

## Environmental Protection Agency

## § 72.41

the Act may be conditionally proposed only to the extent provided in part 76 of this chapter.

(1) To activate a conditionally-approved Acid Rain compliance option, the designated representative shall notify the permitting authority in writing that the conditionally-approved compliance option will actually be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in paragraph (b)(1) of this section, the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on activation under subpart D of this part and part 76 of this chapter.

(2) The notification under paragraph (c)(1) of this section shall specify the first calendar year and the last calendar year for which the conditionally approved Acid Rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

(3) Upon submission of a notification meeting the requirements of paragraphs (c) (1) and (2) of this section, the conditionally-approved Acid Rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally-approved compliance option.

(4) A notification meeting the requirements of paragraphs (c) (1) and (2) of this section will revise the unit's permit in accordance with § 72.83 (administrative permit amendment).

(d) *Termination of compliance option.*

(1) The designated representative for a unit may terminate an Acid Rain compliance option by notifying the permitting authority in writing that an approved compliance option will be terminated beginning January 1 of a specified year. If the compliance option includes a plan described in paragraph (b)(1) of this section, the designated

representative for each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on termination under subpart D of this part and part 76 of this chapter.

(2) The notification under paragraph (d)(1) of this section shall specify the calendar year for which the termination will take effect.

(3) Upon submission of a notification meeting the requirements of paragraphs (d) (1) and (2) of this section, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the Acid Rain compliance option to be terminated.

(4) A notification meeting the requirements of paragraphs (d) (1) and (2) of this section will revise the unit's permit in accordance with § 72.83 (administrative permit amendment).

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 62 FR 55481, Oct. 24, 1997; 64 FR 25842, May 13, 1999; 70 FR 25334, May 12, 2005]

### § 72.41 Phase I substitution plans.

(a) *Applicability.* This section shall apply during Phase I to the designated representative of:

(1) Any unit listed in table 1 of § 73.10(a) of this chapter; and

(2) Any other existing utility unit that is an affected unit under this part, provided that this section shall not apply to a unit under section 410 of the Act.

(b)(1) The designated representative may include, in the Acid Rain permit application for a unit under paragraph (a)(1) of this section, a substitution plan under which one or more units under paragraph (a)(2) of this section are designated as substitution units, provided that:

(i) Each unit under paragraph (a)(2) of this section is under the control of the owner or operator of each unit under paragraph (a)(1) of this section that designates the unit under paragraph (a)(2) of this section as a substitution unit; and

(ii) In accordance with paragraph (c)(3) of this section, the emissions reductions achieved under the plan shall be the same or greater than would have

been achieved by all units governed by the plan without such plan.

(2) The designated representative of each source with a unit designated as a substitution unit in any plan submitted under paragraph (b)(1) of this section shall incorporate in the permit application each such plan.

(3) The designated representative may submit a substitution plan not later than 6 months (or 90 days if submitted in accordance with § 72.82), or a notification to activate a conditionally approved plan in accordance with § 72.40(c) not later than 60 days, before the allowance transfer deadline applicable to the first year for which the plan is to take effect.

(c) *Contents of a substitution plan.* A complete substitution plan shall include the following elements in a format prescribed by the Administrator:

(1) Identification of each unit under paragraph (a)(1) of this section and each substitution unit to be governed by the substitution plan. A unit shall not be a substitution unit in more than one substitution plan.

(2) Except where the designated representative requests conditional approval of the plan, the first calendar year and, if known, the last calendar year in which the substitution plan is to be in effect. Unless the designated representative specifies an earlier calendar year, the last calendar year will be deemed to be 1999.

(3) Demonstration that the total emissions reductions achieved under the substitution plan will be equal to or greater than the total emissions reductions that would have been achieved without the plan, as follows:

(i) For each substitution unit:

(A) The unit's baseline.

(B) Each of the following: the unit's 1985 actual SO<sub>2</sub> emissions rate; the unit's 1985 allowable SO<sub>2</sub> emissions rate; the unit's 1989 actual SO<sub>2</sub> emissions rate; the unit's 1990 actual SO<sub>2</sub> emissions rate; and, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covering the unit for 1995-1999. For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lbs/mmBtu in accordance with appendix B

of this part. Where the most stringent emissions limitation is not the same for every year in 1995-1999, the most stringent emissions limitation shall be stated separately for each year.

