109TH CONGRESS
1ST SESSION

S. 131

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

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clear Skies Act of 2005''.

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

SEC. 2. EMISSION REDUCTION PROGRAMS.

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

"TITLE IV—EMISSION REDUCTION PROGRAMS

"PART A—GENERAL PROVISIONS

"SEC. 401. (Reserved)

"SEC. 402. DEFINITIONS.

''In this title:

''(1) AFFECTED EGU.—The term 'affected EGU' shall have the meaning set forth in section 421, 430, 451, or 471, as appropriate.

''(2) AFFECTED FACILITY.—The term 'affected facility' or 'affected source' means a facility or source that includes one or more affected units.

''(3) AFFECTED UNIT.—The term 'affected unit' means—

''(A) under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, if applicable, under a specified part or subpart; or

''(B) under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

''(4) ALLOWANCE.—The term 'allowance' means—

"(A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or

"(B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

"(5) BASELINE HEAT INPUT.—

"(A) IN GENERAL.—The term 'baseline heat input' means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period 1998 through 2002.

"(B) COMMENCEMENT OF OPERATION AFTER JANUARY 1, 2001.—Notwithstanding subparagraph (A), if a unit commenced or commences operation after January 1, 2001, then 'baseline heat input' means the manufacturer's design heat input capacity for the unit multiplied by 80 percent for coal-fired units, 50 percent for boilers that are not coal-fired, 80 percent for combustion turbine cogeneration units elected under section 407, 50 percent for combustion turbines other than simple cycle turbines, and 5 percent for simple cycle combustion turbines.

''(C) HEAT INPUT DETERMINATION.—A unit's heat input for a year shall be the heat input—

''(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

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

''(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

''(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

''(D) REGULATIONS.—Not later than three months after the enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regulations, without notice and opportunity for comment,

specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. Not later than nine months after the enactment of the Clear Skies Act of 2005, the owner or operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

''(6) COAL.—The term 'coal' means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

''(7) COAL-DERIVED FUEL.—The term 'coal-derived fuel' means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

''(8) COAL-FIRED.—The term 'coal-fired' with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone

or in combination with any amount of any other fuel in any year.

''(9) COGENERATION UNIT.—The term 'cogeneration unit' means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy—

''(A) electricity; and

''(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

''(10) COMBUSTION TURBINE.—

''(A) IN GENERAL.—The term 'combustion turbine' means any combustion turbine that is not self-propelled.

''(B) INCLUSION.—The term 'combustion turbine' includes a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine.

''(C) EXCLUSIONS.—The term 'combustion turbine' does not include a combined turbine in an integrated gasification combined cycle plant.

''(11) COMMENCE COMMERCIAL OPERATION.—The term 'commence commercial operation' with re-

gard to a unit means the start up of the unit's combustion chamber and the commencement of the generation of electricity for sale.

''(12) COMPLIANCE PLAN.—The term 'compliance plan' means either—

''(A) a statement that the facility will comply with all applicable requirements under this title; or

''(B) under subpart 1 of part B or subpart 1 of part C, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

''(13) CONTINUOUS EMISSION MONITORING SYSTEM.—The term 'continuous emission monitoring system' (CEMS) means the equipment as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 405.

''(14) DESIGNATED REPRESENTATIVE.—The term 'designated representative' means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, and the submission of and compliance with permits, permit applications, and compliance plans.

''(15) DUCT BURNER.—The term 'duct burner' means a combustion device that uses the exhaust from a combustion turbine to burn fuel for heat recovery.

''(16) FACILITY.—The term 'facility' means all buildings, structures, or installations located on 1 or more contiguous or adjacent properties under common control of the same person or persons.

''(17) FOSSIL FUEL.—The term 'fossil fuel' means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

''(18) FOSSIL FUEL-FIRED.—The term 'fossil fuel-fired', with regard to a unit, means the combustion of fuel that is composed of at least 10 percent fossil fuel.

''(19) FUEL OIL.—The term 'fuel oil' means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

''(20) GAS-FIRED.—The term 'gas-fired', with regard to a unit, means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at least 90 percent, and fuel oil comprising no more than 10 percent, of the unit's total heat input in any year.

''(21) GASIFY.—The term 'gasify' means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

''(22) GENERATOR.—The term 'generator' means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

''(23) HEAT INPUT.—

''(A) IN GENERAL.—The term 'heat input', with regard to a specific period of time, means the product (in mmBtu/time) obtained by multiplying—

''(i) the gross calorific value of the fuel (in mmBtu/lb); and

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

''(B) EXCLUSIONS.—The term 'heat input' does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

''(24) INTEGRATED GASIFICATION COMBINED CYCLE PLANT.—The term 'integrated gasification combined cycle plant' means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

''(25) OIL-FIRED.—The term 'oil-fired', with regard to a unit, means, except under sections 424 and 434, combusting fuel oil for more than 10 percent the unit's total heat input, and combusting no coal or coal-derived fuel, in any year.

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

''(27) PERMITTING AUTHORITY.—The term 'permitting authority' means the Administrator, or the State or local air pollution control agency, with

an approved permitting program under title V of the Act.

''(28) POTENTIAL ELECTRICAL OUTPUT.—The term 'potential electrical output' with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

''(29) SIMPLE CYCLE COMBUSTION TURBINE.—The term 'simple cycle combustion turbine' means a combustion turbine that does not extract heat from the combustion turbine exhaust gases.

''(30) STATIONARY SOURCE.—The term 'stationary source' means any building, structure, facility, or installation located on one or more contiguous or adjacent properties under common control or ownership of the same person or persons which emits or may emit any air pollutant subject to regulations under the Clear Skies Act of 2005.

''(31) STATE.—The term 'State' means—

''(A) 1 of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

''(B) under subpart 1 of part B and subpart 1 of part C, 1 of the 48 contiguous States or the District of Columbia.

''(32) UNIT.—The term 'unit' means—

''(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plant;

''(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device; and

''(C) a stationary source that—

''(i) emits nitrogen oxides, sulfur dioxide, mercury, or any combination of those substances; and

''(ii) is elected under section 407.

''(33) UTILITY UNIT.—The term 'utility unit' shall have the meaning set forth in section 411.

''(34) YEAR.—The term 'year' means a calendar year.

''SEC. 403. ALLOWANCE SYSTEM.

''(a) ALLOCATIONS.—

''(1) IN GENERAL.—For the emission limitation programs under this title, the Administrator shall allocate annual allowances for an affected unit, to be held or distributed by the designated representative

of the owner or operator in accordance with this title as follows—

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

''(B) nitrogen oxides allowances in an amount calculated under section 454; and

''(C) mercury allowances in an amount calculated under section 474.

''(2) NO JUDICIAL REVIEW.—Notwithstanding any other provision of law to the contrary, the calculation of the allocation for any unit or facility, and the determination of any values used in such calculation, under sections 424, 434, 454, and 474 shall not be subject to judicial review.

''(3) ALLOCATION WITHOUT COST.—Allowances shall be allocated by the Administrator without cost to the recipient, in accordance with this title.

''(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated or sold by the Administrator under this title may be transferred among designated representatives of the

owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2005. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated and shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years. Such regulations shall provide, or shall be amended to provide, that transfers of allowances shall not be effective until certification of the transfer, signed by a responsible official of the transferor, is received and recorded by the Administrator.

''(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by twenty-four months prior to the compliance year, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2005. All allowance allocations and transfers shall, upon recording by the Administrator, be deemed a part of each unit's or facility's permit requirements pursuant to section 404, without any further permit review and revision.

''(d) NATURE OF ALLOWANCES.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated or sold by the Administrator under this title is

a limited authorization to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury, as the case may be, in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated or sold to a person by the Administrator, may be received, held, and temporarily or per-

manently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clear Skies Act of 2005 with respect to the unit for which such allowance was originally allocated and recorded.

''(e) PROHIBITIONS.—

''(1) IN GENERAL.—It shall be unlawful for any person to hold, use, or transfer any allowance allocated or sold by the Administrator under this title, except in accordance with regulations promulgated by the Administrator.

''(2) EMISSIONS.—It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a year in excess of the number of allowances held for that unit or facility for that year by the designated representative as provided in sections 412(c), 422, 432, 452, and 472.

''(3) PURCHASE OF ALLOWANCES.—The owner or operator of a facility may purchase allowances directly from the Administrator to be used only to meet the requirements of sections 422, 432, 452, and 472, as the case may be, for the year in which the purchase is made or the prior year. Not later

than thirty-six months after the date of enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regulations providing for direct sales of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances to an owner or operator of a facility. The regulations shall provide that—

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

''(B) each such sulfur dioxide allowance shall be sold for $2,000, each such nitrogen oxides allowance shall be sold for $4,000, and each such mercury allowance shall be sold for $2,187.50, with such prices adjusted for inflation based on the Consumer Price Index on the date of enactment of the Clear Skies Act of 2005 and annually thereafter;

''(C) the proceeds from any sales of allowances under subparagraph (B) shall be, in accordance with paragraph (j), deposited in the Compliance Assistance Account;

''(D) except for allowances subject to (E), the allowances directly purchased for use for the year specified in subparagraph (A) shall be, on a pro rata basis, taken from, and reduce, the amount of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that would otherwise be allocated under section 423, 453, or 473 starting for the second year after the specified year and continuing for each subsequent year as necessary; and

''(E) if the designated representative does not use any such allowance in accordance with paragraph (A) the designated representative shall hold the allowance for deduction by the Administrator. The Administrator shall deduct the allowance without refund or other form of recompense.

''(4) USE OF ALLOWANCES.—Allowances may not be used prior to the calendar year for which they are allocated but may be used in succeeding years. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected

facilities of their requirements and liabilities under the Act.

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

''(g) APPLICABILITY OF THE ANTITRUST LAWS.—

''(1) IN GENERAL.—Nothing in this section affects—

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

''(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

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

''(h) PUBLIC UTILITY HOLDING COMPANY ACT.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

''(i) INTERPOLLUTANT TRADING.—Not later than July 1, 2009, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances and nitrogen oxides allowances for sulfur dioxide allowances.

''(j) COMPLIANCE ASSISTANCE ACCOUNT.—An account shall be established by the Secretary of Energy in consultation with the Administrator:

''(1) USE OF AMOUNTS.—Payments or monies deposited in this account in accordance with this title shall be used for the purpose of developing emission control technologies through direct grants to affected units that demonstrate new control technologies regulated under this title.

''(2) REGULATIONS.—The Secretary of Energy in consultation with the Administrator shall promulgate regulations with notice and opportunity for comment to establish criteria for affected units to qualify for this subsection.

''SEC. 404. PERMITS AND COMPLIANCE PLANS.

''(a) PERMIT PROGRAM.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units and facilities subject to this title and enforced in accordance with the provisions of title V, as

modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

''(1) annual emissions of sulfur dioxide, nitrogen oxides, and mercury in excess of the number of allowances required to be held in accordance with sections 412(c), 422, 432, 452, and 472;

''(2) exceeding applicable emissions rates under section 441;

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

''(4) contravention of any other provision of the permit.

No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

''(b) COMPLIANCE PLAN.—

''(1) IN GENERAL.—Each initial permit application shall be accompanied by a compliance plan for the facility to comply with its requirements under this title. Where an affected facility consists of more than one affected unit, such plan shall cover all such units, and such facility shall be considered a 'facility' under section 502(c). Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances.

''(2) STATEMENTS.—

''(A) IN GENERAL.—Submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 412(c), 413, 414, and 441, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 412(c), 413, and 414, the owners and operators will hold sulfur dioxide allowances in the amount required by section 412(c), shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized under section 413 (b), (c), (d), or (f), section 416, and section 441 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the sched-

ule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

''(B) OTHER STATEMENTS.—Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitation requirements of sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide allowances, nitrogen oxide allowances, and mercury allowances, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

''(3) RECORDING OF TRANSFERS.—Recording by the Administrator of transfers of allowances shall amend automatically, and will not reopen or require reopening of, any or all applicable proposed or approved permit applications, compliance plans, and permits.

''(c) PERMITS.—The owner or operator of each facility under this title that includes an affected unit subject

to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

''(d) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

''(e) PROHIBITION.—

''(1) IN GENERAL.—It shall be unlawful for any person to operate any facility subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit

issued under title V which complies with this title for facilities subject to this title shall be deemed compliance with this subsection as well as section 502(a).

''(2) NO TERMINATION OF OPERATIONS.—In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section.

''(f) CERTIFICATE OF REPRESENTATION.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

''(g) MULTIPLE OWNERS.—

''(1) IN GENERAL.—No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are mul-

tiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state—

''(A) that allowances and the proceeds or transactions involving allowance will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or

''(B) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract.

''(2) PASSIVE LESSOR.—A passive lessor, of a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purposes of holding or distributing allowances as provided in this subsection, unless ex-

pressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

"SEC. 405. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.

''(a) REQUIREMENTS.—

''(1) APPLICABILITY.—

''(A) IN GENERAL.—The owner and operator of any facility subject to this title shall be required to install and operate CEMS on each affected unit subject to subpart 1 of part B or subpart 1 of part C at the facility, and to quality assure the data, for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each such unit.

