

§ 7651l. General compliance with other provisions

Except as expressly provided, compliance with the requirements of this subchapter shall not exempt or exclude the owner or operator of any source subject to this subchapter from compliance with any other applicable requirements of this chapter.

(July 14, 1955, ch. 360, title IV, § 413, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

§ 7651m. Enforcement

It shall be unlawful for any person subject to this subchapter to violate any prohibition of, requirement of, or regulation promulgated pursuant to this subchapter shall be a violation of this chapter.¹ In addition to the other requirements and prohibitions provided for in this subchapter, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for such unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

(July 14, 1955, ch. 360, title IV, § 414, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

§ 7651n. Clean coal technology regulatory incentives

(a) “Clean coal technology” defined

For purposes of this section, “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 a qualifying project shall be at least 20 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 five 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 7411 of this title or part C or D of subchapter I of this chapter.

(3) Permanent projects

For permanent clean coal technology demonstration projects that constitute repowering as defined in section 7651a(l)¹ of this title, any qualifying project shall not be subject to standards of performance under section 7411 of this title or to the review and permitting requirements of part C² for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA regulations

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 7411 of this title and parts C and D,² as appropriate, to facilitate projects consistent in³ this subsection. With respect to parts C and D,² 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,² 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 7411 of this title or part C of the Act² where the unit (1) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of enactment, (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 chapter.

(July 14, 1955, ch. 360, title IV, § 415, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

REFERENCES IN TEXT

Parts C and D and part C of the Act, referred to in subsecs. (b)(3), (4) and (c), probably mean parts C and D of subchapter I of this chapter.

¹ So in original. Probably should be section “7651a(12)”.

² See References in Text note below.

³ So in original. Probably should be “with”.

¹ So in original.

§ 7651o. Contingency guarantee, auctions, reserve

(a) Definitions

For purposes of this section—

(1) 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.

(2) 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) is nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of November 15, 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 79b(a)(11)¹ of title 15) of the facility’s owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this subchapter.

(3) The term “required allowances” means the allowances required to operate such unit for so much of the unit’s useful life as occurs after January 1, 2000.

(b) Special reserve of allowances

Within 36 months after November 15, 1990, the Administrator shall promulgate regulations establishing a Special Allowance Reserve containing allowances to be sold under this section. 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 II 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.

(c) Direct sale at \$1,500 per ton

(1) Subaccount for direct sales

In accordance with regulations under this section, the Administrator shall establish a Direct Sale Subaccount in the Special Allowance Reserve established under this section. The Direct Sale Subaccount shall contain allowances in the amount of 50,000 tons per year for each year beginning in the year 2000.

(2) Sales

Allowances in the subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of \$1,500 per allowance, adjusted by the Consumer Price Index in the same manner as provided in paragraph (3). Requests to purchase allowances from the Direct Sale Sub-

account established under paragraph (1) shall be approved in the order of receipt until no allowances remain in such subaccount, except that an opportunity to purchase such allowances shall be provided to the independent power producers referred to in this subsection before such allowances are offered to any other person. Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT \$1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
1993–1999	25,000
2000 and after	25,000	25,000

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

(3) Entitlement to written guarantee

Any independent power producer that submits an application to the Administrator establishing that such independent power producer—

(A) proposes to construct a new independent power production facility for which allowances are required under this subchapter;

(B) will apply for financing to construct such facility after January 1, 1990, and before the date of the first auction under this section;

(C) has submitted to each owner or operator of an affected unit listed in table A (in section 7651c of this title) a written offer to purchase the required allowances for \$750 per ton; and

(D) has not received (within 180 days after submitting offers to purchase under subparagraph (C)) an acceptance of the offer to purchase the required allowances,

shall, within 30 days after submission of such application, be entitled to receive the Administrator’s written guarantee (subject to the eligibility requirements set forth in paragraph (4)) that such required allowances will be made available for purchase from the Direct Sale Subaccount established under this subsection and at a guaranteed price. The guaranteed price at which such allowances shall be made available for purchase shall be \$1,500 per ton, adjusted by the percentage, if any, by which the Consumer Price Index (as determined under section 7661a(b)(3)(B)(v) of this title) for the year in which the allowance is purchased exceeds the Consumer Price Index for the calendar year 1990.

(4) Eligibility requirements

The guarantee issued by the Administrator under paragraph (3) shall be subject to a demonstration by the independent power producer, satisfactory to the Administrator, that—

¹ See References in Text note below.