(C) The lesser of: the unit's 1985 actual SO<sub>2</sub> emissions rate; the unit's 1985 allowable SO<sub>2</sub> emissions rate; the greater of the unit's 1989 or 1990 actual SO<sub>2</sub> emissions rate; or, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covering the unit for 1995-99. Where the most stringent emissions limitation is not the same for every year during 1995-1999, the lesser of the emissions rates shall be determined separately for each year using the most stringent emissions limitation for that year.

(D) The product of the baseline in paragraph (c)(3)(i)(A) of this section and the emissions rate in paragraph (c)(3)(i)(C) of this section, divided by 2000 lbs/ton. Where the most stringent emissions limitation is not the same for every year during 1995-1999, the product in the prior sentence shall be calculated separately for each year using the emissions rate determined for that year in paragraph (c)(3)(i)(C) of this section.

(ii)(A) The sum of the amounts in paragraph (c)(3)(i)(D) of this section for all substitution units to be governed by the plan. Except as provided in paragraph (c)(3)(ii)(B) of this section, this sum is the total number of allowances available each year under the substitution plan.

(B) Where the most stringent unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation is not the same for every year during 1995-1999, the sum in paragraph (c)(3)(ii)(A) of this section shall be calculated separately for each year using the amounts calculated for that year in paragraph (c)(3)(i)(D) of this section. Each separate sum is the total number of allowances available for the respective year under the substitution plan.

(iii) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covers the unit for any year

during 1995–1999, the designated representative shall state each such limitation and propose a method for applying the unit-specific and non-unit-specific emissions limitations under paragraph (d) of this section.

(4) Distribution of substitution allowances. (i) A statement that the allowances in paragraph (c)(3)(ii) of this section are not to be distributed to any units under paragraph (a)(1) of this section that are to be governed by the plan; or

(ii) A list showing any annual distribution of the allowances in paragraph (c)(3)(ii) of this section from a substitution unit to a unit under paragraph (a)(1) of this section that, under the plan, designates the substitution unit.

(5) A demonstration that the substitution plan meets the requirement that each unit under paragraph (a)(2) of this section is under the control of the owner or operator of each unit under paragraph (a)(1) of this section that designates the unit under paragraph (a)(2) of this section as a substitution unit. The demonstration shall be one of the following:

(i) If the unit under paragraph (a)(1) of this section has one or more owners or operators that have an aggregate percentage ownership interest of 50 percent or more in the capacity of the unit under paragraph (a)(2) of this section or the units have a common operator, a statement identifying such owners or operators and their aggregate percentage ownership interest in the capacity of the unit under paragraph (a)(2) of this section or identifying the units' common operator. The designated representative shall submit supporting documentation upon request by the Administrator.

(ii) If the unit under paragraph (a)(1) of this section has one or more owners or operators that have an aggregate percentage ownership interest of at least 10 percent and less than 50 percent in the capacity of the unit under paragraph (a)(2) of this section and the units do not have a common operator, a statement identifying such owners or operators and their aggregate percentage ownership interest in the capacity of the unit under paragraph (a)(2) of this section and stating that each such

owner or operator has the contractual right to direct the dispatch of the electricity that, because of its ownership interest, it has the right to receive from the unit under paragraph (a)(2) of this section. The fact that the electricity that such owner or operator has the right to receive is centrally dispatched through a power pool will not be the basis for determining that the owner or operator does not have the contractual right to direct the dispatch of such electricity. The designated representative shall submit supporting documentation upon request by the Administrator.

(iii) A copy of an agreement that is binding on the owners and operators of the unit under paragraph (a)(2) of this section and the owners and operators of the unit under paragraph (a)(1) of this section, provides each of the following elements, and is supported by documentation meeting the requirements of paragraph (c)(6) of this section:

(A) The owners and operators of the unit under paragraph (a)(2) of this section must not allow the unit to emit sulfur dioxide in excess of a maximum annual average SO<sub>2</sub> emissions rate (in lbs/mmBtu), specified in the agreement, for each year during the period that the substitution plan is in effect.

