

permit application and compliance plan under this subchapter, the permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

**(h) Prohibition**

(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this subchapter to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any source subject to this subchapter 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 7661c(f) of this title, with a permit issued under subchapter V which complies with this subchapter for sources subject to this subchapter shall be deemed compliance with this subsection as well as section 7661a(a) of this title.

(3) In order to ensure reliability of electric power, nothing in this subchapter or subchapter V shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 7413 of this title.

**(i) Multiple owners**

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 subchapter, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple 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 (1) that allowances and the proceeds of transactions involving 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 and the proceeds of transactions involving 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 received by the unit are deemed to be held for that person.

(July 14, 1955, ch. 360, title IV, §408, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2616.)

**§ 7651h. Repowered sources**

**(a) Availability**

Not later than December 31, 1997, the owner or operator of an existing unit subject to the emissions limitation requirements of section 7651d(b) and (c) of this title may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under section 7651d of this title. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation. The replacement of an existing utility unit with a new utility unit using a repowering technology referred to in section 7651a(2)<sup>1</sup> of this title which is located at a different site, shall be treated as repowering of the existing unit for purposes of this subchapter, if—

(1) the replacement unit is designated by the owner or operator to replace such existing unit, and

(2) the existing unit is retired from service on or before the date on which the designated replacement unit enters commercial operation.

**(b) Extension**

(1) An owner or operator satisfying the requirements of subsection (a) shall be granted an extension of the emission limitation requirement compliance date for that unit from January 1, 2000, to December 31, 2003. The extension shall be specified in the permit issued to the source under section 7651g of this title, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under section 7411(j) of this title, and shall continue to be subject to requirements under this subchapter as if it were a unit subject to section 7651d of this title.

(2) If (A) the owner or operator of an existing unit has been granted an extension under paragraph (1) in order to repower such unit with a clean coal unit, and (B) such owner or operator demonstrates to the satisfaction of the Administrator that the repowering technology to be utilized by such unit has been properly constructed and tested on such unit, but nevertheless has been unable to achieve the emission reduction limitations and is economically or technologically infeasible, such existing unit may be retrofitted or repowered with equipment or fa-

<sup>1</sup> So in original. Probably should be section "7651a(12)".

ilities utilizing another clean coal technology or other available control technology.

**(c) Allowances**

(1) For the period of the extension under this section, the Administrator shall allocate to the owner or operator of the affected unit, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved State Implementation Plan emissions limitation or its actual emission rate for 1995 in lieu of any other allocation. Such allowances may not be transferred or used by any other source to meet emission requirements under this subchapter. The source owner or operator shall notify the Administrator sixty days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

(2) Effective on that date, the unit shall be subject to the requirements of section 7651d of this title. Allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated as the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000, and prorated accordingly, and are transferable.

(3) Allowances for such existing utility units for calendar years after the year the repowering is complete shall be calculated as the product of the existing unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(4) Notwithstanding the provisions of section 7651b(a) and (e) of this title, allowances shall be allocated under this section for a designated replacement unit which replaces an existing unit (as provided in the last sentence of subsection (a)) in lieu of any further allocations of allowances for the existing unit.

(5) For the purpose of meeting the aggregate emissions limitation requirement set forth in section 7651b(a)(1) of this title, the units with an extension under this subsection shall be treated in each calendar year during the extension period as holding allowances allocated under paragraph (3).

**(d) Control requirements**

Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under the<sup>2</sup> chapter shall not be subject to any standard of performance under section 7411 of this title. Notwithstanding the provisions of this subsection, no new unit (1) designated as a replacement for an existing unit, (2) qualifying for the extension under subsection (b), and (3) located at a different site than the existing unit shall receive an exemption from the requirements imposed under section 7411 of this title.

**(e) Expedited permitting**

State permitting authorities and, where applicable, the Administrator, are encouraged to give expedited consideration to permit applications under parts C and D of subchapter I of this chapter for any source qualifying for an extension under this section.

**(f) Prohibition**

It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, or any regulations of permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

(July 14, 1955, ch. 360, title IV, §409, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2619.)

**§ 7651i. Election for additional sources**

**(a) Applicability**

The owner or operator of any unit that is not, nor will become, an affected unit under section 7651b(e), 7651c, or 7651d of this title, or that is a process source under subsection (d), that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subchapter. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 7651g of this title. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit, or source, shall be allocated allowances, and be an affected unit for purposes of this subchapter.

**(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**

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.

**(d) Process sources**

Not later than 18 months after November 15, 1990, the Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this subchapter. The Administrator shall, by regulation, define the sources that may be designated; specify the emissions limitation; specify the operating, emission baseline, and other data requirements; prescribe CEMS or other monitoring requirements; and promulgate permit, reporting, and any other requirements necessary to implement such a program.

**(e) Allowances and permits**

The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c) or (d), in accordance with

<sup>2</sup>So in original. Probably should be "this".