''(B) SPECIFICATION OF REQUIREMENTS.—The Administrator shall, by regulation, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and time lines as that provided by

CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

''(2) INSTALLATION AND OPERATION.—

''(A) IN GENERAL.—The owner and operator of any facility subject to this title shall be required to install and operate CEMS to monitor the emissions from each affected unit at the facility, and to quality assure the data for—

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

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

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

''(B) ALTERNATIVE MONITORING.—

''(i) IN GENERAL.—The Administrator may specify an alternative monitoring or compliance system for determining mercury emissions. In specifying such alternative monitoring or compliance systems, the lack of commercially available appropriate and reasonable vendor guarantees shall constitute a reasonable and permissible basis for specifying alternative monitoring or compliance systems for mercury.

''(ii) LIMITATIONS.—The regulations under clause (iv) may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure to a reasonable extent the emissions reductions contemplated by this title.

''(iii) NO SEPARATE MONITORING SYSTEM.—The regulations under clause (iv) shall not require a separate CEMS or other monitoring system for each unit where two or more units utilize a single stack and shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for such units.

''(iv) SPECIFICATION OF REQUIREMENTS.—The Administrator shall, by regulation, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring or compliance system that is demonstrated as providing information which is reasonably of the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance sys-

tem, and which will ensure to a reasonable extent the emissions reductions contemplated by this title. Where two or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

''(b) DEADLINES.—

''(1) NEW UTILITY UNITS.—Upon commencement of commercial operation of each new utility unit under subpart I of part B, the unit shall comply with the requirements of subsection (a)(1).

''(2) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the commencement date of the sulfur dioxide allowance requirement of section 422, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued

under paragraph (a)(2) with regard to sulfur dioxide, opacity, and volumetric flow.

''(3) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the first covered year, or the date on which the unit commences commercial operation, the owner or operator of each affected unit under subpart 3 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide and volumetric flow.

''(4) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART C FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the commencement date of the nitrogen oxides allowance requirement under section 452, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part C shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to nitrogen oxides.

''(5) DEADLINE FOR AFFECTED UNITS UNDER PART D FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the commencement date of the mercury allowance requirement of section 472 applies to such unit and commences commercial operation, or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

''(c) UNAVAILABILITY OF EMISSIONS DATA.—

''(1) SULFUR DIOXIDE AND NITROGEN OXIDES.—With respect to sulfur dioxide and nitrogen oxides, if CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator, in coordination with the owner, shall calculate emissions for that period pursuant to regulations promulgated for such

purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee, or assessment against the unit for the same violation under any other section of this Act.

''(2) MERCURY.—With respect to mercury, if CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator in coordination with the owner, shall calculate emissions for that period pursuant to regulations promulgated for such purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine,

penalty, fee, or assessment against the unit for the same violation under any other section of this Act.

''(d) IMPLEMENTATION.—With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2002), amended, as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing proposed regulations not later than 36 months before the commencement date of the mercury allowance requirement under section 472 and final regulations not later than 24 months before that commencement date.

''(e) PROHIBITION.—It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without complying with the requirements of this section, and any regulations implementing this section.

''SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLIANCE WITH OTHER PROVISIONS; ENFORCEMENT.

''(a) EXCESS EMISSIONS PENALTY.—

''(1) AMOUNT FOR OXIDES OF NITROGEN.—The owner or operator of any unit subject to the requirements of section 441 that emits nitrogen oxides for any calendar year in excess of the unit's emissions

limitation requirement shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement multiplied by $2,000.

''(2) AMOUNT FOR SULFUR DIOXIDE BEFORE 2008.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f) or (g). That penalty shall be calculated as follows:

''(A) The product of the unit's excess emissions (in tons) multiplied by $2,000, if within 30 days after the date on which the owner or operator was required to hold sulfur dioxide allowances—

''(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

"(ii) the Administrator receives the penalty payment required under this subparagraph.

"(B) If the requirements of clause (A)(i) or (A)(ii) are not met, the product of the unit's excess emissions (in tons) multiplied by $3,000.

"(3) AMOUNT FOR SULFUR DIOXIDE AFTER 2007.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

"(4) UNITS SUBJECT TO SECTIONS 422, 432, 452, OR 472.—If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility or

units for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be equal to—

"(A) the quantity of the units' excess emissions in tons (or, for mercury emissions, in ounces) multiplied by $2,000 (in the case of sulfur dioxide), $4,000 (in the case of nitrogen oxides), or $2187.50 (in the case of mercury) if, on or before the date that is 30 days after the date on which the owner or operator was required to hold sulfur dioxide, nitrogen oxides allowance, or mercury allowances, as the case may be—

"(i) the owner or operator offsets the excess emissions in accordance with paragraph (2) or (3) of subsection (b), as applicable; and

"(ii) the Administrator receives the penalty required under this subparagraph; or

"(B) if a requirement under subparagraph (A) is not met, the quantity of the units' excess emissions in tons (or, for mercury emissions, in

ounces) multiplied by the product obtained by multiplying—

"(i) 1.5; and

"(ii) the respective amount for sulfur dioxide, nitrogen oxides, or mercury specified in subparagraph (A).

"(5) PAYMENT.—Any penalty under paragraph (1), (2), (3), or (4) shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator. With regard to the penalty under paragraph 1, the Administrator shall implement this paragraph under 40 CFR part 77 (2002), amended as appropriate by the Administrator. With regard to the penalty under paragraphs 2, 3, and 4, the Administrator shall implement this paragraph by issuing regulations no later than 24 months after the date of enactment of the Clear Skies Act of 2005. Any such payment shall be deposited in the Compliance Assistance Account.

"(b) EXCESS EMISSIONS OFFSET.—

"(1) IN GENERAL.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide during any calendar year before 2008 in excess of the sulfur dioxide allowances held for the unit for the calendar year shall

be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess tonnage from those held for the facility for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(2) EXCESS EMISSIONS OF SULFUR DIOXIDE.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for a year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess emissions in tons from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(3) EXCESS EMISSIONS OF SULFUR DIOXIDE, NITROGEN OXIDES, OR MERCURY.—If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons or, for mercury, ounces in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances, nitrogen oxide allowances, or mercury allowances, as the case may be, equal to the excess emissions in tons or, for mercury, ounces from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a)(1) and (a)(2) for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

''(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable for a penalty and offset under this section to fail—

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

''(2) to offset excess emissions as required by subsection (b).

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

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

''(g) VIOLATIONS.—Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected units at a facility to emit sulfur dioxide, nitrogen oxides, or mercury in violation of sec-

tion 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.

"SEC. 407. ELECTION FOR ADDITIONAL UNITS.

"(a) APPLICABILITY.—

"(1) IN GENERAL.—The owner or operator of any unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate the unit as an affected unit under subpart 2 of part B and subpart 2 of part C.

"(2) EFFECT OF DESIGNATION.—If the owner or operator elects to designate a unit that is solid fuel-fired and emits mercury vented only through a stack or duct, the owner or operator shall also designate the unit as an affected unit under part D. If an elected unit fires only gaseous fuels, the unit may be designated under subpart 2 of part C only.

"(b) APPLICATION.—An owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

"(c) APPROVAL.—Subject to subsections (d) through (m), if the Administrator determines that an application

for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C and, if applicable, under part D.

''(d) ESTABLISHMENT OF BASELINE.—

''(1) IN GENERAL.—After approval of a designation under subsection (c), an owner or operator shall install and operate monitoring on the designated unit required under paragraph (5), except that, in a case in which 2 or more units use a single stack, separate monitoring shall be required for each unit unless all units using the same stack are designated as affected units.

''(2) BASELINES.—

''(A) IN GENERAL.—Units shall have baselines established using heat input unless the unit qualifies for a product output baseline under paragraph (4).

''(B) HEAT INPUT OR PRODUCT OUTPUT.—The baselines for heat input or product output and sulfur dioxide and nitrogen oxides emission rates, as the case may be, for the unit shall be the unit's heat input or product output and the emission rates of sulfur dioxide and ni-

trogen oxides in accordance with paragraphs (3) and (4).

''(C) REGULATIONS.—The Administrator shall promulgate regulations requiring the unit's baselines for heat input or product output and for sulfur dioxide and nitrogen oxides emission rates to be based on the same year and specifying minimum data requirements consistent with paragraph (5) for baseline determination.

''(3) HEAT INPUT AND EMISSIONS BASELINES.—For the purposes of this subsection, heat input and emissions baselines shall be calculated, at the election of the owner or operator of the relevant unit, as—

''(A)(i) for heat input, the average of the unit's highest heat input for 3 of the 5 years before the year for which the Administrator is determining the allocations; and

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

''(B)(i) for heat input, the average of any period of 24 consecutive months during the 10-year period immediately prior to the date of

submission of an application under subsection (b), on the condition that the heat input does not exceed 1.2 times the average of the 10-year period; and

''(ii) for emissions baselines, the average of the relevant emissions for the 4-year period prior to the date of enactment of the Clear Skies Act of 2005 (for units that submit an application on or before January 1, 2009), or the average of the relevant emissions for the 4 years before the date of submission of the application under that Act (for units that submit an application after January 1, 2009).

''(4) DESIGNATION FOR PRODUCT OUTPUT BASIS.—

''(A) IN GENERAL.—The owner or operator of a unit that is subject to new source performance standards or other measures imposed by this Act on a product output basis rather than a heat input basis may elect to designate the unit as an affected unit under subpart 2 of part B and subpart 2 of part C.

''(B) BASELINE PRODUCT OUTPUT AND EMISSIONS BASELINES.—For the purposes of this paragraph, for those units using a product

output basis, the baseline product output and emissions baselines in this subparagraph shall be calculated, at the election of the owner or operator of the relevant unit, as—

''(i)(I) for product input, the average of the unit's highest product output for 3 of the 5 years preceding the year for which the Administrator is determining the allocations; and

''(II) for emissions baselines, the average of the relevant emissions for the same years used to determine product output; or

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

''(ii) for emissions baselines, the average of the relevant emissions for the 4-year period prior to the date of enactment of the Clear Skies Act of 2005 (for units that submit an application on or before January 1, 2009), or the average of the relevant emissions for the 4

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

''(5) BASELINE DETERMINATIONS.—

''(A) IN GENERAL.—In making baseline determinations under this section, the Administrator may accept any reliable data on emissions of sulfur dioxide and nitrogen oxides in addition to, and other than, data collected from CEMS.

''(B) TYPES OF DATA.—Reliable data described in subparagraph (A) includes—

''(i) alternative data that has been used to determine compliance with a regulatory or monitoring requirement under this Act or a comparable State law, if the data establishes a reliable measure of heat input or product output and sulfur dioxide and nitrogen oxides emissions over a simultaneous period of time; or

''(ii) if that data is not available, such other alternative reliable data as the Administrator may prescribe.

''(C) USE OF CEMS FOR COMPLIANCE MONITORING.—The Administrator—

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

"(ii) shall require the use of CEMS for compliance monitoring by units of between 250 mmBtu and 750 mmBtu heat input or equivalent product output capacity unless the Administrator determines that a CEMS requirement is not necessary to generate reliable data for compliance determinations; and

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

"(D) RELIABILITY.—In determining the reliability of data for purposes of this subsection, the Administrator shall consider the cost of generating more reliable data compared to the quantitative im-

portance of the resulting gain in quantifying emissions.

''(e) EMISSION LIMITATIONS.—After approval of the designation of the unit under subsection (c), the unit shall become—

''(1) an affected unit under subpart 2 of part B, and shall be allocated sulfur dioxide allowances under subsection (f), beginning on the later of January 1, 2010, or January 1 of the year after approval of the designation;

''(2) an affected unit under subpart 2 of part C, and shall be allocated nitrogen oxides allowances under subsection (f), beginning on the later of January 1, 2010, or January 1 of the year after approval of the designation; and

''(3) if applicable, an affected unit under part D, and shall be allocated mercury allowances, beginning on the later of January l, 2010, or January 1 of the year after approval of designation.

''(f) ALLOCATIONS.—

''(1) SULFUR DIOXIDE AND NITROGEN OXIDES.—

''(A) IN GENERAL.—The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances and nitro-

gen oxides allowances for each year during which a unit is an affected unit under subsection (e).

''(B) ALLOCATIONS.—The regulations shall provide for allocations equal to 70 percent (beginning January 1, 2010) and 50 percent (beginning January 1, 2018) of the unit's baseline heat input or product output under subsection (d) multiplied by the lesser of—

''(i) the unit's baseline sulfur dioxide emission rate or nitrogen oxides emission rate, as the case may be; or

''(ii) the unit's most stringent Federal or State emission limitation for sulfur dioxide or nitrogen oxides applicable to the year on which the unit's baseline heat input or product output is based under subsection (d).

''(2) MERCURY.—

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

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

"(i) the product obtained by multiplying—

"(I) the unit's allowable emissions rate for mercury under the national emissions standards for hazardous air pollutants for boilers and process heaters, industrial furnaces, kilns, or other stationary source; by

"(II) the unit's baseline heat input or product output; and

"(i) the product obtained by multiplying—

"(I) the unit's most stringent Federal or State emission limitation for mercury emissions rate; by

"(II) the unit's baseline heat input or product output.

"(3) LIMITATION.—Allowances allocated to electing units under paragraphs (1) and (2) shall comprise a separate limitation on emissions from sections 423, 433, 453, 473, and other provisions of this Act. These allowances for sulfur dioxide, nitrogen oxides, or mercury, as the case may be, shall be

tradable with allowances allocated under sections 414, 424, 454, 474, as applicable, on the conditions that—

"(A) electing units may only trade nitrogen oxides within the respective zones established under section 452 within which the electing unit is located; and

"(B) affected units within the WRAP States may only purchase sulfur dioxide allowances allocated or otherwise distributed by the Administrator to electing units within the WRAP States, and will not be counted for purposes of the affected unit's emissions within the meaning of the WRAP Annex.

"(4) INCENTIVES FOR EARLY REDUCTIONS.—

"(A) IN GENERAL.—Not later than 180 months after the date of enactment of this section, the Administrator shall promulgate regulations authorizing the allocation of sulfur dioxide, nitrogen oxides, and mercury allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

''(B) PROHIBITION ON CERTAIN ALLOCATIONS.—No allowances shall be allocated under this paragraph for emissions reductions attributable to—

''(i) pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section;

''(ii) fuel switching; or

''(iii) compliance with any Federal regulation.

''(C) ALLOWANCES.—The allowances allocated to any unit under this paragraph shall—

''(i) be in addition to the allowances allocated under paragraphs (1) and (2) and sections 414, 424, 434, 454, and 474; and

''(ii) be allocated in an amount equal to 1 allowance of sulfur dioxide and nitrogen oxides for each 1.05 tons of reduction in emissions of sulfur dioxide and nitrogen oxides, respectively, and 1.05 ounces of reduction in the emissions of mercury, achieved by the pollution control equip-

ment or combustion technology improvements starting with the year in which the equipment or improvement is implemented.

''(g) WITHDRAWAL.—The Administrator shall promulgate regulations withdrawing from the approved designation under subsection (c) any unit that qualifies as an affected EGU under subpart 2 of part B or subpart 2 of part C, or part D after the approval of the designation of the unit under subsection (c).

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

''(i) APPLICATION PERIOD.—

''(1) IN GENERAL.—Applications for designation of units under this section shall be accepted by the Administrator beginning not later than 180 days after the date of enactment of this section.

''(2) APPROVAL AND DISAPPROVAL.—Except as provided in paragraph (30, not later than 270 days after accepting an application under paragraph (1), the Administrator shall approve or disapprove the application.

''(3) DETERMINATION OF COMPLETION.—

"(A) IN GENERAL.—Not later than 90 days after accepting an application under paragraph (1), the Administrator shall determine whether the application is complete.

"(B) DETERMINATION OF COMPLETION.—Unless an application accepted under paragraph (1) is determined to be incomplete under subparagraph (A), the application shall be subject to paragraph (2).

"(4) STAY OF DEADLINES.—During the period beginning on the date of acceptance by the Administrator of an application under paragraph (1) and ending on the date on which the Administrator acts on the petition, the applicable compliance deadlines for NESHAPs under subsection (j) shall not apply to the applicable unit that is the subject of the application.

"(j) NESHAP APPLICABILITY.—

"(1) APPLICABILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a unit that is designated as an affected unit under this section shall not be subject to the national emissions standards for hazardous air pollutants (NESHAP) promulgated under section 112(d) for—

''(i) Industrial, Commercial, and Institutional Boilers and Process Heaters (Fed. Reg. 69–55217);

''(ii) Plywood and Composite Wood Panel (Fed. Reg. 69–45943);

''(iii) Reciprocating Internal Combustion Engines (Fed. Reg. 69–33473); or

''(iv) Stationary Combustion Turbines (Fed. Reg. 69–10511).

''(B) EXCEPTION.—Units that are boilers or process heaters, industrial furnaces, kilns, or other stationary sources shall be subject on and after January 1, 2010, to the emissions limitation for mercury or the equivalent mercury allocation under subsection (f)(2), along with associated monitoring and compliance requirements, that would be applicable to such units under the NESHAP for those sources promulgated pursuant to section 112(d).

''(2) REPORTS.—

''(A) PRELIMINARY REPORT.—Not later than 18 months after the date of enactment of this section, the Administrator shall publish and make available for public comment a peer reviewed preliminary report characterizing the

emissions and public health effects that may reasonably be anticipated to occur from the implementation of subsection (j)(1) and subsection (f).

''(B) FINAL REPORT.—Not later than 30 months after the date on which the preliminary report is published under subparagraph (A), in accordance with section 112(n)(1)(A), the Administrator shall publish a final report, including responses to the comments received.

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

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

''(ii) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in subsection (j)(1) from such sources that may

reasonably be expected to occur for each year from 2010 through 2018;

''(iii) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in subsection (j)(1) from such sources that might reasonably be expected to occur for each year from 2010 through 2018, if such sources estimated in clause (i) are not designated under this section; and

''(iv) a description of the public health and environmental impacts associated with the emissions increases and decreases described in clauses (ii) and (iii).

''(D) ADDITIONAL AUTHORITY.—

''(i) IN GENERAL.—Notwithstanding subsection (j)(1), the Administrator may regulate emissions of hazardous air pollutants listed under section 112(b), other than mercury compounds, from sources designated under this section in accordance with section 112(f)(2).

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

''(iii) TREATMENT OF DETERMINATION.—The determination shall be a final agency action subject to judicial review under section 307 and the Administrative Procedures Act.

''(k) EXEMPTION FROM MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.—

''(1) MAJOR SOURCE EXEMPTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), a unit designated as an affected unit under this section shall not be considered to be a major source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of parts C

and D of title I, for the 20-year period beginning on the date of enactment of the Clear Skies Act of 2005.

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

''(i)(I) the designated unit either achieves in fact, or is subject to a regulatory requirement to achieve, a limit on the emissions of particulate matter from the affected unit to the level not greater than the level applicable to the unit either pursuant to subpart D of part 60 of title 40, Code of Federal Regulations, or the national emissions standards for hazardous air pollutants for industrial boilers and process heaters issued pursuant to section 112; or

''(II) the owner or operator of the affected unit properly operates, maintains, and repairs pollution control equipment to limit emissions of particulate matter; and

''(ii) the owner or operator of the designated unit uses good combustion prac-

tices to minimize emissions of carbon monoxide.

''(2) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in paragraph (1), an affected unit located within 50 kilometers of a Class I area on which construction commences after the date of enactment of this section is subject to those provisions under part C of title I to the review of a new or modified major stationary source's impact on a Class I area.

''(l) LIMITATION.—

''(1) IN GENERAL.—No unit designated under this section shall transfer or bank allowances produced as a result of reduced utilization or shutdown, except that such allowances may be transferred or carried forward for use in subsequent years to the extent that—

''(A) reduced utilization or shutdown results from the replacement of the unit designated under this section, with any other unit or units subject to the requirements of this subpart; and

''(B) the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units.

''(2) NO GREATER ALLOCATION.—In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act.

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

''(m) DEFINITION OF PRODUCT OUTPUT.—In this section, the term 'product output' means the output of a stationary source that produces a commercial product other than electricity, heat, or steam which may be used to determine a baseline for units for which heat input is not an appropriate baseline.''.

''SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

''(a) DEFINITION.—For purposes of this section, the term 'clean coal technology' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process

steam, or industrial products, which is not in widespread use as of November 15, 1990.

''(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

''(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading 'Department of Energy—Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for qualifying project shall be at least twenty percent of the total cost of the demonstration project.

''(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the

State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

''(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

''(4) EPA REGULATIONS.—Not later than twelve months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval

revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

''(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit—

''(1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory on November 15, 1990;

''(2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

''(3) is equipped with low-NO_X burners prior to the time of commencement; and

''(4) is otherwise in compliance with the requirements of this Act.

"SEC. 409. ELECTRICITY RELIABILITY.

''(a) RELIABILITY.—

''(1) APPLICABILITY.—At any time prior the applicability of this Act under sections 422, 432, 452, and 472, in order to ensure the reliability of an electric utility company or system, including a system cooperatively or municipally owned, for a specified geographic area or service territory, as determined by the Department of Energy in consultation with the Administrator, during the installation of sulfur dioxide pollution control technology or scrubbers, nitrogen oxides, mercury or particulate matter control technology, or any combination thereof, the owner or operator of an affected unit may meet the requirements of sections 422, 432, 452, and 472 by means of the compliance procedures of this subsection (a).

''(2) PETITION.—The owner or operator of an affected unit that believes it may experience an adverse impact on the reliability of the company or system as a result, in substantial part, of the need to construct sulfur dioxide pollution control equipment or scrubbers, nitrogen oxides, mercury or particulate matter control technology, or any combination thereof, may petition the Secretary of Energy, in consultation with the Administrator, for a deter-

mination that, to a reasonable degree of certainty, reliability will likely be threatened. Upon such a determination, the owner or operator may elect to adopt a compliance method meeting the requirements of this subsection, as follows:

''(A) REGULATIONS.—Within 12 months of enactment the Secretary of Energy shall promulgate regulations describing the requirements for a petition and the petition process, which will include notice and public comment. The Secretary of Energy, in consultation with the Administrator, shall make a final determination on a petition within 180 days of the submittal of a reasonably complete petition. Failure to act within the 180-day period will extend the applicability by 12 months for all units subject to the petition.

''(B) CONTENTS OF PETITION.—The petition must contain—

''(i) a description of each affected unit, the estimated outage time and a construction schedule;

''(ii) an estimate of demand from date of applicability until 2018;

''(iii) the impacts on reliability associated with constructing all of the pollution control projects, including those for sulfur dioxide, nitrogen oxides, mercury, or particulate matter, by the respective deadlines; and

''(iv) how the proposed compliance schedule would alleviate detrimental impacts.

''(C) FAILURE TO PROMULGATE REGULATIONS.—If the Secretary of Energy fails to promulgate final regulations or such regulations are not effective for any reason, within the prescribed time, petitions containing reasonably sufficient information for a final determination may be submitted to the Secretary of Energy and will be deemed complete.

''(3) FINAL DETERMINATION.—In making a final determination the Secretary of Energy, in consultation with the Administrator, shall consider the following factors, provided that not all factors need be present to make a determination that, to a reasonable degree, reliability will be threatened:

''(A) SUPPLY.—The ability of vendors to supply scrubbers; scrubber system equipment,

materials and scrubber affected balance of plant equipment including fans, pumps, electric motors, motor drives, dampers, electrical power supply equipment; at fair prices with meaningful guarantees or warranties as to availability, delivery dates and meeting contracted pollution control reduction requirements or emissions limitations; with similar considerations for nitrogen oxides, mercury or particulate matter control technology, or any combination thereof.

''(B) DESIGN AND CONSTRUCTION RESOURCES.—The availability and limitations of key sulfur dioxide, nitrogen oxides or mercury controls design resources and North American construction resources. The design resources shall include Architect Engineering companies experienced in the design of sulfur dioxide, nitrogen oxides, mercury or particulate matter control technology. The construction resources shall include construction companies with experience in the construction of sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology and trained and experienced labor resources including but not limited to

boilermakers, iron workers, electricians, mechanics;

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

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

''(i) an increase in the price of purchase power of (10) percent over the estimated cost in cents per kilowatt for the company, system or State, utilized in the latest submissions to a relevant State or Federal agency;

''(ii) a projected reduction in available generating capacity such that adequate reserve margins for a company, system or State do not exist, as determined by the Secretary of Energy in coordination with the relevant Federal or State utility agency or reliability council; or

"(iii) a supply shortage of coal needed to meet emissions control expectations for any proposed emissions control device.

"(E) POSITIVE DETERMINATION.—A company or system which submits a petition to install sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology, or any combination thereof, on affected units equaling 25 percent or more of its coal-fired capacity shall be presumed to meet the requirements of a positive determination from the Secretary of Energy.

"(4) COMPLIANCE.—Upon a positive determination by the Secretary of Energy in accordance with paragraph (3)(E), such affected units will be granted a 1-year extension from the relevant applicability date under this title.

"(b) SUBMISSION OF PETITION.—During any year covered by this title, an affected unit may submit a petition in accordance with paragraph (a)(2) to allow use of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, allocated for the immediate next year to meet the applicable requirement to hold such allowances equal to the petitioned year's emissions.

''(c) PRESIDENTIAL WAIVER.—Notwithstanding subsection (a) or any other provision of this Act, The President of the United States shall have authority to temporarily grant waivers from emission limitations under sections 412, 422, 432, 452, and 472, as the case may be, if the President determines that the reliability of any portion of national electricity supply or national security is imperiled.

"PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

"Subpart 1—Acid Rain Program

"SEC. 411. DEFINITIONS.

''For purposes of this subpart and subpart 1 of part B:

''(1) ACTUAL 1985 EMISSION RATE.—The term 'actual 1985 emission rate', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF). For non-utility units, the term 'actual 1985 emission rate' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

''(2) ALLOWABLE 1985 EMISSIONS RATE.—The term 'allowable 1985 emissions rate' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation.

''(3) ALTERNATIVE METHOD OF COMPLIANCE.—The term 'alternative method of compliance' means a method of compliance in accordance with one or more of the following authorities—

''(A) a substitution plan submitted and approved in accordance with subsections 413(b) and (c); or

''(B) a phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology as determined by the Administrator in accordance with that section.

''(4) BASELINE.—The term 'baseline' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ('mmBtu's'), calculated as follows:

''(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 (NAPAP) Emissions Inventory, Version 2 (NURF), or in a corrected data base as established by the Administrator pursuant to paragraph (3). For nonutility units, the baseline in the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of 4 calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents,

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

''(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than 18 months after November 15, 1990.

''(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subpart. Such corrections shall not be subject to judicial review, nor shall the failure of the Adminis-

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

"(5) BASIC PHASE II ALLOWANCE ALLOCATIONS.—The term 'basic phase II allowance allocations' means:

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

"(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) of section 414.