(B) The maximum annual average SO<sub>2</sub> emissions rate for the unit under paragraph (a)(2) of this section shall not exceed 70 percent of the lesser of: the unit's 1985 actual SO<sub>2</sub> emissions rate; the unit's 1985 allowable SO<sub>2</sub> emissions rate; the greater of the unit's 1989 or 1990 actual SO<sub>2</sub> emissions rate; the most stringent federally enforceable or State enforceable SO<sub>2</sub> emissions limitation, as of November 15, 1990, applicable to the unit in Phase I; or the lesser of the average actual SO<sub>2</sub> emissions rate or the most stringent federally enforceable or State enforceable SO<sub>2</sub> emissions limitation for the unit for four consecutive quarters that immediately precede the 30-day period ending on the date the substitution plan is submitted to the Administrator. If the unit is covered by a non-unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation in the four consecutive quarters or, as of November 15, 1990, in Phase I,

the Administrator will determine, on a case-by-case basis, how to apply the non-unit-specific emissions limitation for purposes of determining whether the maximum annual average SO<sub>2</sub> emissions rate meets the requirement of the prior sentence. If a non-unit-specific federally enforceable SO<sub>2</sub> emissions limitation is not different from a non-unit-specific federally enforceable SO<sub>2</sub> emissions limitation that was effective and applicable to the unit in 1985, the Administrator will apply the non-unit-specific SO<sub>2</sub> emissions limitation by using the 1985 allowable SO<sub>2</sub> emissions rate.

(C) For each year that the actual SO<sub>2</sub> emissions rate of the unit under paragraph (a)(2) of this section exceeds the maximum annual average SO<sub>2</sub> emissions rate, the designated representative of the unit under paragraph (a)(1) of this section must surrender allowances for deduction from the Allowance Tracking System account of the unit under paragraph (a)(1) of this section. The designated representative shall surrender allowances authorizing emissions equal to the baseline of the unit under paragraph (a)(2) of this section multiplied by the difference between the actual SO<sub>2</sub> emissions rate of the unit under paragraph (a)(2) of this section and the maximum annual average SO<sub>2</sub> emissions rate and divided by 2000 lbs/ton. The surrender shall be made by the allowance transfer deadline of the year of the exceedance, and the surrendered allowances shall have the same or an earlier compliance use date as the allowances allocated to the unit under paragraph (a)(2) of this section for that year. The designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(D) The unit under paragraph (a)(2) of this section and the unit under paragraph (a)(1) of this section shall designate a common designated representative during the period that the substitution plan is in effect. Having a common alternate designated representative shall not satisfy the requirement in the prior sentence.

(E) Except as provided in paragraph (c)(6)(i) of this section, the actual SO<sub>2</sub> emissions rate for any year and the average actual SO<sub>2</sub> emissions rate for any period shall be determined in accordance with part 75 of this chapter.

(6) A demonstration under paragraph (c)(5)(iii) of this section shall include the following supporting documentation:

(i) The calculation of the average actual SO<sub>2</sub> emissions rate and the most stringent federally enforceable or State enforceable SO<sub>2</sub> emissions limitation for the unit for the four consecutive quarters that immediately preceded the 30-day period ending on the date the substitution plan is submitted to the Administrator. To the extent that the four consecutive quarters include a quarter prior to January 1, 1995, the SO<sub>2</sub> emissions rate for the quarter shall be determined applying the methodology for calculating SO<sub>2</sub> emissions set forth in appendix C of this part. This methodology shall be applied using data submitted for the quarter to the Secretary of Energy on United States Department of Energy Form 767 or, if such data has not been submitted for the quarter, using the data prepared for such submission for the quarter.

(ii) A description of the actions that will be taken in order for the unit under paragraph (a)(2) of this section to comply with the maximum annual average SO<sub>2</sub> emissions rate under paragraph (c)(5)(iii) of this section.

(iii) A description of any contract for implementing the actions described in paragraph (c)(6)(ii) of this section that was executed before the date on which the agreement under paragraph (c)(5)(iii) of this section is executed. The designated representative shall state the execution date of each such contract and state whether the contract is expressly contingent on the agreement under paragraph (c)(5)(iii) of this section.

(iv) A showing that the actions described under paragraph (c)(6)(ii) of this section will not be implemented during Phase I unless the unit is approved as a substitution unit.

(7) The special provisions in paragraph (e) of this section.

## Environmental Protection Agency

## § 72.41

(d) *Administrator's action.* (1) If the Administrator approves a substitution plan, he or she will allocate allowances to the Allowance Tracking System accounts of the units under paragraph (a)(1) of this section and substitution units, as provided in the approved plan, upon issuance of an Acid Rain permit containing the plan, except that if the substitution plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan.

