

Environmental Protection Agency

§ 77.6

draft offset plan or disapproval of a draft offset plan. Public hearings will not be held on issues under paragraphs (h)(3) (i) and (ii) of this section.

(3) During a public hearing under this section, any person may submit oral or written comments concerning the draft offset plan or disapproval of a draft offset plan. The Administrator may set reasonable limits on the time allowed for oral statements and will require the submission of written summaries of each oral statement.

(4) The Administrator will assure that a record is made of the hearing.

(j) *Response to Comments.* (1) The Administrator will consider comments on the draft offset plan or disapproval of a draft offset plan received during the public comment period and any public hearing. The Administrator is not required to consider comments otherwise received.

(2) In approving or disapproving an offset plan, the Administrator will:

(i) Identify any draft offset plan provision or portion of the statement of basis that has been changed and the reasons for the change; and

(ii) Briefly describe and respond to relevant comments under paragraph (j)(1) of this section.

(k) *Approval and Effective Date of Excess Emissions Offset Plans.* (1) After the close of the public comment period, the Administrator will approve an offset plan requiring allowance deductions in an amount equal to the unit's tons of excess emissions or disapprove an offset plan. The Administrator will serve a copy of any approved offset plan and the response to comments on the designated representative for the affected unit involved and serve written notice of the approval or disapproval of the offset plan on any persons who are entitled to written notice under paragraphs (g)(2)(i) (B) and (C) of this section or who submitted written or oral comments on the approval or disapproval of the draft offset plan. The Administrator will also give notice in the FEDERAL REGISTER.

(2) The Administrator will approve an offset plan requiring immediate deduction from the unit's compliance subaccount of all allowances necessary to offset the excess emissions except to the extent the designated representa-

tive of the unit demonstrates that such a deduction will interfere with electric reliability.

(3) Upon approval of the offset plan by the Administrator, the offset plan will be incorporated into the Acid Rain permit in accordance with § 72.84 (automatic permit amendment) and shall supersede any inconsistent provision of the permit.

[58 FR 3757, Jan. 11, 1993, as amended at 62 FR 55487, Oct. 24, 1997; 62 FR 66279, Dec. 18, 1997]

§ 77.5 Deduction of allowances to offset excess emissions of sulfur dioxide.

(a) The Administrator will deduct allowances to offset excess emissions in accordance with the offset plan approved under § 77.4(b) (1) or (k) or in accordance with § 72.91(b) of this chapter.

(b) The designated representative shall hold enough allowances in the appropriate compliance subaccount to cover the deductions to be made in accordance with paragraph (a) or paragraph (c) of this section.

(c) If the designated representative does not submit a timely and complete proposed offset plan, or if the Administrator disapproves a proposed offset plan under § 77.4 (c) or (k), the Administrator will immediately deduct allowances, from the unit's compliance subaccount on a first-in, first-out basis in accordance with § 73.35(c)(2) of this chapter, equal to the amount of the unit's excess emissions of sulfur dioxide.

(d) If a compliance subaccount does not contain adequate allowances to offset the excess emissions, the Administrator will deduct the required allowances whenever allowances are recorded to that account.

§ 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.

(a)(1) If excess emissions of sulfur dioxide or nitrogen oxide occur at an affected unit during any year, the owners and operators of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

(2) If one or more affected units governed by an approved NO_x averaging plan under § 76.11 of this chapter fail