"(6) CAPACITY FACTOR.—The term 'capacity factor' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

"(7) COMMENCED.—The term 'commenced' as applied to construction of any new electric utility

unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

''(8) COMMENCED COMMERCIAL OPERATION.—The term 'commenced commercial operation' with regard to a unit means the start up of the unit's combustion chamber and commencement of the generation of electricity for sale.

''(9) CONSTRUCTION.—The term 'construction' means fabrication, erection, or installation of an affected unit.

''(10) EXISTING UNIT.—The term 'existing unit' means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, which is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the purposes of this subpart. For the purposes of this subpart, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25 MWe or less.

''(11) INDEPENDENT POWER PRODUCER.—The term 'independent power producer' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

''(12) NEW INDEPENDENT POWER PRODUCTION FACILITY.—The term 'new independent power production facility' means a facility that—

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

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

''(C) is a new unit required to hold allowances under this subpart.

''(13) INDUSTRIAL SOURCE.—The term 'industrial source' means a unit that does not serve a generator that produces electricity, a 'nonutility unit' as defined in this section, or a process source.

''(14) LIFE-OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGEMENT.—The term 'life-of-the-unit, firm power contractual arrangement' means a unit participation power sales agreement under

which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

''(A) for the life of the unit;

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

''(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

''(15) NEW UNIT.—The term 'new unit' means a unit that commences commercial operation on or after November 15, 1990.

''(16) NONUTILITY UNIT.—The term 'nonutility unit' means a unit other than a utility unit.

''(17) PHASE II BONUS ALLOWANCE ALLOCATIONS.—The term 'phase II bonus allowance allocations' means, for calendar year 2000 through 2009,

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

''(18) QUALIFYING PHASE I TECHNOLOGY.—The term 'qualifying phase I technology' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

''(19) REPOWERING.—The term 'repowering' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction rel-

ative to the performance of technology in widespread commercial use as of November 15, 1990.

''(20) RESERVE.—The term 'reserve' means any bank of allowances established by the Administrator under this subpart.

''(21) UTILITY UNIT.—

''(A) IN GENERAL.—The term 'utility unit' means—

''(i) a unit that serves a generator located in any State and that produces electricity for sale; or

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

''(B) EXCLUSIONS.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

''(I) was in commercial operation during 1985; but

''(II) did not during 1985, serve a generator in any State that produced electricity for sale

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

''(i) UNITS THAT COGENERATE STEAM AND ELECTRICITY.—A unit that cogenerates steam and electricity is not a 'utility unit' for purposes of this subpart unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one-third of its potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale.

''SEC. 412. ALLOWANCE ALLOCATION.

''(a) IN GENERAL.—Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual emission allowances for sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic phase II allowance allocations for each unit subject to the requirements of section 414. Subject to the provisions of section 417, the

Administrator shall allocate allowances for each affected until at an affected source annually, as provided in paragraphs (2) and (3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000), shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

''(b) NEW UTILITY UNITS.—

''(1) PROHIBITION OF EXCEEDING UNIT ALLOWANCES.—After January 1, 2000 and through December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator.

''(2) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (c)(3).

''(3) ELIGIBILITY FOR ALLOCATION OF SULFUR DIOXIDE ALLOWANCES.—New utility units shall not

be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of subsection (b)(1) or subsection(c)(3) shall be liable for fulfilling the obligations specified in section 406.

''(c) PROHIBITIONS.—

''(1) IN GENERAL.—It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator.

''(2) PROHIBITION OF EXCEEDING UNIT ALLOWANCES.—For any year 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit.

''(3) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, it shall be unlawful for the affected units at a source to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the

source for that year by the owner or operator of the source.

''(4) EFFECT ON OTHER EMISSION LIMITATIONS.—Upon the allocation of allowances under this subpart, the prohibition in paragraphs (2) and (3) shall supersede any other emission limitation applicable under this subpart to the units for which such allowances are allocated.

''(d) LIMITATION ON REGULATIONS.—In order to ensure electricity reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and this subpart shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recording. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned, in-

cluding for calendar years after 2007, allowances held for such units by the owner or operator of the sources where the units are located.

''(e) INTEREST IN AFFECTED UNITS.—Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate of representation required under section 404(f) shall state—

''(1) that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement; or

''(2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in accordance with the contract.

A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder

of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances under this subpart received by the unit are deemed to be held for that person.

"SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.

''(a) EMISSION LIMITATIONS.—

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

''(A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d); or

''(B) the owner or operator of such unit holds allowances to emit not less than the unit's

total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 414. The owner or operator of any unit in violation of this section be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 406.

''(2) DETERMINATION.—Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between—

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

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

"(3) ADDITIONAL ALLOCATIONS.—In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph

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

''(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 404 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

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

''(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

''(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 411(4), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

''(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

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

''(6) such other information as the Administrator may require.

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

''(1) IN GENERAL.—The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall dis-

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

''(2) ISSUANCE OF PERMITS.—Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 404. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 412. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the unit's total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 406. If a substitution proposal is

disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

''(d) ELIGIBLE PHASE I EXTENSION UNITS.—

''(1) IN GENERAL.—The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 404 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 404, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

''(2) REQUIREMENTS FOR EXTENSION PROPOSALS.—Such extension proposal shall—

"(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

"(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

"(C) specify the unit's or units' baselines, actual 1985 emissions rates, allowable 1985 emissions rates, and projected utilizations for calendar years 1995 through 1999;

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

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

"(3) APPROVAL OR DISAPPROVAL.—The Administrator shall review and take final action on

each extension proposal in order of receipt, consistent with section 404, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the subpart.

''(4) DETERMINING THE AVAILABILITY OF ALLOCATIONS.—In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of the allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraph (A), (B), and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

"(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

"(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

"(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

"(5) ALLOCATION OF INITIAL ALLOWANCES.—Each eligible phase I extension unit shall receive allowances determined under subsection (a)(1) or (c)

of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emission tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allow-

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

"(6) ALLOCATION OF ADDITIONAL ALLOWANCES.—In addition to allowances specified in paragraph (4), the Administrator shall allocate for each eligible phase I extension unit employing qualifying phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000 exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

"(7) DEDUCTION FROM ANNUAL ALLOWANCE ALLOCATIONS.—After January 1, 1997, in addition to any liability under this Act, including under section 406, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (2) of this subsection, the Administrator shall, in the calendar

year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

''(e) EARLY REDUCTIONS.—

''(1) IN GENERAL.—In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements—

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

''(B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 414 (but is not also an affected unit under this section) and part of a

utility system that includes one or more affected units under section 414 for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

''(2) LIMITATIONS.—In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs per mmBtu), divided by 2,000 exceeds (B) the allowances specified for such unit in table A. In the case of an affected unit under section 414, the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which—

''(A) the product of—

"(i) the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by—

"(ii) the lesser of—

"(I) 2.50, or

"(II) the most stringent emission rate (in lbs per mmBtu) applicable to the unit under the applicable implementation plan—

divided by 2,000 exceeds

"(B) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned.

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

"(3) NO BASIS FOR EXCUSED NONPERFORMANCE.—In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impracticability or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

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

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890

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

State	Plant name	Generator	Phase I allowances
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E.W. Stout	5	3,880
		6	4,770
		7	23,610
	F.B. Culley	2	4,290
		3	16,970
	F.E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450

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

State	Plant name	Generator	Phase I allowances
		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
	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

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

State	Plant name	Generator	Phase I allowances
	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
		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

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

State	Plant name	Generator	Phase I allowances
		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
		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

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

State	Plant name	Generator	Phase I allowances
		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

''(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

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

''(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term 'qualified energy conservation measure' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

''(B) QUALIFIED RENEWABLE ENERGY.—The term 'qualified renewable energy' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

''(C) ELECTRIC UTILITY.—The term 'electric utility' means any person, State agency, or Federal agency, which sells electric energy.

''(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

''(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

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

''(i) Such electric utility is paying for or participating in the qualified energy

conservation measures or qualified renewable energy.

''(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

''(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

''(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

''(III) In the case of electric utilities subject to the jurisdiction of a State regulatory authority such plan shall have been approved by such authority. For electric utilities not subject to the jurisdiction of a

State regulatory authority such plan shall have been approved by the Administrator.

''(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy has certified that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

''(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

"(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992, and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subpart (including those sources that elect to become affected by this title, pursuant to section 417).

"(D) DETERMINATION OF AVOIDED EMISSIONS.—

"(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

"(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions;

''(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

''(III) demonstrates that the requirements of subparagraph (B) have been met.

''(ii) APPROVAL.—Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

''(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the imple-

mentation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

"(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures; by

"(ii) 0.004, and dividing the product so derived by 2,000.

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

"(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy; by

"(ii) 0.004, and dividing the product so derived by 2,000.

"(G) PROHIBITIONS.—

"(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

"(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

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

"(4) REGULATIONS.—The Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility and from State-to-State in accordance with the Administrator's rules. The Administrator shall publish and make available to the public the findings of this review no less than annually.

"(g) CONSERVATION AND RENEWABLE ENERGY RESERVE.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Notwithstanding the prior sentence, if allowances remain in the reserve on January 1, 2010, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 414, the term 'pro rata basis' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

"(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

''(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

''(A) has an emission rate below 1.0 lbs/mmBtu,

''(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

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

''(i) as provided under section 411, or

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

''(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 412(a), this section,

and section 414 (as basic phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs/mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 414.

"SEC. 414. PHASE II SULFUR DIOXIDE REQUIREMENTS.

''(a) APPLICABILITY.—

''(1) BASIC PHASE II ALLOWANCE ALLOCATIONS.—After January l, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subpart. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate.

''(2) BASIC PHASE II BONUS ALLOWANCE ALLOCATIONS.—In addition to basic phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive,

the Administrator shall allocate up to 530,000 phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3) (A) and (B), and (h)(2) of this section and section 415.

"(3) ADDITIONAL ALLOWANCE ALLOCATIONS FOR CERTAIN AFFECTED SOURCES AND UNITS.—In addition to basic phase II allowances allocations and phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on table A in section 413 (other than units at Kyger Creek, Clifty Creek, and Joppa Stream) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on table A (other than units at Kyger Creek, Clifty Creek, and Joppa Stream). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 412(a).

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

"(1) BASIC PHASE II ALLOWANCE ALLOCATIONS.—Except as otherwise provided in paragraph

(3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than

60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

''(3) PROHIBITION.—After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to

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

"(4) ANNUAL ALLOWANCE ALLOCATIONS.—After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980, and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided,* That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

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

"(1) STEAM-ELECTRIC CAPACITY EQUAL TO OR GREATER THAN 250 MWE.—Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

"(2) STEAM-ELECTRIC CAPACITY LESS THAN 250 MWE.—After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that

serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(3) STEAM-ELECTRIC CAPACITY BETWEEN 250 AND 450 MWE.—After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/

mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit

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

''(4) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

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

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

"(B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe; and

"(C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements

of this paragraph to exceed an annual emissions tonnage limitation equal to the project of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—

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

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

''(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year

after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) RATE BETWEEN 0.60 AND 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(3) RESERVE ALLOWANCE.—

''(A) IN GENERAL.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allo-

cations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

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

"(ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic phase II allowance allocations.

"(B) UNITS SUBJECT TO CERTAIN LIMITATIONS.—In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Admin-

istrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

"(i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000; exceeds

"(ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 412(a) as basic phase II allowance allocations.

"(C) ELECTION BY OPERATING COMPANY.—An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances

pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

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

''(5) CLEAN COAL TECHNOLOGY DEMONSTRATION GRANT.—For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

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

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

''(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowance 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90

percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by—

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

"(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

"(2) ADDITIONAL ALLOCATION.—In addition to allowances allocated pursuant to paragraph (1) as basic phase II allowance allocations and section 412(a), beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Ad-

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

"(g) UNITS THAT COMMENCE COMMERCIAL OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—

"(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65-percent-capacity factor multiplied by the unit's allowance 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

"(2) UNIT ALLOWANCES.—After January 1, 2000, the Administrator shall allocate allowances pursuant to section 411 to each unit which is listed

in table B of this paragraph in an annual amount equal to the amount specified in table B.

"TABLE B

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

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, provided that the owner or operator of a unit listed on table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

"(3) UNITS THAT COMMENCED COMMERCIAL OPERATION BETWEEN OCTOBER 1, 1990, AND DECEMBER 31, 1992.—Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992, allowances in an amount equal to the product of the unit's annual fuel consumption, on a

Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

''(4) UNITS THAT COMMENCED COMMERCIAL OPERATION BETWEEN JANUARY 1, 1993, AND DECEMBER 31, 1995.—Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993, and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

''(5) UNITS THAT CONVERTED TO COAL FIRED OPERATION BETWEEN JANUARY 1, 1985, AND DECEMBER 31, 1987.—After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985, and December 31, 1987, for which there has been allocated a proposed or final prohibi-

tion order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq., repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(6) APPLICABILITY TO QUALIFYING SMALL POWER PRODUCTION FACILITIES, QUALIFYING COGENERATION FACILITIES, AND NEW INDEPENDENT POWER PRODUCTION FACILITIES.—Unless the Administrator has approved a designation of such facility under section 417, the provisions of this subpart shall not apply to a 'qualifying small power production facility' or 'qualifying cogeneration facility' (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a 'new independent

power production facility' if, as of November 15, 1990—

"(A) an applicable power sales agreement has been executed;

"(B) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

"(C) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

"(D) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

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

"(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during

the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

''(3) ADDITIONAL ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a), beginning January 1, 2010, the

Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

''(i) UNITS IN HIGH GROWTH STATES.—

''(1) ANNUAL ALLOCATIONS.—In addition to allowances allocated pursuant to this section and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

''(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

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

''(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of

this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator; and

"(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section:

Provided, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

"(2) ADDITIONAL ALLOCATIONS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1)—

"(A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990;

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

"(C) which commenced operation after January 1, 1970;

"(D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990; and

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

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

"(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1):

Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

"(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 412(a) as basic phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

"SEC. 415. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

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

''(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 412(a), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 414.