(2) In no event shall allowances be allocated to a substitution unit, under an approved substitution plan, for any year in excess of the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section, as adjusted by the Administrator in approving the plan.

(3) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covers the unit for any year during 1995-1999, the Administrator will specify on a case-by-case basis a method for using unit-specific and non-unit-specific emissions limitations in allocating allowances to the substitution unit. The specified method will not treat a non-unit-specific emissions limitation as a unit-specific emissions limitation and will not result in substitution units retaining allowances allocated under paragraph (d)(1) of this section for emissions reductions necessary to meet a non-unit-specific emissions limitation. Such method may require an end-of-year review and the adjustment of the allowances allocated to the substitution unit and may require the designated representative of the substitution unit to surrender allowances by the allowance transfer deadline of the year that is subject to the review. Any surrendered allowances shall have the same or an earlier compliance use date as the allowances originally allocated for the year, and the designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, such allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(e) *Special provisions—(1) Emissions Limitations.* (i) Each substitution unit governed by an approved substitution

plan shall become a Phase I unit from January 1 of the year for which the plan takes effect until January 1 of the year for which the plan is no longer in effect or is terminated. The designated representative of a substitution unit shall surrender allowances, and the Administrator will deduct allowances, in accordance with paragraph (d)(3) of this section.

(ii) Each unit under paragraph (a)(1) of this section, and each substitution unit, governed by an approved substitution plan shall be subject to the Acid Rain emissions limitations for nitrogen oxides in accordance with part 76 of this chapter.

(iii) Where an approved substitution plan includes a demonstration under paragraphs (c)(5)(iii) and (c)(6) of this section.

(A) The owners and operators of the substitution unit covered by the demonstration shall implement the actions described under paragraph (c)(6)(ii) of this section, as adjusted by the Administrator in approving the plan or in revising the permit. The designated representative may submit proposed permit revisions changing the description of the actions to be taken in order for the substitution unit to achieve the maximum annual average SO<sub>2</sub> emissions rate under the approved plan and shall include in any such submission a showing that the actions in the changed description will not be implemented during Phase I unless the unit remains a substitution unit. The permit revision will be treated as an administrative amendment, except where the Administrator determines that the change in the description alters the fundamental nature of the actions to be taken and that public notice and comment will contribute to the decision-making process, in which case the permit revision will be treated as a permit modification or, at the option of the designated representative, a fast-track modification.

(B) The designated representative of the unit under paragraph (a)(1) of this section shall surrender allowances, and the Administrator will deduct allowances, in accordance with paragraph (c)(5)(iii)(C) of this section. The surrender and deduction of allowances as required under the prior sentence shall

be the only remedy under the Act for a failure to meet the maximum annual average SO<sub>2</sub> emissions rate, provided that, if such deduction of allowance results in excess emissions, the remedies for excess emissions shall be fully applicable.

(2) *Liability.* The owners and operators of a unit governed by an approved substitution plan shall be liable for any violation of the plan or this section at that unit or any other unit that is the first unit's substitution unit or for which the first unit is a substitution unit under the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(3) *Termination.* (i) A substitution plan shall be in effect only in Phase I for the calendar years specified in the plan or until the calendar year for which a termination of the plan takes effect, provided that no substitution plan shall be terminated, and no unit shall be de-designated as a substitution unit, before the end of Phase I if the substitution unit serves as a control unit under a Phase I extension plan.

(ii) To terminate a substitution plan for a given calendar year prior to the last year for which the plan was approved:

(A) A notification to terminate in accordance with §72.40(d) shall be submitted no later than 60 days before the allowance transfer deadline applicable to the given year; and

(B) In the notification to terminate, the designated representative of each unit governed by the plan shall state that he or she surrenders for deduction from the unit's Allowance Tracking System account allowances equal in number to, and with the same or an earlier compliance use date as, those allocated under paragraph (d)(1) of this section for all calendar years for which the plan is to be terminated. The designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, allowances will be deducted on a first-in, first-out basis under §73.35(c)(2) of this chapter.

(iii) If the requirements of paragraph (e)(3)(ii) of this section are met and upon revision of the permit to terminate the substitution plan, the Admin-

istrator will deduct the allowances specified in paragraph (e)(3)(ii)(B) of this section. No substitution plan shall be terminated, and no unit shall be de-designated as a Phase I unit, unless such deduction is made.

