcategory listed
24 under this subsection. The Administrator shall have
25 the authority to regulate the emission of hazardous

1 air pollutants listed under section 112(b), other than
2 mercury compounds, by electric utility steam gener-
3 ating units in accordance with the regime set forth
4 in section 112(f)(2) through (4). The section
5 112(f)(2) determination shall be based on actual
6 emissions by electric utility steam generating units
7 in 2010. Any such regulations shall be promulgated
8 within 8 years of 2010. To the extent practicable,
9 the categories and subcategories listed under this
10 subsection shall be consistent with the list of source
11 categories established pursuant to section 111 and
12 part C. Nothing in the preceding sentence limits the
13 Administrator's authority to establish subcategories
14 under this section, as appropriate.”;

15 (B) subparagraph (n)(1)(A) to read as fol-
16 lows:

17 “(n) OTHER PROVISIONS.—

18 “(1) ELECTRIC UTILITY STEAM GENERATING
19 UNITS.—

20 “(A) The Administrator shall perform a
21 study of the hazards to public health reasonably
22 anticipated to occur as a result of emissions by
23 electric utility steam generating units of pollut-
24 ants listed under subsection (b) after imposition
25 of the requirements of this Act. The Adminis-

1 trator shall report the results of this study to
2 the Congress within 3 years after November 15,
3 1990.”;

4 (6) modifying section 126 by:

5 (A) revising subsection (b) by replacing
6 ‘section 110(a)(2)(D)(ii) or this section’ with
7 ‘section 110(a)(2)(D)(i)’;

8 (B) revising subsection (c)(1) by replacing
9 ‘this section and the prohibition of section
10 110(a)(2)(D)(ii)’ with ‘the prohibition of section
11 110(a)(2)(D)(i)’;

12 (C) revising subsection (c), flush language
13 at end, by replacing ‘section 110(a)(2)(D)(ii)’
14 with ‘section 110(a)(2)(D)(i)’ and deleting the
15 last sentence; and

16 (D) adding subsection (d) to read as fol-
17 lows:

18 “(d)(1) For purposes of this subsection, the term ‘af-
19 fected unit’ means any unit that is subject to emission
20 limitations under subpart 2 of part B, subpart 2 of part
21 C, or part D.

22 “(2) To the extent that any petition submitted under
23 subsection (b) after the date of enactment of the Clear
24 Skies Act of 2002 seeks a finding for any affected unit,

1 then, notwithstanding any provision in subsections (a)
2 through (c) to the contrary—

3 “(A) In determining whether to make a finding
4 under subsection (b) for any affected unit, the Ad-
5 ministrator shall consider, among other relevant fac-
6 tors, emissions reductions required to occur by the
7 attainment date or dates of any relevant nonattain-
8 ment areas in the petitioning State or political sub-
9 division.

10 “(B) The Administrator may not determine
11 that affected units emit or would emit any air pollut-
12 ant in violation of the prohibition of section
13 110(a)(2)(D)(i) unless that Administrator deter-
14 mines that—

15 “(i) such emissions may be reduced at
16 least as cost-effectively as emissions from each
17 other principal category of sources of sulfur di-
18 oxide or nitrogen oxides, including industrial
19 boilers, on-road mobile sources, and off-road
20 mobile sources, and any other category of
21 sources that the Administrator may identify;
22 and

23 “(ii) reductions in such emissions will im-
24 prove air quality in the petitioning state’s non-
25 attainment area(s) at least as cost-effectively as

1 reductions in emissions from each other prin-
2 cipal category of sources of sulfur dioxide or ni-
3 trogen oxides to the maximum extent that a
4 methodology is reasonably available to make
5 such a determination. In making this deter-
6 mination, the Administrator will use the best
7 available peer reviewed models and methodology
8 that consider the proximity of the source or
9 sources to the petitioning State or political
10 subsidision and incorporate other sources char-
11 acteristics.

12 “(C) The Administrator shall develop an appro-
13 priate peer reviewed methodology for making deter-
14 minations under subparagraph (B) by December 31,
15 2006.

16 “(D) The Administrator shall not make any
17 findings with respect to an affected unit under this
18 section prior to January 1, 2009. For any petition
19 submitted prior to January 1, 2007, the Adminis-
20 trator shall make a finding or deny the petition by
21 January 31, 2009.

22 “(E) The Administrator, by rulemaking, shall
23 extend the compliance and implementation deadlines
24 in subsection (c) to the extent necessary to assure

1 that no affected unit shall be subject to any such
2 deadline prior to January 1, 2012.”.

3 (b) Title III of the Clean Air Act is amended by modi-
4 fying section 307(d)(1)(G) to read as follows:

5 “(G) the promulgation or revision of any
6 regulation under title IV,”.

7 (c) Title IV of the Clean Air Act (relating to noise
8 pollution) (42 U.S.C. 7641 et seq.) is—

9 (1) amended by renumbering sections 401
10 through 403 as sections 701 through 703, respec-
11 tively; and

12 (2) renumbered as title VII.

13 (d) Title VIII of the Clean Air Act Amendments of
14 1990 (miscellaneous provisions) is amended by modifying
15 section 821(a) to read as follows:

16 “(a) MONITORING.—The Administrator of the Envi-
17 ronmental Protection Agency shall promulgate regulations
18 within 18 months after November 15, 1990 to require that
19 all affected sources subject to subpart 1 of part B of title
20 IV of the Clean Air Act shall also monitor carbon dioxide
21 emissions according to the same timetable as in section
22 405(b). The regulations shall require that such data be
23 reported to the Administrator. The provisions of section
24 405(e) of title IV of the Clean Air Act shall apply for pur-
25 poses of this section in the same manner and to the same

1 extent as such provision applies to the monitoring and
2 data referred to in section 405. The Administrator shall
3 implement this subsection under 40 CFR part 75 (2001),
4 amended as appropriate by the Administrator.’.

○