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

ances to units subject to the provisions of this section pursuant to section 414.

"SEC. 416. ELECTION FOR ADDITIONAL SOURCES.

"(a) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 404. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit shall be allocated allowances, and be an affected unit for purposes of this subpart.

"(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

"(c) EMISSION LIMITATIONS.—

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

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

''(2) ELECTIONS SUBMITTED AFTER JANUARY 1, 2002.—For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by 4,000.

''(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation cal-

culated under subsection (c), in accordance with section 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

''(e) LIMITATION.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subpart, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

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

"SEC. 417. AUCTIONS, RESERVE.

''(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

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

''(2) 2.8 percent of the basic phase 11 allowance allocation of allowances for each year beginning in the year 2000;

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

''(b) AUCTION SALES.—

''(1) SUBACCOUNT FOR AUCTIONS.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

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

ministrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subpart and subpart 2.

TABLE C—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of sale	Spot auction (same year)	Advance auction
1993	50,000	100,000
1994	50,000	100,000
1995	50,000	100,000
1996	150,000	100,000

TABLE C—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION—Continued

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

''(3) PROCEEDS.—

''(A) TRANSFER.—Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

''(B) RETURN.—At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the

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

''(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

''(c) CHANGES IN AUCTIONS AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance auctions) and 2005 (in the case of spot auctions) decrease the number of allowances withheld and sold under this section.

''(d) TERMINATION OF AUCTIONS.—Not later than the commencement date of the sulfur dioxide allowance requirement under section 422, the Administrator shall terminate the withholding of allowances and the auction sales under this section. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

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

"SEC. 418. INDUSTRIAL SULFUR DIOXIDE EMISSIONS.

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

"(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 414(g)(2), and may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 414(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 414(g)(2), under authority of this section. For an existing source regulated under this section, 'standard of performance' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

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

"SEC. 419. TERMINATION.

''Starting January l, 2010, the owners or operators of affected units and affected facilities under sections 412(b) and (c) and 416 and shall no longer be subject to the requirements of sections 412 through 417.

"Subpart 2—Clear Skies Sulfur Dioxide Allowance Program

"SEC. 421. DEFINITIONS.

''For purposes of this subpart—

''(1) AFFECTED EGU.—The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator with a nameplate capacity of greater than twenty-five megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that meets the criteria for qualifying cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April

1, 2002 during 2002 and each year thereafter; and

"(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a unit serving one or more generators with total nameplate capacity of twenty-five megawatts or less, or a cogeneration unit that meets the criteria for qualifying cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the year the unit commences services of a generator.

Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

"(2) COAL-FIRED.—The term 'coal-fired' with regard to a unit means, for purposes of section 424,

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

''(3) EASTERN BITUMINOUS.—The term 'Eastern bituminous' means bituminous that is from a mine located in a State east of the Mississippi River.

''(4) GENERAL ACCOUNT.—The term 'general account' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any person under 40 CFR part 73.31(c) (2002), amended as appropriate by the Administrator.

''(5) OIL-FIRED.—The term 'oil-fired' with regard to a unit means, for purposes of section 424, combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1998 through 2002 or, for a unit that commenced operation on or after January 1, 2003, a unit designed to combust oil for more than 10 percent of the unit's total heat

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

''(6) UNIT ACCOUNT.—The term 'unit account' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any unit under 40 CFR section 73.31 (a) and (b) (2002), amended as appropriate by the Administrator.

"SEC. 422. APPLICABILITY.

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

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 423 shall be held in order to meet the requirements of subsection (a).

"SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.

''For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate sulfur dioxide allowances under section 424.

''TABLE A—TOTAL SO_2 ALLOWANCES ALLOCATED FOR EGUs

Year	SO_2 allowances allocated
2010	4,416,666
2011–2012	4,416,667
2013–2017	4,500,000
2018 and thereafter	3,000,000.

"SEC. 424. EGU ALLOCATIONS.

"(a) IN GENERAL.—Not later than 3 years before the commencement date of the sulfur dioxide allowance requirement of section 422, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 and thereafter. The regulations shall provide that:

"(1) 93 percent of the total amount of sulfur dioxide allowances shall be allocated to fossil-fuel-fired affected EGUs under section 424 shall be allocated by the Administrator to individual EGUs as follows:

"(A) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine the total amount of sulfur dioxide allowances allocated under subpart 1 for 2010 and thereafter that are recorded, as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2005. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2002), amended as appropriate by the Administrator, except that the Administrator shall apply a discount rate of 7 percent for each year after 2010 to the

amounts of sulfur dioxide allowances allocated for 2011 or later.

''(B) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine an amount of sulfur dioxide allowances equal to the allocation amount under subparagraph (A) multiplied by the ratio of the amount of sulfur dioxide allowances determined to be recorded in that account under clause (i) to the total amount of sulfur dioxide allowances determined to be recorded in all unit accounts and general accounts in the Allowance Tracking System under clause (i).

''(C) The Administrator shall allocate to each facility's account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and shall allocate to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account.

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

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

''(B) The Administrator shall allocate each year for the units under subparagraph (A) that commenced operation before January 1, 2001, an amount of sulfur dioxide allowances determined by:

''(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i), (ii),

and (iii) to the total of the amounts for all facilities under clause (i), (ii), and (iii).

''(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv).

''(C) The Administrator shall allocate each year for units under subparagraph (A) that commence commercial operation on or after January l, 2001 and before January 1, 2005, an amount of sulfur dioxide allowances determined by:

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

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

''(iii) If the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), mul-

tiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i) and (ii) to the total of the amounts for all facilities under clauses (i) and (ii).

''(iv) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i) and (ii) or, if the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall allocate to the facilities under paragraph (1) and this paragraph on a pro rata basis (based on the allocations under those paragraphs) any allowances not allocated under this paragraph.

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

''(E) In the event that allocation demand exceeds supply, the Administrator shall allocate allowances under subparagraph (A) giving first priority to units qualifying under subparagraph (B), second priority to units qualifying under subparagraph (C), and third priority to units qualifying under subparagraph (D). Allowances allocated under subparagraph (D) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under sub-paragraph (D) will not be reduced as a result of new units commencing commercial operation.

''(b) FAILURE TO PROMULGATE.—

''(1) ANNUAL NOTICE.—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under subsection (a), each affected EGU shall comply with section 422 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using rea-

sonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

''(2) RECONCILIATION.—Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of sulfur dioxides and section 403(c) establishing an Allowance Transfer System for sulfur dioxide allowances, each unit's emissions shall be compared to and reconciled to its actual allocations under the promulgated regulations. Each unit will have nine (9) months to purchase any allowance shortfall through allowances purchased from other allowance holders or through direct sale.

''SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.

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

''(b) REGULATIONS.—The Administrator shall promulgate regulations as necessary to assure that the re-

quirement to hold allowances under section 422 may be met using sulfur dioxide allowances allocated under subpart 1 for 1995 through 2009. No part of this Act shall be construed to prevent use of unused pre-2010 allowances to meet the requirements of section 422.

"SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.

''(a) RESERVE.—The Administrator shall establish a reserve of 250,000 sulfur dioxide allowances comprising 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur dioxide allowances for 2011, and 83,333 sulfur dioxide allowances for 2012.

''(b) APPLICATION.—Not later than 18 months after the enactment of the Clear Skies Act of 2005, an owner or operator of an affected EGU that commenced operation before 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for sulfur dioxide allowances from the reserve under subsection (a). The application shall include each of the following:

''(1) A statement that the owner or operator will install and commence commercial operation of specified sulfur dioxide control technology at the unit within 24 months after approval of the application under subsection (c) if the unit is allocated the

sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide description of the control technology.

''(2) A statement that, during the period starting with the commencement of operation of sulfur dioxide technology under paragraph (1) through 2009, the unit will combust Eastern bituminous at a percentage of the unit's total heat input equal to or exceeding the percentage of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

''(3) A demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide control technology under subparagraph (1) through 2009. The tonnage of emission reductions shall be the difference between emissions monitored at a location at the unit upstream of the control technology described in paragraph (1) and emissions monitored at a location at the unit down-

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

''(4) A request that the Administrator allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide technology under paragraph (1) through 2009.

''(5) A statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

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

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

''(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

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

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

''(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

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

''(6) approve each application listed under paragraph (2) with a ratio equal to or less than the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

''(d) MONITORING.—An owner or operator whose application is approved under subsection (c) shall install and operate a CEMS for monitoring sulfur dioxide and to quality assure the data. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(B) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, and one or more units are not subject to

such standards, separate monitoring shall be required for each unit.

''(e) ALLOCATIONS.—Not later than 6 months after the commencement date of the sulfur dioxide allowance requirement of section 422, for the units for which applications are approved under subsection (c), the Administrator shall allocate sulfur dioxide allowances as follows:

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

''(A) the total tonnage of sulfur dioxide emissions reductions achieved by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

''(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

''(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide

allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

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

"Subpart 3—Western Regional Air Partnership

"SEC. 431. DEFINITIONS.

''For purposes of this subpart—

''(1) ADJUSTED BASELINE HEAT INPUT.—The term 'adjusted baseline heat input' means the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

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

"(i) on or after January 1 of the fifth year before the first covered year, then 'adjusted baseline heat input' shall mean the average annual heat input used by the unit during the fifth and fourth years before the first covered year; and

"(ii) on or after January 1 of the fourth year before the first covered year, then 'adjusted baseline heat input' shall mean the annual heat input used by the unit during the fourth year before the first covered year.

"(B) A unit's heat input for a year shall be the heat input—

"(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

"(ii) reported to the Energy Information Administrator for the unit, if the unit was not required to report heat input under section 405;

''(iii) based on data for the unit reported to the WRAP State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

''(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the WRAP State.

''(2) AFFECTED EGU.—The term 'affected EGU' means an affected EGU under subpart 2 that is in a WRAP State and that—

''(A) in 2000, emitted 100 tons or more of sulfur dioxide and was used to produce electricity for sale; or

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

''(3) COAL-FIRED.—The term 'coal-fired' with regard to a unit means, for purposes of section 434,

a unit combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during the period from the eighth through the fourth year before the first covered year.

''(4) COVERED YEAR.—The term 'covered year' means—

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

''(ii) the third year after the year 2013 or later when the Administrator determines by regulation that the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States are reasonably projected to exceed 271,000 tons in 2018 or any year thereafter. The Administrator may make such determination only if all the WRAP States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the WRAP States subject to the requirements of sections 432 through 434; and

''(B) each year after the 'covered year' under subparagraph (A).

''(5) OIL-FIRED.—The term 'oil-fired' with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, and any year during the period from the eighth through the fourth year before the first covered year.

''(6) WRAP STATE.—The term 'WRAP State' means Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

"SEC. 432. APPLICABILITY.

''(a) PROHIBITION.—Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 433 shall be held in order to meet the requirements of subsection (a).

"SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for

each covered year under section 434 shall equal 271,000 tons.

"SEC. 434. EGU ALLOCATIONS.

"(a) IN GENERAL.—By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the units at a facility that are affected EGUs as of December 31 of the fourth year before the covered year by—

"(1) for such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

"(2) for such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

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

"(4) multiplying by 0.95 the allocation amount under section 433 by the ratio of the total of the amounts for the facility under paragraphs (1), (2),

and (3) to the total of the amounts for all facilities under paragraphs (1), (2), and (3); and

''(5)(A) 5 percent of the total amount of sulfur dioxide allowances allocated each year under section 433 shall be allocated for units at a facility that are affected EGUs, but did not receive sulfur dioxide allocations under paragraph (4). These units shall be allocated allowances in accordance with paragraphs (1), (2), and (3).

''(B) Allowances allocated under subparagraph (A) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under paragraph (A) will not be reduced as a result of new units commencing commercial operation.

''(C) Allowances not allocated under subparagraph (B) shall be allocated to units in paragraphs (A) and (B) on a pro rata basis.

''(b) FAILURE TO PROMULGATE.—

''(1) IN GENERAL.—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under paragraph (a), each affected EGU shall comply with section 422 by provided annual notice to the permitting au-

thority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

''(2) RECONCILIATION.—Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of sulfur dioxides and section 403(c) establishing an Allowance Transfer System for sulfur dioxide allowances, each unit's emissions shall be compared to and reconciled to its actual allocations under the promulgated regulations. Each unit will have nine (9) months to purchase any allowance shortfall through allowances purchased from other allowance holders or through direct sale.

"PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

"Subpart 1—Acid Rain Program

"SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.

''(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the NO_X reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

''(b) EMISSION LIMITATIONS.—

(1) IN GENERAL.—The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided*, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_X burner technology. The Administrator shall implement this paragraph under 40 CFR part 76.5 (2002). The maximum allowable emission rates are as follows:

"(A) for tangentially fired boilers, 0.45 lb/mmBtu; and

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

"(2) UTILITY BOILERS.—The Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

"(A) wet bottom wall-fired boilers;

"(B) cyclones;

"(C) units applying cell burner technology; and

"(D) all other types of utility boilers.