(iv)(A) If there is a change in the ownership interest of the owners or operators of any unit under a substitution plan approved as meeting the requirements of paragraph (c)(5)(i) or (ii) of this section or a change in such owners' or operators' right to direct dispatch of electricity from a substitution unit under such a plan and the demonstration under paragraph (c)(5)(i) or (ii) of this section cannot be made, then the designated representatives of the units governed by this plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made.

(B) Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if there is a change in the agreement under paragraph (c)(5)(iii) of this section and a demonstration that the agreement, as changed, meets the requirements of paragraph (c)(5)(iii) cannot be made, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if the requirements of the first sentence of paragraph (e)(1)(iii)(A) of this section are not met during a calendar year, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of such calendar year.

(C) If the plan is not terminated in accordance with paragraphs (e)(3)(iv)(A) or (B) of this section, the Administrator, on his or her own motion, will terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

(D) Where a substitution unit and the Phase I unit designating the substitution unit in an approved substitution plan have a common owner, operator, or designated representative during a year, the plan shall not be terminated under paragraphs (e)(3)(iv)(A), (B), or (C) of this section with regard to the substitution unit if the year is as specified in paragraph (e)(3)(iv)(D)(1) or (2) of this section and the unit received from the Administrator for the year, under the Partial Settlement in *Environmental Defense Fund v. Carol M. Browner*, No. 93-1203 (D.C. Cir. 1993) (signed May 4, 1993), a total number of allowances equal to the unit's baseline multiplied by the lesser of the unit's 1985 actual SO<sub>2</sub> emissions rate or 1985 allowable SO<sub>2</sub> emissions rate.

(1) Except as provided in paragraph (e)(3)(iv)(D)(2) of this section, paragraph (e)(3)(iv)(D) of this section shall apply to the first year in Phase I for which the unit is and remains an active substitution unit.

(2) If the unit has a Group 1 boiler under part 76 of this chapter and is and remains an active substitution unit during 1995, paragraph (e)(3)(iv)(D) of this section shall apply to 1995 and to the second year in Phase I for which the unit is and remains an active substitution unit.

(3) If there is a change in the owners, operators, or designated representative of the substitution unit or the Phase I unit during a year under paragraph (e)(3)(iv)(D)(1) or (2) of this section and, with the change, the units do not have a common owner, operator, or designated representative, then the designated representatives for such units shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. If the plan is not terminated in accordance with the prior sentence, the Administrator, on his or her own motion, will terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 40747, July 30, 1993; 59 FR 60230, 60238, Nov. 22, 1994; 62 FR 55481, Oct. 24, 1997]

#### § 72.42 Phase I extension plans.

(a) *Applicability.* (1) This section shall apply to any designated representative seeking a 2-year extension of the deadline for meeting Phase I sulfur dioxide emissions reduction requirements at any of the following types of units by applying for allowances from the Phase I extension reserve:

(i) A unit listed in table 1 of § 73.10(a) of this chapter;

(ii) A unit designated as a substitution unit in accordance with § 72.41; or

(iii) A unit designated as a compensating unit in accordance with § 72.43, except a compensating unit that is a new unit.

(2) A unit for which a Phase I extension is sought shall be either:

(i) A control unit, which shall be a unit under paragraph (a)(1) of this section and at which qualifying Phase I technology shall commence operation on or after November 15, 1990 but not later than December 31, 1996; or

(ii) A transfer unit, which shall be a unit under paragraph (a)(1)(i) of this section and whose Phase I emissions reduction obligation shall be transferred in whole or in part to one or more control units.

(3) A Phase I extension does not exempt the owner or operator for any unit governed by the Phase I extension plan from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.

(b) To apply for a Phase I extension:

(1) The designated representative for each source with a control unit may submit an early ranking application for a Phase I extension plan in person, beginning on the 40th day after publication of this subpart in the FEDERAL REGISTER, between the hours of 9 a.m. and 5 p.m. Eastern Standard Time at Acid Rain Division, Attn: Early Ranking, U.S. Environmental Protection Agency, 501 3rd Street NW., 4th floor, Washington, DC; or send the application by regular mail, certified mail, or overnight delivery service to Acid Rain Division, Attn: Early Ranking, U.S. Environmental Protection Agency, 6204 J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) By February 15, 1993: