

112TH CONGRESS
1ST SESSION

S. 1833

To provide additional time for compliance with, and coordinating of, the compliance schedules for certain rules of the Environmental Protection Agency.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 2011

Mr. MANCHIN (for himself, Mr. COATS, Mr. NELSON of Nebraska, and Mr. CORKER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide additional time for compliance with, and coordinating of, the compliance schedules for certain rules of the Environmental Protection Agency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Compliance Act
5 of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) AFFECTED OWNER OR OPERATOR.—The
5 term “affected owner or operator” means an owner
6 or operator of an electric utility steam generating
7 unit that is subject to—

8 (A) any emissions standard for hazardous
9 air pollutants from electric utility steam gener-
10 ating units that the Administrator may promul-
11 gate based on the proposed rule entitled “Na-
12 tional Emission Standards for Hazardous Air
13 Pollutants From Coal- and Oil-Fired Electric
14 Utility Steam Generating Units and Standards
15 of Performance for Fossil-Fuel-Fired Electric
16 Utility, Industrial-Commercial-Institutional,
17 and Small Industrial-Commercial-Institutional
18 Steam Generating Units” (76 Fed. Reg. 24976
19 (May 3, 2011)); or

20 (B) the final rule entitled “Federal Imple-
21 mentation Plans: Interstate Transport of Fine
22 Particulate Matter and Ozone and Correction of
23 SIP Approvals” (76 Fed. Reg. 48208 (August
24 8, 2011)).

1 (3) SECRETARY.—The term “Secretary” means
2 the Secretary of Energy.

3 **SEC. 3. COMPLIANCE PERIOD FOR UTILITY MACT STAND-**
4 **ARDS.**

5 (a) EXTENSION OF COMPLIANCE DATE.—

6 (1) IN GENERAL.—Notwithstanding title I of
7 the Clean Air Act (42 U.S.C. 7401 et seq.), the Ad-
8 ministrators shall provide an extension, for the period
9 described in paragraph (2), of the deadline to com-
10 ply with any emissions standards for hazardous air
11 pollutants from electric utility steam generating
12 units that the Administrator may promulgate based
13 on the proposed rule entitled “National Emission
14 Standards for Hazardous Air Pollutants From Coal-
15 and Oil-Fired Electric Utility Steam Generating
16 Units and Standards of Performance for Fossil-
17 Fuel-Fired Electric Utility, Industrial-Commercial-
18 Institutional, and Small Industrial-Commercial-Insti-
19 tutional Steam Generating Units” (76 Fed. Reg.
20 24976 (May 3, 2011)).

21 (2) DESCRIPTION OF EXTENSION PERIOD.—The
22 period referred to in paragraph (1) is a period of not
23 less than an additional 2 years, as measured begin-
24 ning on the final day of the applicable 3-year compli-

1 ance period required under section 112(i)(3)(A) of
2 the Clean Air Act (42 U.S.C. 7412(i)(3)(A)).

3 (b) SAVINGS CLAUSE.—Nothing in this section modi-
4 fies, limits, or otherwise affects the authority to extend
5 the compliance schedule for any emissions standards de-
6 scribed in subsection (a)(1) pursuant to paragraph (3)(B)
7 or (4) of section 112(i) of the Clean Air Act (42 U.S.C.
8 7412(i)).

9 **SEC. 4. COMPLIANCE PERIOD FOR CROSS-STATE AIR POL-
10 LUTION RULE.**

11 (a) EXTENSION OF COMPLIANCE DATE.—Notwith-
12 standing title I of the Clean Air Act (42 U.S.C. 7401 et
13 seq.), the Administrator shall—

14 (1) provide adequate time for each State to
15 adopt and submit plan revisions under section 110
16 of that Act (42 U.S.C. 7410) for the implementation
17 of the emissions reductions of sulfur dioxide and ni-
18 trogen oxides from electric utility steam generating
19 units required by the final rule entitled “Federal Im-
20 plementation Plans: Interstate Transport of Fine
21 Particulate Matter and Ozone and Correction of SIP
22 Approvals” (76 Fed. Reg. 48208 (August 8, 2011));
23 and

24 (2) extend the date by which each State shall
25 implement the emissions reductions required by the

1 rule described in paragraph (1) until not earlier
2 than—

3 (A) January 1, 2015, for first phase of the
4 emissions reductions; and

5 (B) January 1, 2017, for the second phase
6 of the emissions reductions.

7 (b) SAVINGS CLAUSE.—Nothing in this section modi-
8 fies the effective date, or otherwise modifies, limits, or af-
9 fects the emissions reduction requirements, established by
10 the rule described in subsection (a)(1).

11 **SEC. 5. EXPEDITIOUS IMPLEMENTATION OF EMISSIONS RE-**
12 **DUCTIONS.**

13 (a) IMPLEMENTATION PLAN.—

14 (1) DEVELOPMENT.—In accordance with sub-
15 section (b), each affected owner or operator shall de-
16 velop a plan for the expeditious implementation of
17 the applicable emissions reduction requirements
18 specified in sections 3 and 4.

19 (2) SUBMISSION.—Not later than December 1,
20 2012, each affected owner or operator shall submit
21 to the Administrator and the Secretary the imple-
22 mentation plan developed under paragraph (1).

23 (b) REQUIREMENTS.—In developing an implementa-
24 tion plan under subsection (a)(1), an affected owner or
25 operator shall—

1 (1) include all electric utility steam generating
2 units under the common control of the affected
3 owner or operator;

4 (2) designate the units within the plan that are
5 scheduled for permanent retirement or continued op-
6 eration through the planning period ending on De-
7 cember 31, 2018;

8 (3) in accordance with subsection (c), provide a
9 schedule that establishes—

10 (A) in the case of each unit designated for
11 permanent retirement under paragraph (2), the
12 proposed date by which the unit will perma-
13 nently cease all operations to generate elec-
14 tricity; and

15 (B) in the case of each unit designated for
16 continued operation under paragraph (2), the
17 intermediate milestones and the final comple-
18 tion date for the implementation of the control
19 measures that are necessary to achieve compli-
20 ance with the applicable emissions reductions
21 requirements specified in sections 3 and 4; and

22 (4) in accordance with subsection (d), ensure
23 that the implementation plan does not impair or
24 threaten to impair the reliability of the local or re-
25 gional electricity system.

1 (c) ELEMENTS OF SCHEDULE.—The schedule re-
2 quired under subsection (b)(3) shall contain each of the
3 following elements:

4 (1) In the case of each unit designated for re-
5 tirement under subsection (b)(2), a proposed date
6 for the permanent cessation of all operations to gen-
7 erate electricity in accordance with a schedule that—

8 (A) is as expeditious as practicable; but

9 (B) provides sufficient time for the imple-
10 mentation of any mitigation measures that may
11 be necessary to ensure the reliability of the local
12 or regional electricity system.

13 (2) In the case of each unit designated for con-
14 tinued operation under subsection (b)(2)—

15 (A) a description of the control measures
16 that the affected owner or operator plans to im-
17 plement in order to comply with the applicable
18 emissions reduction requirements specified in
19 sections 3 and 4;

20 (B) intermediate milestones (which may in-
21 clude applying for permits and regulatory ap-
22 provals, completing phases of the engineering
23 design, placing orders for control equipment,
24 commencing construction, and benchmarks for
25 completion of major phases of construction)

1 that the affected owner or operator plans to
2 meet in order to ensure the expeditious imple-
3 mentation of each control measure identified
4 under subparagraph (A); and

5 (C) a proposed date for completion of each
6 control measure identified under subparagraph
7 (A).

8 (d) PROCEDURES FOR ENSURING ELECTRIC RELI-
9 ABILITY.—

10 (1) REVIEW OF DRAFT PLAN.—

11 (A) IN GENERAL.—Not later than July 1,
12 2012, each affected owner or operator shall
13 submit a draft implementation plan to the Elec-
14 tric Reliability Organization (as defined in sec-
15 tion 215(a) of the Federal Power Act (16
16 U.S.C. 824o(a)) (referred to in this section as
17 “ERO”).

18 (B) SCOPE OF REVIEW.—ERO, in con-
19 sultation with appropriate regional reliability
20 organizations, shall—

21 (i) review each implementation plan
22 submitted under subparagraph (A);

23 (ii) assess—

1 (I) the feasibility of the imple-
2 mentation of the combined plans for
3 the region; and

4 (II) the impacts of the combined
5 schedules contained in those plans on
6 the reliability and adequacy of the
7 bulk power system; and

8 (iii) recommend any revisions to the
9 schedules contained in the implementation
10 plans to provide adequate time for the im-
11 plementation of any mitigation measures
12 that may be necessary to ensure the reli-
13 ability and adequacy of the bulk electric
14 system.

15 (2) MODIFICATION OF DRAFT PLAN.—

16 (A) CONSULTATION.—

17 (i) IN GENERAL.—ERO shall consult
18 with each affected owner or operator that
19 submits a draft implementation plan under
20 paragraph (1)(A).

21 (ii) REVISIONS.—Based on the con-
22 sultation under clause (i), ERO and the af-
23 fected owner or operator shall develop any
24 revisions to the schedule contained in the
25 draft plan of the affected owner or oper-

1 ator that may be necessary to address the
2 recommendations developed by ERO dur-
3 ing the review of the draft plan.

4 (B) FINALIZATION OF DRAFT PLAN.—The
5 consultations under this paragraph shall be
6 completed as expeditiously as practicable to fa-
7 cilitate timely submission of the plans in ac-
8 cordance with subsection (a)(2).

9 (e) ISSUANCE AND IMPLEMENTATION OF FINAL
10 PLANS.—

11 (1) PUBLICATION.—Not later than 60 days
12 after the date of submission of a draft plan to ERO
13 under subsection (d)(1)(A), the Secretary shall pub-
14 lish and submit to the Administrator the final imple-
15 mentation plan.

16 (2) IMPLEMENTATION.—Not later than March
17 31, 2015, and annually thereafter through 2018, the
18 Secretary shall submit to the Administrator an an-
19 nual report that describes the progress made during
20 the reporting period on the expeditious implementa-
21 tion of the necessary emissions control measures in
22 a manner that ensures the reliability of the local and
23 regional electricity systems.

24 (f) ANNUAL REPORTS.—

1 (1) REQUIREMENT.—Not later than December
2 1, 2014, and annually thereafter, each affected
3 owner or operator that has submitted an implemen-
4 tation plan under subsection (a)(2) shall submit to
5 the Administrator and the Secretary a report de-
6 scribing the progress made during the reporting pe-
7 riod in implementing the plan, including—

8 (A) all milestones achieved; and

9 (B)(i) any deviations from the intermediate
10 milestones established by the schedule contained
11 in the plan; and

12 (ii) all measures carried out to resume im-
13 plementation according to that schedule.

14 (2) ADJUSTMENTS TO IMPLEMENTATION
15 PLAN.—If an affected owner or operator determines
16 that an adjustment to any retirement date or the
17 final date for completion of any control measure is
18 necessary, the affected owner or operator—

19 (A) may submit to the Administrator and
20 the Secretary a request for a modification of
21 the schedule contained in the implementation
22 plan; and

23 (B) shall develop, review, and obtain ap-
24 proval of the modified schedule in the same

1 manner as the initial implementation plan es-
2 tablished under this section.

○