ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 74

[FRL–5892–3]

RIN 2060–AH36

Acid Rain Program: Revisions to Sulfur Dioxide Opt-Ins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act, as amended by Clean Air Act Amendments of 1990, (''the Act'') authorizes the Environmental Protection Agency (''EPA'' or ''Agency'') to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. This proposal is intended to promote participation in the opt-in program by clarifying existing regulations, allowing a limited exception to the general rule of one designated representative for all affected units at a source, revising the conditions under which the Agency may cancel current-year allowance allocations, and allowing thermal energy plans to be effective on a quarterly basis.

DATES: Comments on the regulations proposed by this action must be received on or before October 27, 1997, unless a hearing is requested by October 6, 1997. If a hearing is requested, written comments must be received by November 10, 1997.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than October 6, 1997. If a hearing is held it will take place October 9, 1997, beginning at 10:00 am.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–97–23) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Docket. Docket No. A–97–23, containing supporting information used to develop the proposal is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski at (202) 233–9074 Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; or the Acid Rain Hotline at (202) 233–9620. Electronic copies of this rulemaking and technical support documents can be accessed through the Acid Rain Division website at http://www.epa.gov/acidrain.

SUPPLEMENTARY INFORMATION:

I. Affected Entities

Entities potentially affected by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 74.2 of title 40 of the Code of Federal Regulations and the revised §§ 72.6, 72.7, 72.8, and 72.14 proposed on December 27, 1996 (61 FR 68340). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

The overall goal of the Acid Rain Program is to achieve significant environmental benefits through reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X), the primary precursors of acid rain. To achieve this goal at the lowest cost to society, the program employs both traditional and innovative, market-based approaches for controlling air pollution. In addition, the program encourages energy efficiency and promotes pollution prevention.

The Acid Rain Program departs from traditional regulatory methods by introducing an SO_2 allowance trading system that lowers the cost of reducing emissions by allowing electric utilities to seek out the least costly methods of control. Utility units affected under title IV are allocated allowances based on the product of their historic utilization and emission rates prescribed in the Clean Air Act. These units may trade allowances, provided that at the end of each year, each unit holds enough allowances to cover its annual SO_2 emissions.

Although the Acid Rain Program is mandated only for utility sources, section 410 provides opportunities for SO_2-emitting sources not otherwise affected by title IV requirements (e.g., industrial sources) to participate through the opt-in program. Entry of combustion sources into the opt-in program is voluntary. Opt-in sources are allocated allowances and, by making cost-effective emissions reductions so that their allowance allocations will exceed their emissions, will have allowances that may be sold in the SO_2 allowance trading system. These marketable allowances provide greater compliance flexibility for affected utility units.

III. Part 74: Opt-Ins

A. Designated Representative

Under the opt-in rules issued April 4, 1995 (60 FR 17100), combustion or process sources located at the same location as affected units are required to have the same designated representative as the affected units. EPA has received comment that, in some limited circumstances, the requirement for the same designated representative will inhibit entry or continued participation in the opt-in program of opt-in sources that could otherwise make cost-effective emissions reductions. The commenter described a situation where combustion sources and a process source are owned by an industrial company and Phase I units at the same affected source are partly owned by a utility. The industrial company uses electricity to operate the process sources and, for this purpose, generates electricity at its wholly-owned combustion sources and supplements the generation with electricity obtained from the utility-owned unit. The industrial company is concerned that having a single designated representative for all these facilities may result in confidential business information—particularly concerning

the process source operations and the industrial company's own generation costs—being available to the designated representative, who is an employee of the utility and would not otherwise have access to such information. According to the commenter, the industrial company's participation in the opt-in program may be jeopardized because of its concern over the potential competitive disadvantage that could result from this arrangement. The commenter raised the issue in a petition for review filed on June 5, 1995 challenging the existing opt-in regulations. On January 9, 1997, EPA and the commenter entered into a settlement of the litigation initiated by the June 5, 1995 petition.

In response to the above comment and consistent with the settlement, EPA is establishing a procedure for nonutility combustion or process sources located with affected utility units to elect an exception to the general requirement that there be only one designated representative for all affected units at a source. EPA is establishing this procedure for nonutililty opt-in sources because their participation, which Congress viewed as beneficial, in the Acid Rain Program is voluntary. Nonutility opt-in sources are part of industrial operations that are very different businesses from electric utilities. Although EPA recognizes the recent trend toward increased competition in the electricity market, the concern over confidentiality of business information and the potential adverse effect of disclosure of information on a company's competitiveness are likely to be greater for nonutility businesses. These factors are thus more likely to discourage industrial sources from opting in to the Acid Rain Program.

Under EPA's proposed new approach, the certifying official of an electing opt-in source must certify to the Administrator that the combustion or process source meets the following criteria: that the opt-in source (1) is located at the same source as one or more affected utility units and (2) is a nonutility opt-in source, i.e., has no owner or operator of which the principal business is the sale, transmission, or distribution of electricity to the public or that is a public utility under the jurisdiction of a State or local utility regulatory authority. In addition, a certificate of representation meeting the generally applicable requirements for such certificates must be submitted. The Administrator will rely on the submitted certificate, unless the Administrator determines that the opt-in source does not actually meet the election requirements.

EPA notes that its general approach has been, and continues to be, to make opt-in sources subject to the same requirements as other affected units. 60 FR 17101. In fact, EPA has previously explained that section 410 requires that combustion sources meet the same monitoring requirements as other affected units. 59 FR 50088, 50095 (1993); *see also* 42 U.S.C. 7651i(e) (requiring opt-in sources to meet the monitoring requirements of section 412 of the Clean Air Act). In deciding whether to impose on opt-in sources the same single-designated-representative requirement that other affected sources must meet, EPA must balance, on one hand, the importance of imposing consistent requirements on all affected units and, on the other hand, Congress' desire to encourage voluntary entry of opt-in sources into the Acid Rain Program. EPA believes that allowing, in a few cases in order to encourage voluntary participation, a separate designated representative for an opt-in source will not adversely affect the Acid Rain Program. EPA anticipates that there will be few opt-in sources that will qualify for the proposed election. Balancing these considerations, EPA is proposing to revise the regulations to allow for such limited exceptions.

B. Thermal Energy Plans

The opt-in rule allows combustion sources to become opt-in sources at the beginning of any calendar quarter, not only at the beginning of a calendar year. *See* 40 CFR 74.28. However, EPA notes that the thermal energy provision at § 74.47 only provides for calendar year plans. This may create a problem in cases where the replacement of thermal energy is supposed to begin some time after January 1 of the calendar year. The opt-in source would have to delay replacement of thermal energy for a period of up to almost 12 months after the replacement would otherwise begin to coordinate the replacement with the commencement of the thermal energy plan. EPA believes that allowing thermal energy plans to begin after the first calendar quarter provides additional flexibility to opt-in sources without unduly burdening the Agency because EPA anticipates that there will be few opt-in sources requesting such plans.

Therefore, EPA is proposing revisions to allow (and take account of the possibility of) the submission of thermal energy plans at the beginning of any calendar quarter. For example, certain revisions require that, where a thermal energy plan is to begin during a quarter after the first quarter, the plan must include information related to the amount of the replacement thermal energy to be provided for the first partial year of the plan. Information on the replacement thermal energy in subsequent full years of the plan must also be provided. The allowances transferred to the replacement unit are based on the amount of replacement thermal energy; for the first calendar year allowances will reflect the replacement energy provided during the partial year, and for any subsequent years, allowances will reflect the replacement energy during the full year.

C. Deduction of Allowances From ATS Accounts

The opt-in rule not only restricts transfer of future year opt-in allowances, it also allows EPA to cancel current-year opt-in allowances in the event that an opt-in source has excess emissions and has shut down. For operating opt-in sources, EPA draws upon future-year allowances in the opt-in's Allowance Tracking System (ATS) account to offset excess emissions. However, when the opt-in source shuts down, future-year allowances are eliminated and EPA retains the option of canceling opt-in allowances, even when those allowances have been transferred to other ATS accounts.

EPA has received comment that retaining such option may unduly restrict transfer of opt-in allowances and that the option is unnecessarily broad, considering EPA's other processes. This issue was raised in the June 5, 1995 petition for review of the existing opt-in regulations and is addressed in the January 9, 1997 settlement, which petition and settlement are discussed above. EPA agrees that EPA's recordation process and EPA's process regarding confirmation reports appear to generally offer sufficient protection to prevent transfer of opt-in allowances before the Agency is assured that those allowances are not needed to cover excess emissions.