"(3) BASIS OF RATES.—The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy

and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). The Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_X burned technology is available: *Provided*, That, no unit that is an affected unit pursuant to section 413 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any. The Administrator shall implement that paragraph under 40 CFR parts 76.6 and 76.7 (2002).

''(c) ALTERNATIVE EMISSION LIMITATIONS.—(1) The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

''(A) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO_X burner technology; or

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

which the Administrator based the applicable emission limitation.

''(2) ELIGIBILITY FOR ALTERNATIVE EMISSION LIMITATIONS.—The permitting authority shall base such determination upon a reasonable showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

''(A) has properly installed appropriate control equipment designed to meet the applicable emission rate;

''(B) has properly operated such equipment for a period of 15 months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

''(C) has specified an emission rate that such unit can meet on an annual average basis. The permitting authority shall issue an operating permit for the unit in question, in accordance with section 404 and title V—

''(i) that permits the unit during the demonstration period referred to in subparagraph

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

"(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in subparagraphs (B) and (C).

"(3) ADDITIONAL CONTROL TECHNOLOGY.—Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_X burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_X control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 CFR part 76 (2002), amended as appropriate by the Administrator.

"(d) EMISSIONS AVERAGING.—

"(1) ALERNATIVE CONTEMPORANEOUS EMISSION LIMITATIONS.—In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (c), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative

contemporaneous annual emission limitations for such units that ensure that—

"(A) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than; or equal to

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

"(2) OPERATING PERMITS.—If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in paragraph (1) can be met, the permitting authority shall issue operating permits for such units, in accordance with section 404 and title V, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits. The Administrator shall implement this subsection under 40 CFR part 76 (2002), amended as appropriate by the Administrator.

"SEC. 442. TERMINATION.

''Starting January 1, 2008, the owner or operator of affected units and affected facilities under section 441 shall no longer be subject to the requirements of that section.

"Subpart 2—Clear Skies Nitrogen Oxides Allowance Program

"SEC. 451. DEFINITIONS.

''For purposes of this subpart:

''(1) AFFECTED EGU.—The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002 during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2005, a unit in a State

serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the unit commences service of a generator.

''(C) EXCLUSION.—Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

''(2) ADJUSTED BASELINE HEAT INPUT.—The term 'adjusted baseline heat input' with regard to a unit means, for purposes of allocating nitrogen oxides allowances in a particular year under this subpart, the units baseline multiplied by—

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

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

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

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

"(3) ALLOWABLE NITROGEN OXIDES EMISSIONS RATE.—The term 'allowable nitrogen oxides emissions rate' means the most stringent Federal or State emissions limitation for nitrogen oxides that applies to the unit as of date of enactment of this subpart. If the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation to establish the allowable rate. Such limitation shall not include any requirement to hold nitrogen oxides allowances under the Federal NO_X Budget Trading Program as codified at 40 CFR part 97 (2002), or any State program adopted to

meet the requirements of the NO_X SIP Call as codified at 40 CFR 51.121 (2002).

''(4) ZONE 1 STATE.—The term 'Zone 1 State' means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, the fine grid portion (as defined in section 51.121 of title 40, Code of Federal Regulations (as in effect for 2002)) of Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

''(5) ZONE 2 STATE.—The term 'Zone 2 State' means Alaska, American Samoa, Arizona, California, Colorado, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Kansas, Minnesota, the coarse grid portion (as defined in section 51.121 of title 40, Code of Federal Regulations (as in effect for 2002)) of Missouri, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

"SEC. 452. APPLICABILITY.

"(a) ZONE 1 PROHIBITION.—

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

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

"(b) ZONE 2 PROHIBITION.—

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

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

"SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.

"(a) ZONE 1 ALLOCATIONS.—For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the

Administrator shall allocate nitrogen oxides allowances under section 454(a) as specified in table A.

"TABLE A—TOTAL NO_X ALLOWANCES ALLOCATED FOR EGUS IN ZONE 1

Year	NO_X allowances allocated
2008–2017	1,473,603
2018 and thereafter	1,073,603

"(b) ZONE 2 ALLOCATIONS.—For affected EGUs in the Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b) as specified in table B.

"TABLE B—TOTAL NO_X ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

Year	NO_X allowance allocated
2008 and thereafter	714,794

"SEC. 454. EGU ALLOCATIONS.

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

"(1) EPA REGULATIONS.—Not later than 18 months before the date on which the nitrogen oxides allowance requirement under section 452 takes effect, the Administrator shall promulgate regulations determining the allocation of nitrogen oxide allowances for 2008 and each subsequent year for units at a facility in a Zone 1 State that are affected EGUs as of the date of enactment of this section.

"(2) FORMULA FOR ALLOCATION.—

"(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), the regulations

shall specify that the allocation of nitrogen oxide allowances for each unit referred to in paragraph (1) for each year shall be the product obtained by multiplying—

"(i) the product of 0.95 and the allocation amount under section 453(a); and

"(ii) the ratio that—

"(I) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

"(II) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 1 States; and

"(B) MAXIMUM ALLOCATION.—Notwithstanding subparagraph (A) and paragraph (3), no unit shall receive an allocation in excess of the product obtained by multiplying—

"(i) the baseline heat input of the unit; and

"(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

"(3) DISTRIBUTION OF REMAINING ALLOWANCES.—

"(A) IN GENERAL.—Subject to paragraph (2)(B), any nitrogen oxide allowances remaining after the allocation of allowances under paragraph (2) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that paragraph.

"(B) ADDITIONAL REMAINING ALLOWANCES.—Allowances remaining after each iteration of the calculation under subparagraph (A) as a result of the limitation under paragraph (2)(B) shall be allocated in accordance with subparagraph (A).

"(4) SET-ASIDE FOR NEW UNITS.—

"(A) IN GENERAL.—5 percent of the total amount of nitrogen oxide allowances allocated each year under section 453 shall be allocated for units at a facility that are affected EGUs, but did not receive nitrogen oxide allocations under paragraph (2).

"(B) FORMULA FOR ALLOCATION.—

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

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

"(I) the product of 0.05 and the allocation amount under section 453(a); and

"(II) the ratio that—

"(aa) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

"(bb) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 1 States, including those affected EGUs that receive allowances under paragraph (2).

"(ii) ADDITIONAL ALLOWANCES.—Notwithstanding clause (i) and subparagraph (E), no unit shall receive an allocation under this paragraph in excess of the product obtained by multiplying—

"(I) the baseline heat input of the unit; and

"(II) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

"(C) METHOD OF ALLOCATION.—Allowances allocated under this paragraph shall be allocated to each unit on a first-come basis determined by the date on which the unit commences operation.

"(D) NO REDUCTION IN ALLOCATIONS.—Allocations to units under this paragraph shall not be reduced as a result of new units commencing commercial operation.

"(E) DISTRIBUTION OF REMAINING ALLOWANCES.—Any nitrogen oxide allowances remaining after the allocation of allowances under subparagraph (B) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that subparagraph and paragraphs (2) and (3).

"(5) FAILURE TO PROMULGATE REGULATIONS.—For calendar year 2008 and each calendar year thereafter, if the Administrator has not promulgated the regulations determining the allocations under this subsection—

"(A) each affected unit shall comply with section 452 by providing an annual notice to the permitting authority that indicates the amount of allowances the affected unit believes the affected unit has for the relevant year (including the quantity of nitrogen oxide emissions of the affected unit for that year);

"(B) the amount of nitrogen oxide emissions of an affected unit described in subparagraph (A) shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

"(C) upon promulgation of regulations under this subsection for Zone 1 determining the allocations for 2008 and each year thereafter, and promulgation of regulations under section 403(b) providing for the transfer of nitrogen oxides and regulations under section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances—

"(i) the emissions of each unit shall be compared to and reconciled with actual allocations to the unit under the regulations; and

''(ii) each unit shall have not more than 270 days to submit allowances to the Administrator, without recompense, for any allowance shortfall (including submitted allowances obtained and held by any mechanism consistent with this Act, including direct sale).

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

''(1) EPA REGULATIONS.—Not later than 18 months before the date on which the nitrogen oxides allowance requirement under section 452 takes effect, the Administrator shall promulgate regulations determining the allocation of nitrogen oxide allowances for 2008 and each subsequent year for units at a facility in a Zone 2 State that are affected EGUs as of the date of enactment of this section.

''(2) FORMULA FOR ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), the regulations shall specify that the allocation of nitrogen oxide allowances for each unit referred to in paragraph (1) for each year shall be the product obtained by multiplying—

''(i) the product of 0.95 and the allocation amount under section 453(b); and

"(ii) the ratio that—

"(I) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

"(II) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 2 States.

"(B) MAXIMUM ALLOCATION.—Notwithstanding subparagraph (A) and paragraph (3), no unit shall receive an allocation in excess of the product obtained by multiplying—

"(i) the baseline heat input of the unit; and

"(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

"(3) DISTRIBUTION OF REMAINING ALLOWANCES.—

"(A) IN GENERAL.—Subject to paragraph (2)(B), any nitrogen oxide allowances remaining after the allocation of allowances under paragraph (2) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that paragraph.

''(B) ADDITIONAL REMAINING ALLOWANCES.—Allowances remaining after each iteration of the calculation under subparagraph (A) as a result of the limitation under paragraph (2)(B) shall be allocated in accordance with subparagraph (A).

''(4) SET-ASIDE FOR NEW UNITS.—

''(A) IN GENERAL.—5 percent of the total amount of nitrogen oxide allowances allocated each year under section 453 shall be allocated for units at a facility that are affected EGUs, but did not receive nitrogen oxide allocations under paragraph (2).

''(B) FORMULA FOR ALLOCATION.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (E), the regulations promulgated under paragraph (1) shall specify that the allocation of nitrogen oxide allowances for each unit referred to in subparagraph (A) for each year shall be the product obtained by multiplying—

''(I) the product of 0.05 and the allocation amount under section 453(a); and

''(II) the ratio that—

"(aa) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

"(bb) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 2 States, including those affected EGUs that receive allowances under paragraph (2).

"(ii) ADDITIONAL ALLOWANCES.—Notwithstanding clause (i) and subparagraph (E), no unit shall receive an allocation under this paragraph in excess of the product obtained by multiplying—

"(I) the baseline heat input of the unit; and

"(II) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

"(C) METHOD OF ALLOCATION.—Allowances allocated under this paragraph shall be allocated to each unit on a first-come basis determined by the date on which the unit commences operation.

''(D) NO REDUCTION IN ALLOCATIONS.—Allocations to units under this paragraph shall not be reduced as a result of new units commencing commercial operation.

''(E) DISTRIBUTION OF REMAINING ALLOWANCES.—Any nitrogen oxide allowances remaining after the allocation of allowances under subparagraph (B) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that subparagraph and paragraphs (2) and (3).

''(5) FAILURE TO PROMULGATE REGULATIONS.—For calendar year 2008 and each calendar year thereafter, if the Administrator has not promulgated the regulations determining the allocations under this subsection—

''(A) each affected unit shall comply with section 452 by providing an annual notice to the permitting authority that indicates the amount of allowances the affected unit believes the affected unit has for the relevant year (including the quantity of nitrogen oxide emissions of the affected unit for that year);

''(B) the amount of nitrogen oxide emissions of an affected unit described in subpara-

graph (A) shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

''(C) upon promulgation of regulations under this subsection for Zone 2 determining the allocations for 2008 and each year thereafter, and promulgation of regulations under section 403(b) providing for the transfer of nitrogen oxides and regulations under section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances—

''(i) the emissions of each unit shall be compared to and reconciled with actual allocations to the unit under the regulations; and

''(ii) each unit shall have not more than 270 days to submit allowances to the Administrator, without recompense, for any allowance shortfall (including submitted allowances obtained and held by any mechanism consistent with this Act, including direct sale).

"SEC. 455 NITROGEN OXIDES EARLY ACTION REDUCTION CREDITS.

''(a) CREDITS.—Except as provided in subsection (e), the Administrator shall promulgate regulations within 18 months authorizing the allocation of nitrogen oxides allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2008.

''(b) EMISSIONS REDUCTIONS.—No allowances shall be allocated under this section for emissions reductions that are—

''(1) attributable to pollution control equipment or combustion technology improvements that were operational at any time prior to the date of enactment of this section;

''(2) attributable to fuel switching;

''(3) required under any Federal or State regulation for the applicable year; or

''(4) made by a unit, subject to—

''(A) subpart 1 of part C, that are necessary for compliance with the limitation on the Btu-weighted average annual emission rate of the unit and 1 or more other units under section 441(d); or

''(B) the requirements in the applicable implementation plan of a NO_X SIP Call State (as defined in section 461(3)) that meet the requirements under sections 51.121 and 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004) during the period beginning on May 1 and ending on September 30.

''(c) ALLOCATION.—The allowances allocated to any unit under this section shall be in addition to the allowances allocated under section 454 and shall be allocated in an amount equal to one allowance of nitrogen oxides for each 1.05 tons of reduction in emissions of nitrogen oxides achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradable in the same manner as allowances under section 454.

''(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by

the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

''(e) EXCEPTION.—This section shall not apply to reductions that are—

''(1) made during the period beginning on May 1 and ending on September 30 of a year by units that are subject to an applicable implementation plan for a NO_X SIP Call State (as defined in section 461(3)) required under section 51.121 of title 40, Code of Federal Regulations (as in effect for calendar year 2004); or

''(2) necessary to comply with subpart 1 of part C for the applicable year.

