

*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 7651b(a)(1) of this title 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.

(July 14, 1955, ch. 360, title IV, § 405, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2605.)

REFERENCES IN TEXT

Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (g)(5), is section 301(b) of Pub. L. 95-620, which is classified to section 8341(b) of this title. A prior section 301(b) of Pub. L. 95-620, title III, Nov. 9, 1978, 92 Stat. 3305, which was formerly classified to section 8341(b) of this title, was repealed by Pub. L. 97-35, title X, § 1021(a), Aug. 13, 1981, 95 Stat. 614.

**§ 7651e. 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 state-wide 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 II bonus allowance allocations, allowances from the reserve created pursuant to section 7651d(a)(2) of this title 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 7651b(a)(1) of this title, each Governor of a State eligible to make an election under paragraph<sup>1</sup> (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 7651d of this title.

**(c) Allowances after January 1, 2010**

After January 1, 2010, the Administrator shall allocate allowances to units subject to the pro-

visions of this section pursuant to section 7651d of this title.

(July 14, 1955, ch. 360, title IV, § 406, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2613.)

**§ 7651f. Nitrogen oxides emission reduction program**

**(a) Applicability**

On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 7651c, 7651d,<sup>1</sup> 7651h of this title, or on the date a unit subject to the provisions of section 7651c(d) or 7651h(b) of this title, must meet the SO<sub>2</sub> 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) Not later than eighteen months after November 15, 1990, 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<sub>x</sub> burner technology. The maximum allowable emission rates are as follows:

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

(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) Not later than January 1, 1997, 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;

(D) all other types of utility boilers.

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) of this section. Not later than January 1, 1997, 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<sub>x</sub> burner technology is available: *Provided*, That, no unit that is an affected unit pur-

<sup>1</sup> So in original. Probably should be "subsection".

<sup>1</sup> So in original. Probably should be followed by "or".

suant to section 7651c of this title and that is subject to the requirements of subsection (b)(1) of this section, shall be subject to the revised emission limitations, if any.

**(c) Revised performance standards**

(1)<sup>2</sup> Not later than January 1, 1993, the Administrator shall propose revised standards of performance to section 7411 of this title for nitrogen oxides emissions from fossil-fuel fired steam generating units, including both electric utility and nonutility units. Not later than January 1, 1994, the Administrator shall promulgate such revised standards of performance. Such revised standards of performance shall reflect improvements in methods for the reduction of emissions of oxides of nitrogen.

**(d) Alternative emission limitations**

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) of this section upon a determination that—

(1) a unit subject to subsection (b)(1) of this section cannot meet the applicable limitation using low NO<sub>x</sub> burner technology; or

(2) a unit subject to subsection (b)(2) of this section cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator not later than eighteen months after November 15, 1990, that the owner or operator—

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

(2) has properly operated such equipment for a period of fifteen 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

(3) 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 7651g of this title and part B<sup>3</sup> of title III—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, 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 paragraphs (2) and (3) above.

Units subject to subsection (b)(1) of this section for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO<sub>x</sub> burners. Nothing in this section shall preclude

an owner or operator from installing and operating an alternative NO<sub>x</sub> control technology capable of achieving the applicable emission limitation. If the owner or operator of a unit subject to the emissions limitation requirements of subsection (b)(1) of this section demonstrates to the satisfaction of the Administrator that the technology necessary to meet such requirements is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit by a period of 15 months. Any owner or operator may petition the Administrator to make a determination under the previous sentence. The Administrator shall grant or deny such petition within 3 months of submittal.

**(e) Emissions averaging**

In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (d) of this section, the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections,<sup>4</sup> may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) 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 (2) 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) of this section.

If the permitting authority determines, in accordance with regulations issued by the Administrator not later than eighteen months after November 15, 1990;<sup>5</sup> that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 7651g of this title and part B<sup>3</sup> of title III, 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.

(July 14, 1955, ch. 360, title IV, §407, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2613.)

REFERENCES IN TEXT

Part B of title III, referred to in subsecs. (d) and (e), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§ 7661 et seq.) of this chapter.

**§ 7651g. Permits and compliance plans**

**(a) Permit program**

The provisions of this subchapter shall be implemented, subject to section 7651b of this title, by permits issued to units subject to this sub-

<sup>2</sup> So in original. No par. (2) has been enacted.

<sup>3</sup> See References in Text note below.

<sup>4</sup> So in original. Probably should be "subsections."

<sup>5</sup> So in original. The semicolon probably should be a comma.