

combined bona fide crude oil throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy.

**(4) Limitation per refinery**

The maximum number of allowances that can be annually allocated to a small refinery pursuant to this subsection is one thousand and five hundred.

**(5) Limitation on total**

In any given year, the total number of allowances allocated pursuant to this subsection shall not exceed thirty-five thousand.

**(6) Required certification**

The Administrator shall not allocate any allowances pursuant to this subsection unless the owner or operator of a small diesel refinery shall have certified, at a time and in a manner prescribed by the Administrator, that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of subsection<sup>1</sup> 7545(i) of this title.

(July 14, 1955, ch. 360, title IV, §410, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2621.)

**§ 7651j. Excess emissions penalty**

**(a) Excess emissions penalty**

The owner or operator of any unit or process source subject to the requirements of sections<sup>1</sup> 7651b, 7651c, 7651d, 7651e, 7651f or 7651h of this title, or designated under section 7651i of this title, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the 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 7410(f) of this title. That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by \$2,000. Any such penalty shall be due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator by no later than eighteen months after November 15, 1990. Any such payment shall be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Act.<sup>2</sup> Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this chapter.

**(b) Excess emissions offset**

The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emissions limitation requirement or of the 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 owner or operator of the source shall, within sixty days after the end of the year in which the excess emissions occurred,<sup>3</sup> submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. Upon approval of the proposed plan by the Administrator, as submitted, modified or conditioned, the plan shall be deemed at<sup>4</sup> a condition of the operating permit for the unit without further review or revision of the permit. The Administrator shall also deduct allowances equal to the excess tonnage from those allocated for the source for the calendar 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) of this section 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 source liable for a penalty and offset under this section to fail (1) to pay the penalty under subsection (a) of this section, (2) to provide, and thereafter comply with, a compliance plan as required by subsection (b) of this section, or (3) to offset excess emissions as required by subsection (b) of this section.

**(e) Savings provision**

Nothing in this subchapter shall limit or otherwise affect the application of section 7413, 7414, 7420, or 7604 of this title except as otherwise explicitly provided in this subchapter.

(July 14, 1955, ch. 360, title IV, §411, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2623.)

REFERENCES IN TEXT

The Miscellaneous Receipts Act, referred to in subsec. (a), is not a recognized popular name for an act. For provisions relating to deposit of monies, see section 3302 of Title 31, Money and Finance.

**§ 7651k. Monitoring, reporting, and record-keeping requirements**

**(a) Applicability**

The owner and operator of any source subject to this subchapter shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. The Administrator shall, by regulations issued not later than eighteen months after November 15, 1990, specify the requirements for CEMS, for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that pro-

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

<sup>2</sup> See References in Text note below.

<sup>3</sup> So in original. Probably should be "occurred".

<sup>4</sup> So in original.