''Subpart 3—Ozone Season NO_X Budget Program

''SEC. 461. DEFINITIONS.

''For purposes of this subpart:

''(1) OZONE SEASON.—The term 'ozone season' means—

''(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

''(B) with regard to all other States, the period May 1 through September 30, for each year starting in 2004 and thereafter.

''(2) NON-OZONE SEASON.—The term 'non-ozone season' means—

''(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period October 1 through April 30; and

''(B) with regard to all other States, the period October 1, 2003, through May 29, 2004 and the period October 1 through April 30 beginning in the year 2004 and for each year thereafter.

''(3) NO_X SIP CALL STATE.—The term 'NO_X SIP Call State' means Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

''(4) FINE GRID PORTIONS OF ALABAMA, GEORGIA, MICHIGAN, AND MISSOURI.—The term 'fine grid

portions of Alabama, Georgia, Michigan, and Missouri' means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 CFR part 51.121 (2001).

"SEC. 462. GENERAL PROVISIONS.

''The provisions of sections 402 through 406 shall not apply to this subpart.

"SEC. 463. APPLICABLE IMPLEMENTATION PLAN.

''(a) SIPS.—Except as provided in subsection (b), the applicable implementation plan for each NO_X SIP Call State shall be consistent with the requirements, including the NO_X SIP Call State's nitrogen oxides budget and compliance supplement pool, in sections 51.121 and 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004).

''(b) REQUIREMENTS.—Notwithstanding any provision to the contrary in section 51.121 or 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004):

''(1) IMPLEMENTATION PLAN.—The applicable implementation plan for each NO_X SIP Call State shall require full implementation of the required emission control measures starting no later than the first ozone season.

''(2) EXEMPTION.—Starting January 1, 2008—

''(A) the owners and operators of a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D shall no longer be subject to the requirements in a NO_X SIP Call State's applicable implementation plan that meet the requirements of subsection (a) and paragraph (1); and

''(B) notwithstanding subparagraph (A), if the Administrator determines, by December 31, 2007, that a NO_X SIP Call State's applicable implementation plan meets the requirements of subsection (a) and paragraph (1), such applicable implementation plan shall be deemed to continue to meet such requirements.

''(c) SAVINGS PROVISION.—Nothing in this section or section 464 shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard, relating to a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, that is more stringent than a regulation, requirement, limitation,

or standard in effect under this section or under any other provision of this Act.

"SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO_X TRADING PROGRAM FOR EGUS.

"Starting January 1, 2008, with regard to any boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, the Administrator shall not administer any nitrogen oxides trading program included in any NO_X SIP Call State's applicable implementation plan and meeting the requirements of section 463(a) and (b)(1).

"SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES ALLOWANCES.

"The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers, is included in a NO_X SIP Call State's applicable implementation plan, and meets the requirements of section 463 (a) and (b)(1).

"SEC. 466. NON-OZONE SEASON VOLUNTARY ACTION CREDITS.

''An affected facility that voluntarily elects to operate selective catalytic reduction (SCR) units, installed prior to enactment of this title, during the non-ozone season under section 461(2) shall be credited 0.5 allowances per ton of NO_X emissions avoided as a result of operating these controls. The amount avoided will equal every ton of nitrogen oxides reduction below the allowable emission rate. The Administrator shall determine if any other existing NO_X emission control devices are generally uneconomic to operate unless EGUs are provided incentives to control NO_X emissions during the non-ozone season. If the Administrator finds that incentives using different control equipment are necessary to make the operation of these devices economic, the Administrator shall specify these types of control devices and, for an affected facility with these specified devices, installed prior to enactment of this title, that voluntarily elects to operate these devices during the nonozone season under section 461(2) shall be credited 0.5 allowances per ton of emissions avoided as a result of operating these controls. The Administrator shall promulgate regulations as necessary to establish this NO_X allowance credit program. Failure of the Administrator to promulgate implementing regulations prior to voluntary reductions being undertaken by affected facilities shall not in

any manner reduce the number of allowances an otherwise qualifying facility shall be credited upon promulgation of the regulations.

"PART D—MERCURY EMISSIONS REDUCTIONS

"SEC. 471. DEFINITIONS.

''For purposes of this part:

''(1) ADJUSTED BASELINE HEAT INPUT.—The term 'adjusted baseline heat input' with regard to a unit means the unit's baseline heat input multiplied by—

''(A) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

''(B) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

''(C) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based; and

''(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph

(A), (B), or (C) or for the entire baseline heat input if such baseline heat input is not based on the unit's heat input in specified years.

''(2) AFFECTED EGU.—The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2005, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration unit that meets the criteria for qualifying for a cogeneration fa-

cilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the year the unit commences service of a generator.

''(C) EXCLUSION.—Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include—

''(i) a solid waste incineration unit subject to section 129;

''(ii) a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act; or

''(iii) a unit with de minimis emissions equal to or less than 50 pounds on an average annual basis, as calculated by the Administrator for a 3-year period using—

''(I) for calendar year 2010, the emissions data for a facility for calendar years 2006 through 2009; and

''(II) for calendar year 2011 and subsequent calendar years, the 3 most recent calendar years for which emissions data are available.

"SEC. 472. APPLICABILITY.

"Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in a State to emit a total amount of mercury during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility.

"SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.

"For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances pursuant to section 474.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED FOR EGUS

Year	Mercury allowances allocated
2010–2017	1,088,000
2018 and thereafter	480,000

"SEC. 474. EGU ALLOCATIONS.

"(a) IN GENERAL.—Not later than 24 months before the commencement date of the mercury allowance requirement of section 472, the Administrator shall promulgate regulations determining allocations of mercury allowances for 2010 and thereafter for units at a facility that commence commercial operation by and are affected EGUs as of date of enactment. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying by 0.95 the allocation amount in section 473 by the ratio of the total

amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

''(b) NEW FACILITIES.—5 percent of the total amount of nitrogen oxides allowances allocated each year under section 473 shall be allocated for units at a facility that commence commercial operation and are affected EGUs after the date of enactment. These units shall be allocated allowances for each year by multiplying the allocation amount under section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input to all affected EGUs, including those covered in subsection (a). However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable mercury emissions rate, divided by 2000.

''(c) ALLOCATION.—Allowances allocated under subsection (b) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences commercial operation. As such, allocations to units under subsection (b) will not be reduced as a result of new units commencing commercial operation.

''(d) UNALLOCATED ALLOWANCES.—Allowances not allocated under paragraph (2) shall be allocated to units in subsections (a) and (b) on a pro rata basis.

''(e) AMOUNT OF ALLOWANCES.—For each year 2010 and thereafter, if the Administrator has not promulgated the regulations determining allocation under subsection (a)—

''(1) each affected unit shall comply with section 472 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected unit believes it has for the relevant year and the amount of mercury emissions for such year. The amount of mercury emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

''(2) upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing an Allowance Transfer System for mercury allowances, each unit's emissions shall be compared to and reconcile with its actual allocations under the promulgated

regulation. Each unit will have nine (9) months to submit allowances to the Administrator, without recompense, for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with the Act including, but not limited to, direct sale.

"SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS.

''(a) IN GENERAL.—The Administrator shall promulgate regulations within 18 months authorizing the allocation of mercury allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

''(b) NONALLOCATION OF ALLOWANCES.—No allowances shall be allocated under this paragraph for emissions reductions: attributable to pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; attributable to fuel switching; or required under any Federal regulation.

''(c) AMOUNT OF ALLOWANCES.—The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 474 and shall be allocated in an amount equal to 1 allowance of

mercury for each 1.05 ounces of reduction in emissions of mercury achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradable in the same manner as allowances under section 474.

''(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

''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.

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

''(1) COMMENCED.—The term 'commenced', with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

''(2) CONSTRUCTION.—The term 'construction' means fabrication, erection, or installation of an affected unit.

''(3) AFFECTED UNIT.—The term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(4) EXISTING AFFECTED UNIT.—The term 'existing affected unit' means any affected unit that is not a new affected unit.

''(5) NEW AFFECTED UNIT.—The term 'new affected unit;' means any affected unit, the construction or reconstruction of which is commenced after the date of enactment of the Clear Skies Act of 2005, except that for the purpose of any revision of a standard pursuant to subsection (e), 'new affected unit' means any affected unit, the construction or reconstruction of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard under this section that will apply to such unit.

''(6) RECONSTRUCTION.—The term 'reconstruction' means the replacement of components of a unit to such an extent that—

''(A) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit; and

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

''(b) EMISSION STANDARDS.—

''(1) IN GENERAL.—No later than 12 months after the date of enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regula-

tions prescribing the standards in subsections (c) through (d) for the specified affected units and establishing requirements to ensure compliance with these standards, including monitoring, recordkeeping, and reporting requirements.

''(2) MONITORING.—

''(A) IN GENERAL.—The owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section shall meet the requirements of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each affected unit for the pollutants for which the unit is subject to such standards.

''(B) REQUIREMENTS.—The Administrator shall, by regulation, require—

''(i) the owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section to—

''(I) install and operate CEMS for monitoring output, including electricity and useful thermal energy, on

the affected unit and to quality assure the data; and

"(II) comply with recordkeeping and reporting requirements, including provisions for reporting output data in megawatt hours.

"(ii) the owner or operator of any affected unit subject to the standards for particulate matter under this section to—

"(I) install and operate CEMS for monitoring particulate matter on the affected unit and to quality assure the data;

"(II) comply with recordkeeping and reporting requirements; and

"(III) comply with alternative monitoring, quality assurance, recordkeeping, and reporting requirements for any period of time for which the Administrator determines that CEMS with appropriate vendor guarantees are not commercially available for particulate matter.

"(3) COMPLIANCE.—For boilers, integrated gasification combined cycle plants, and coal fired or

gas-fired combustion turbines the Administrator shall require that the owner or operator demonstrate compliance with the standards daily, using a 30-day rolling average, except that in the case of mercury, the compliance period shall be the calendar year. For combustion turbines that are oil-fired the Administrator shall require that the owner or operator demonstrate compliance with the standards hourly, using a 4-hour rolling average.

''(c) BOILERS AND INTEGRATED GASIFICATION COMBINED CYCLE PLANTS.—

''(1) IN GENERAL.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any boiler or integrated gasification combined cycle plant that is a new affected unit to discharge into the atmosphere any gases which contain—

''(A) sulfur dioxide in excess of 2.0 lb/MWh;

''(B) nitrogen oxides in excess of 1.0 lb/MWh;

''(C) particulate matter in excess of 0.20 lb/MWh; or

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

''(i) mercury emissions from the unit, determined assuming no use of on-site or off-site pre-combustion treatment of coal and no use of technology that captures mercury, are reduced by 80 percent;

''(ii) flue gas desulfurization (FGD) and selective catalytic reduction (SCR) are applied to the unit; or

''(iii) a technology is applied to the unit and the permitting authority determines that the technology is equivalent in terms of mercury capture to the application of FGD and SCR.

''(2) EXEMPTION.—Notwithstanding subparagraph (1)(D), integrated gasification combined cycle plants with a combined capacity of less than 5 GW are exempt from the mercury requirement under subparagraph (1)(D) if they are constructed as part of a demonstration project under the Secretary of Energy that will include a demonstration of removal of significant amounts of mercury as determined by the Secretary of Energy in conjunction with the Administrator as part of the solicitation process.

''(3) DISCHARGES.—After the effective date of standards promulgated under subsection (b), no

owner or operator shall cause any oil-fired boiler that is an existing affected unit to discharge into the atmosphere any gases which contain particulate matter in excess of 0.30 lb/MWh.

''(d) COMBUSTION TURBINES.—

''(1) GAS-FIRED COMBUSTION TURBINES.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any gas-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain nitrogen oxides in excess of—

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

''(B) 0.084 lb/MWh (3.5 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine and either uses add-on controls or is located within 50 km of a class I area; or

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

''(2) COAL-FIRED COMBUSTION TURBINES.—After the effective date of standards promulgated

under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide, nitrogen oxides, particulate matter, or mercury in excess of the emission limits under subparagraphs (c)(1) (A) through (D).

''(3) COMBUSTION TURBINES THAT ARE NOT GAS-FIRED OR COAL-FIRED.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain—

''(A) sulfur dioxide in excess of 2.0 lb/MWh;

''(B) nitrogen oxides in excess of—

''(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine, is dual-fuel capable, and uses add-on controls; or is not a simple cycle combustion turbine and is located within 50 km of a class I area; and

''(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle

combustion turbine; is not a simple cycle combustion turbine and is not dual-fuel capable; or is not a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

''(C) particulate matter in excess of 0.20 lb/MWh.

''(e) PERIODIC REVIEW AND REVISION.—

''(1) IN GENERAL.—The Administrator shall, at least every eight years following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation demonstrated by substantial evidence to be achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements). When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

''(2) EXCEPTION.—Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

''(f) EFFECTIVE DATE.—The standard promulgated pursuant to this section shall become effective upon promulgation.

''(g) DELEGATION.—

''(1) IN GENERAL.—Each State may develop and submit to the Administration a procedure for implementing and enforcing standards promulgated under this section for affected units located in such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State any authority the Administrator has under this Act to implement and enforce such standards.

''(2) ENFORCEMENT.—Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard under this section.

''(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate

such unit in violation of any standard, established by this section applicable to such unit.