Thus, in response to the comment and consistent with the settlement, EPA is proposing to provide that an opt-in allowance may not be deducted under § 74.50(a) from any ATS account, other than the account of the opt-in source allocated such allowance, (i) after EPA has completed the process of recordation as set forth in § 73.34(a) following the deduction of allowances from the opt-in source's compliance subaccount for the year for which such allowance may first be used or (ii) if the opt-in source claims under in an annual compliance certification report an estimated reduction in heat input from

improved efficiency, under § 74.44(a)(1)(B), after EPA has completed action on the confirmation report concerning such claimed reduction pursuant to §§ 74.44(c)(2)(iii)(E)(3)–(E)(5) for the year for which such allowance may first be used.

For any given compliance year and, for opt-in sources claiming reductions from improved efficiency, the recordation process and action on confirmation reports will probably be completed before the end of the year following the compliance year. For 1995, EPA actually completed the recordation process on July 2, 1996. For 1996, EPA completed the process on June 12, 1997. However, because confirmation reports are not due to EPA until July 1, EPA expects to complete action on such reports by September of the same year.

D. Miscellaneous

EPA is proposing a number of modifications and corrections to the combustion source opt-in rules to reflect changes in the Acid Rain Program and operating permits program under title V of the Clean Air Act since the publication of the final opt-in rule on April 4, 1995. In particular the Agency has finalized operating permit rules in part 71 and proposed changes to part 72.

The following types of miscellaneous changes are proposed:

1. References to part 71 are added to part 74 where appropriate.

2. References to exemptions under §§ 72.7, 72.8 and 72.14 are added where appropriate in order to reflect the proposed revisions to part 72 that provide that exempt units are not affected units. Units exempted under these sections may not become opt-in units.

3. Repetitive language concerning the effect of withdrawal of an opt-in source from the Acid Rain Program on prior violations of opt-in requirements is removed. A similar change was proposed to language in part 72 concerning the effect of exemptions under §§ 72.7, 72.8 and 72.14 on prior violations. *See* 61 FR 68369–68371 (similar language in ''Special Provisions'' for each exemption).

4. Corrections are made so that language concerning the use of improved efficiency of an opt-in source to account for reduced utilization is consistent with similar provisions in part 72 concerning reduced utilization of affected utility units. *See* 40 CFR 72.91(a)(5) and (b)(2).

5. The formula for determining how many allowances should be retained in the allowance account of an opt-in source with a thermal energy plan is revised. The revision takes into account the fact that the opt-in source's allowance account may include allowances acquired by the opt-in source as well as allowances allocated to it by EPA.

6. Incorrect references to sections in parts 74 and 75 are corrected.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The proposed revisions to part 74 will not have a significant effect on regulated entities or State permitting authorities. The revisions potentially reduce the burden certain opt-in sources, by allowing the election of a separate designated representative and by allowing thermal energy plans to begin on the calendar quarter. Also, the revisions potentially reduce the burden on the utility sector by revising when EPA may deduct allowances from ATS accounts.

C. Paperwork Reduction Act

This action proposing revisions to the opt-in rule would not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the opt-in rules, 40 CFR part 74, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0258. 60 FR 17111.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M. St. SW (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities.

In the preamble of the April 4, 1995 opt-in rule, the Administrator certified that the rule, including the provisions revised by today's rule, would not have a significant economic impact on small entities. 60 FR 17111. Today's revisions are not significant enough to change the overall economic impact addressed in the April 4, 1995 preamble. Moreover, as discussed above, the revisions provide regulated entities with additional flexibility (e.g., the option to have a separate designated representative and to have a thermal energy plan that begins in the second, or later, quarter of the year). Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 74

Environmental protection, Acid rain, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 9, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 74 is proposed to be amended as set forth below.

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

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

2. Section 74.3 is amended by:

i. In paragraph (b), revising the phrase ''parts 70 and 72'' to read ''parts 70, 71, and 72'';

ii. In paragraph (b), revising the phrase ''part 70'' to read ''parts 70 and 71''; and

iii. Adding at the end of paragraph (d) the words '', consistent with subpart E of this part.''

3. Section 74.4 is amended by adding paragraph (c) to read as follows:

§ 74.4 Designated Representative.

* * * * *

(c)(1) Notwithstanding paragraph (b) of this section, a certifying official of a combustion or process source that is located at the same source as one or more affected utility units and that has no owner of which the principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory commission may elect to designate, for such combustion or process sources, a different designated representative than the designated representative for the affected utility units.

