

Environmental Protection Agency

§ 77.3

maintenance labor costs, operating labor costs, and fan electricity costs. All capital and operating costs are to be reported in dollars with the year of expenditure or estimate specified for each component.

[60 FR 18761, Apr. 13, 1995, as amended at 61 FR 67164, Dec. 19, 1996; 62 FR 3464, Jan. 23, 1997]

PART 77—EXCESS EMISSIONS

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AUTHORITY: 42 U.S.C. 7601 and 7651, et seq.

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§ 77.1 Purpose and scope.

(a) This part sets forth the excess emissions offset planning and offset penalty requirements under section 411 of the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Public Law 101-549 (November 15, 1990). These requirements shall apply to the owners and operators and, to the extent applicable, the designated representative of each affected unit and affected source under the Acid Rain Program.

(b) Nothing in this part shall limit or otherwise affect the application of sections 112(r)(9), 113, 114, 120, 303, 304, or 306 of the Act, as amended. Any allowance deduction, excess emission penalty, or interest required under this part shall not affect the liability of the affected unit's and affected source's owners and operators for any additional fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Act.

§ 77.2 General.

Part 72 of this chapter, including §§ 72.2 (definitions), 72.3 (measurements, abbreviations, and acronyms), 72.4 (Federal authority), 72.5 (State authority), 72.6 (applicability), 72.7 (new units exemption), 72.8 (retired units exemption), 72.9 (standard requirements),

72.10 (availability of information), and 72.11 (computation of time), shall apply to this part. The procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

§ 77.3 Offset plans for excess emissions of sulfur dioxide.

(a) *Applicability.* The owners and operators of any affected source that has excess emissions of sulfur dioxide in any calendar year shall be liable to offset the amount of such excess emissions by an equal amount of allowances from the source's compliance account.

(b) *Deadline.* Not later than 60 days after the end of any calendar year during which an affected source had excess emissions of sulfur dioxide (except for any increase in excess emissions under § 72.91(b) of this chapter), the designated representative for the source shall submit to the Administrator a complete proposed offset plan to offset those emissions. Each day after the 60-day deadline that the designated representative fails to submit a complete proposed offset plan shall be a separate violation of this part.

(c) *Number of Plans.* The designated representative shall submit a proposed offset plan for each affected source with excess emissions of sulfur dioxide.

(d) *Contents of Plan.* A complete proposed offset plan shall include the following elements in a format prescribed by the Administrator for the source and for the calendar year for which the plan is submitted:

(1) Identification of the source.

(2) If the source had excess emissions for the calendar year prior to the year for which the plan is submitted, an explanation of how and why the excess emissions occurred for the year for which the plan is submitted and a description of any measures that were or will be taken to prevent excess emissions in the future.

(3) At the designated representative's option, the number of allowances to be deducted from the source's compliance account's to offset the excess emissions for the year for which the plan is submitted.

(4) At the designated representative's option, the serial numbers of the allowances that are to be deducted from the source's compliance account's.

(5) A statement either that allowances to offset the excess emissions are to be deducted immediately from the source's compliance account or that they are to be deducted on a specified date in a subsequent year.

(6) If the proposed offset plan does not propose an immediate deduction of allowances under paragraph (d)(5) of this section, a demonstration that such a deduction will interfere with electric reliability.

[58 FR 3757, Jan. 11, 1993, as amended at 62 FR 55487, Oct. 24, 1997; 70 FR 25337, May 12, 2005]

§ 77.4 Administrator's action on proposed offset plans.

(a) *Determination of Completeness.* The Administrator will determine whether the proposed offset plan is complete within 30 days of receipt by the Administrator. The offset plan shall be deemed complete if the Administrator fails to notify the designated representative to the contrary within 30 days of receipt or when the Administrator approves the offset plan and deducts allowances in accordance with paragraph (b)(1) of this section.

(b) *Review of proposed offset plans.* (1) If the designated representative submits a complete proposed offset plan for immediate deduction, from the source's compliance account, of allowances required to offset excess emissions of sulfur dioxide, the Administrator will approve the proposed offset plan without further review and will serve written notice of any approval on the designated representative. The Administrator will also give notice of any approval in the FEDERAL REGISTER. The plans will be incorporated in the unit's Acid Rain permit in accordance with § 72.84 of this chapter (automatic permit amendment) and will not be subject to the requirements of paragraphs (d) through (k) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, the Administrator may, in his or her discretion, require that the proposed offset plan under paragraph (b)(1) of this section be reviewed under paragraphs (c) through (k) of

this section. The Administrator may exercise such discretion where he or she determines that review of the plan is necessary to ensure compliance with the emissions limitation and reduction goals or other purposes of title IV of the Act.

(3) If the designated representative submits a complete proposed offset plan that does not meet the requirements of paragraph (b)(1) of this section, the Administrator will review the plan under paragraphs (c) through (k) of this section.

(c) *Supplemental Information.* (1)(i) Regardless of whether the proposed offset plan is complete under paragraph (a) of this section, the Administrator may require submission of any additional information that the Administrator determines is necessary to approve an offset plan.

(ii) Such supplemental information may include, but is not limited to:

(A) A description of the measures that are proposed to be taken to ensure that the source will have sufficient allowances to offset the excess emissions and to prevent excess emissions in future years;

(B) A schedule of compliance with appropriate increments of progress for the proposed measures; and

(C) A schedule for the submission of progress reports, and supporting documentation, describing actions taken and actions remaining to be taken under the schedule of compliance and any proposed adjustments to the schedule of compliance.

(2)(i) The designated representative shall submit the information required under paragraph (c)(1) of this section within a reasonable period determined by the Administrator.

(ii) If the designated representative fails to submit the supplemental information within the required time period, the Administrator may disapprove the proposed offset plan.

(d) *Draft Offset Plan.* (1) After the Administrator receives a complete proposed offset plan and any supplemental information, the Administrator will prepare a draft offset plan that incorporates in whole, in part, or with changes or conditions as appropriate, the proposed offset plan or disapprove a draft offset plan for the affected