''(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections III(e), 113, 114, 116, 120, 303, 304, 307, and other provisions for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard of performance under section 111, and each affected unit subject to standards under this section shall be treated in the same manner as a stationary source under section 111.

''(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard relating to affected units, or other EGUs, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

''(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected unit subject to standards under this sec-

tion shall be subject to standards under section 111 of this Act.

"SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.

"(a) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research, environmental monitoring, and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury and to demonstrate the efficacy of emission reductions under this title for purposes of reporting to Congress under (e)(2). The purposes of such a program are to—

"(1) expand current research and knowledge of the contribution of emissions from electricity generation to exposure and health effects associated with particulate matter and mercury;

"(2) enhance current research and development of promising multi-pollutant control strategies and CEMS for mercury;

"(3) produce peer-reviewed scientific and technology information;

"(4) improve environmental monitoring and assessment of sulfur dioxide, nitrogen oxides and mercury, and their transformation products, to track

changes in human health and the environment attributable to emission reductions under this title; and

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

''(b) RESEARCH.—The Administrator shall enhance planned and ongoing laboratory and field research and modeling analyses, and conduct new research and analyses to produce peer-reviewed information concerning the human health and environmental effects of mercury and particulate matter and the contribution of United States electrical generating units to those effects. Such information shall be included in the report under subsection (d). In addition, such research and analyses shall—

''(1) improve understanding of the rates and processes governing chemical and physical transformations of mercury in the atmosphere, including speciation of emissions from electricity generation and the transport of these species;

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

''(A) the response of and contribution to mercury in the biota owing to atmospheric dep-

osition of mercury from U.S. electricity generation on both local and regional scales;

''(B) long-term contributions of mercury from U.S. electricity generation on mercury accumulations in ecosystems, and the effects of mercury reductions in that sector on the environment and public health;

''(C) the role and contribution of mercury, from U.S. electricity generating facilities and anthropogenic and natural sources to fish contamination and to human exposure, particularly with respect to sensitive populations;

''(D) the contribution of U.S. electricity generation to population exposure to mercury in freshwater fish and seafood and quantification of linkages between U.S. mercury emissions and domestic mercury exposure and its health effects; and

''(E) the contribution of mercury from U.S. electricity generation in the context of other domestic and international sources of mercury, including transport of global anthropogenic and natural background levels;

''(3) improve understanding of the health effects of fine particulate matter components related

to electricity generation emissions (as distinct from other fine particle fractions and indoor air exposures) and the contribution of U.S. electrical generating units to those effects including—

''(A) the chronic effects of fine particulate matter from electricity generation in sensitive population groups; and

''(B) personal exposure to fine particulate matter from electricity generation; and

''(4) improve understanding, by way of a review of the literature, of methods for valuing human health and environmental benefits associated with fine particulate matter and mercury.

''(c) INNOVATIVE CONTROL TECHNOLOGIES.—The Administrator shall collaborate with the Secretary of Energy to enhance research and development, and conduct new research that facilitates research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at a lower cost than existing technologies. Such research and development shall provide updated information on the cost and feasibility of technologies. Such information shall be included in the report under subsection (d). In addition, the research and development shall—

''(1) upgrade cost and performance models to include results from ongoing and future electricity generation and pollution control demonstrations by the Administrator and the Secretary of Energy;

''(2) evaluate the overall environmental implications of the various technologies tested including the impact on the characteristics of coal combustion residues;

''(3) evaluate the impact of the use of selective catalytic reduction on mercury emissions from the combustion of all coal types;

''(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

''(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

''(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the Secretary of Energy and the Administrator, including development of enhanced sorbents and scrubbers for use on all coal types;

''(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

''(8) improve low cost combustion modifications and controls for dry-bottom boilers.

''(d) ENVIRONMENTAL ACCOUNTABILITY.—

''(1) MONITORING AND ASSESSMENT.—The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall—

''(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

''(i) improve the ability to routinely measure mercury in dry deposition processes;

''(ii) improve understanding of the spatial and temporal distribution of mer-

cury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

''(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

''(iv) improve understanding of the effectiveness and cost of mercury emissions controls;

''(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section;

''(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota;

''(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implica-

tions and models that describe the response of ecosystems to atmospheric deposition; and

''(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

''(2) REPORTING REQUIREMENTS.—Not later than January 1, 2008, and not later than every 4 years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title.

''(A) The report under this subparagraph shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to—

''(i) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

''(ii) average ambient concentrations of sulfur dioxide and nitrogen oxides transformation products, related air quality pa-

rameters, and indicators of reductions in human exposure;

''(iii) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

''(iv) status and trends in visibility;

''(v) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and nearcoastal waters);

''(vi) status of mercury and its transformation products in fish;

''(vii) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

''(viii) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

''(ix) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

''(B) The report under this subparagraph shall address the relative contribution of the United States to world-wide emissions as well as a comparison of the stringency of fossil fuel-fired requirements under the Act to other countries.

''SEC. 483. MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS; APPLICABILITY TO AFFECTED UNITS.

''(a) MAJOR SOURCE EXEMPTION.—An affected unit shall be considered neither a major emitting facility or major stationary source nor a part of a major emitting facility or major stationary source, for purposes of compliance with the requirements of parts C and part D of title I, and shall not otherwise be subject to the requirements of section 169A or 169B, for a period of 20 years after the date of enactment of this section. This applicability provision only applies to affected units that are either subject to the performance standards of section 481 or meet the following requirements within 3 years after the date of enactment of the Clear Skies Act of 2005:

''(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate

matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particulate matter from the affected unit to 0.03 lb/mmBtu within eight years after the date of enactment of the Clear Skies Act of 2005, and

''(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide. Good combustion practices may be accomplished through control technology, combustion technology improvements, or workplace practices.

''(b) CLASS I AREA PROTECTIONS.—Notwithstanding the provisions of subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2005 is subject to those provisions under part C of title I pertaining to the review of a new or reconstructed major stationary source's impact on a Class I area.

''(c) PRECONSTRUCTION REQUIREMENTS.—Each State shall include in its plan under section 110, as program to provide for the regulation of the construction of

an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit—

''(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard;

''(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved provided that interference with any program will be deemed not to occur, with respect to each nonattainment area located wholly or partially within the State, if on the date of submission of a complete permit application and throughout a continuous period of three years immediately preceding such date, the nonattainment area was in full compliance with all requirements of this Act, including but not limited to requirements for State Implementation Plans;

''(3) for a reconstructed unit, prior to beginning operation, the unit must comply with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity; and

''(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

''(d) DEFINITIONS.—For purposes of this section:

''(1) AFFECTED UNIT.—The term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(2) CONSTRUCTION.—The term 'construction' includes the construction of a new affected unit and the modification of any affected unit.

''(3) MODIFICATION.—The term 'modification' means any physical change in, or change in the method of operation of, an affected unit that increases the maximum hourly emissions of any pollutant regulated under this Act above the maximum hourly emissions achievable at that unit during the five years prior to the change or that results in the

emission of any pollutant regulated under this Act and not previously emitted.

''(e) SAVINGS CLAUSE.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt to enforce any regulation, requirement, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.''.

SEC. 3. OTHER AMENDMENTS.

(a) TITLE I.—Title I of the Clean Air Act is amended as follows:

(1) In section 103 by repealing subparagraphs (E) and (F).

(2) In section 107(d)(1)(A)—

(i) by striking ''or'' at the end of clause (ii);

(ii) by striking the period at the end of clause (iii) and inserting '', or''; and

(iii) by adding at the end the following:

''(iv) notwithstanding clauses (i) through (iii) and subsection (d)(3), if requested by a State, an area may be redesignated as transitional for the PM 2.5 na-

tional primary or secondary ambient air quality standards or the 8-hour ozone national primary or secondary ambient air quality standard if—

"(I) the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain the applicable standard or standards not later than December 31, 2015;

"(II) such modeling demonstration and all necessary local controls have been approved into the State implementation plan not later than 1 year after the date of enactment of the Clear Skies Act of 2005; and

"(III) the redesignation is made not later than 180 days after the date of that approval."

(3) In section 110 as follows:

(A) By amending clause (i) of subsection (a)(2)(D) by inserting ''except as provided in subsection (q),'' before the word ''prohibiting''.

(B) By adding the following new subsections at the end thereof:

''(q) REVIEW OF CERTAIN PLANS.—

''(1) IN GENERAL.—The Administrator shall, in reviewing, under subsection (a)(2)(D)(i), any plan with respect to affected units, within the meaning of section 126(d)(l)—

''(A) consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the other State or States;

''(B) not require submission of plan provisions mandating emissions reductions from such affected units, unless the Administrator determines that—

''(i) emissions from such units may be reduced at least as cost-effectively as emissions reductions in the State or each other State from each other principal category of sources of the relevant pollutant, pollutants, or pre-cursors thereof, including in-

dustrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and

''(ii) reductions in such emissions will improve air quality in the other State's or States' nonattainment areas at least as cost-effectively as reductions in emissions in the State or each other State from each other principal category of sources of the relevant pollutant, pollutants, or precursors thereof, to the maximum extent that a methodology is reasonably available to make such a determination;

''(C) develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006; and

''(D) not require submission of plan provisions subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to December 31, 2014.

''(2) PROXIMITY.—In making the determination under clause (ii) of subparagraph (B) of paragraph (1), the Administrator will use the best available

peer-reviewed models and methodology that consider the proximity of the source or sources to the other State or States and incorporate other source characteristics.

''(3) EFFECT ON REGULATIONS.—Nothing in paragraph (1) shall be interpreted to require revisions to the provisions of 40 CFR parts 51.121 and 51.122 (2001).

''(r) TRANSITIONAL AREAS.—

''(1) MAINTENANCE.—

''(A) SUBMISSION OF INVENTORY AND ANALYSIS.—By December 31, 2011, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2014.

''(B) REVIEW.—No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2014, the Administrator shall consult with the State and determine what action,

if any, is necessary to assure that attainment will be achieved by December 31, 2014.

''(2) PREVENTION OF SIGNIFICANT DETERIORATION.—Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this title.

''(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015.—No later than June 30, 2016, the Administrator shall determine whether each area designated as transitional for the 8-hour ozone standard or for the PM 2.5 standard has attained that standard. If the Administrator determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within one year of the determination and the State shall be required to submit a State implementation plan revision satisfying the provisions of section 172 within three years of redesignation as nonattainment.''.

(4) In section 111(b)(1) by adding the following new subparagraph (C) after subparagraph (B):

''(C) No standards of performance promulgated under this section shall apply to units

subject to regulations promulgated pursuant to section 481.''.

(5) In section 112:

(A) By amending paragraph (1) of subsection (c) to read as follows:

''(1) IN GENERAL.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every eight years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Electric utility steam generating units not subject to section 3005 of the Solid Waste Disposal Act shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units, provided that any determination shall be based on public health concerns and, on an individual source basis shall: consider the effects of emissions controls installed or anticipated to be installed in order to meet other

emission reduction requirements under this Act by 2018; and, be based on a peer reviewed study with notice and opportunity to comment, to be completed not before January 2015. Any such regulations shall be promulgated within, and shall not take effect before, the date eight years after the commencement date of the requirements set forth in section 472. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.''.

(B) By amending subparagraph (A) of subsection (n)(1) to read as follows:

''(A) STUDY.—The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within three years after November 15, 1990.''

(6) Section 126 is amended as follows:

(A) By replacing ''section 110(a)(2)(D)(ii) or this section'' in subsection (b) with ''section 110(a)(2)(D)(i)''.

(B) In the language at end of subsection (c) by striking ''section 110(a)(2)(D)(ii)'' and inserting ''section 110(a)(2)(D)(i)'' and deleting the last sentence.

(D) By adding at the end the following:

''(d) DEFINITION OF AFFECTED UNIT.—

''(1) IN GENERAL.—For purposes of this subsection, the term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D, or is a designated unit under section 407.

''(2) FINDING FOR AFFECTED UNITS.—To the extent that any petition submitted under subsection (b) after the date of enactment of the Clear Skies Act of 2005 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary:

''(A) In determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattain-

ment areas in the petitioning State or political subdivision.

''(B) The Administrator may not determine that affected units emit, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that—

''(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify; and

''(ii) reductions in such emissions will improve air quality in the petitioning State's nonattainment area or areas at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination.

In making the determination under clause (ii), the Administrator shall use the best available peer-re-

viewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other sources characteristics.

''(C) The Administrator shall develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006.

''(D) The Administrator shall not make any findings with respect to an affected unit under this section prior to December 1, 2011. For any petition submitted prior to January 1, 2010, the Administrator shall make a finding or deny the petition by the December 31, 2011.

''(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2014.''.

(b) TITLE III.—Section 307(d)(1)(G) of title III of the Clean Air Act is amended to read as follows:

''(G) the promulgation or revision of any regulation under title IV,''.

(c) NOISE POLLUTION.—Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)

is redesignated as title VII and amended by renumbering sections 401 through 403 as sections 701 through 703, respectively, and conforming all cross-references thereto accordingly.

(d) SECTION 406.—Title IV of the Clean Air Act Amendments of 1990 (relating to acid deposition control) is amended by repealing section 406 (industrial sulfur dioxide emissions).

(e) MONITORING.—Section 821 (a) of title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended to read as follows:

''(a) MONITORING.—The Administrator shall promulgate regulations within eighteen months after November 15, 1990, to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act as of December 31, 2009, shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall

implement this subsection under 40 CFR part 75 (2002), amended as appropriate by the Administrator.''.

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