(2) In order to make such an election, the certifying official shall submit to the Administrator, in a format prescribed by the Administrator: a certification that the combustion or process source for which the election is made meets each of the requirements for election in paragraph (c)(1) of this section; and a certificate of representation for the designated representative of the combustion or process source in accordance with § 72.24 of this chapter. The Administrator will rely on such certificate of representation in accordance with § 72.25 of this chapter, unless the Administrator determines that the requirements for election in the paragraph (c)(1) are not met.

§ 74.14 [Corrected]

4. Section 74.10 is amended by removing from paragraph (a)(2) the word ''§ 74.62'' and adding in its place the words ''§ 75.20 of this chapter''.

§ 74.10 [Corrected]

5. Section 74.14 is amended by removing from paragraph (b) introductory text the words ''part 70'' and adding in their place the words ''parts 70 and 71'' and by removing from paragraph (b)(6)(ii) the word ''approved'' and adding in its place the words ''approved for operating permits''.

§ 74.16 [Corrected]

6. Section 74.16 is amended by removing from paragraph (a)(12) the word '';'' and adding in its place the words ''and does not have an exemption under § 72.7, 72.8, or 72.14 of this chapter;''.

§ 74.18 [Corrected]

7. Section 74.18 is amended by removing from paragraph (d) the words ''§ 74.46(c)'' and adding in their place ''§ 74.46(b)(2)'' and by removing the last sentence from paragraph (e).

§ 74.22 [Corrected]

8. Section 74.22 is amended by removing from paragraph (c)(2) the words ''§ 74.20(a)(2)(A)'' and adding in their place the words ''§ 74.20(a)(2)(i)''.

§ 74.26 [Corrected]

9. Section 74.26 is amended by removing from paragraph (a)(2) the words ''in which'' and adding in their place the words ''for which''.

§ 74.42 [Corrected]

10. Section 74.42 is amended by removing from paragraph (a) the word ''(a).''

§ 74.44 [Corrected]

11. Section 74.44 is amended by:

i. Removing from paragraph (a)(1)(i)(G) the words ''demand side measures that improve the efficiency of electricity or steam consumption'' and adding in their place the words ''specific measures'';

ii. Removing from paragraph (a)(2)(i) the words ''or for the first two calendar years after the effective date of a thermal energy plan governing an opt-in source in accordance with § 74.47 of this chapter'';

iii. Adding in paragraph (a)(2)(iii) the words ''of this section'' after the word ''(a)(2)(ii)'';

iv. Removing from paragraph (c)(2)(ii)(B)(1) the words ''opt-in sources.'' and adding in their place the words ''opt-in sources and Phase I units.'';

v. Removing from the formula in paragraph (c)(2)(iii)(F) the words ''= allowances allocated'' and adding in their place the words ''allowances allocated or acquired'';

vi. Removing from paragraph (c)(2)(iii)(F) the words '' 'Allowances allocated' shall be the number of

allowances allocated under section § 74.40 for the calendar year.'' and adding in their place the words '' 'Allowances allocated or acquired' shall be the number of allowances held in the source's compliance subaccount at the allowance transfer deadline plus the number of allowances transferred for the previous calendar year to all replacement units under an approved thermal energy plan in accordance with § 74.47(a)(6).'';

vii. Removing from paragraph (c)(2)(iii)(E)(*3*) the words ''allowances necessary'' and adding in their place the words ''allowances that he or she determines is necessary''.

12. Section 74.47 is amended by:

i. By adding in paragraph (a)(3)(i), after the word ''year'' in each place it appears, the word ''and quarter'';

ii. Adding in the first sentence of paragraph (a)(3)(vii), after the word ''year'', the words ''and quarter''; and

iii. Revising paragraphs (a)(1), (a)(3)(viii), (a)(3)(ix), (a)(3)(x), (a)(3)(xi), (a)(3)(xii), and (a)(4) to read as follows:

§ 74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.

(a) *Thermal energy plan*. (1) *General provisions*. The designated representative of an opt-in source that seeks to qualify for the transfer of allowances based on the replacement of thermal energy by a replacement unit shall submit a thermal energy plan subject to the requirements of § 72.40(b) of this chapter for multi-unit compliance options and this section. The effective period of the thermal energy plan shall begin at the start of the calendar quarter (January 1, April 1, July 1, or October 1) for which the plan is approved and end December 31 of the last full calendar year for which the opt-in permit containing the plan is in effect.

* * * * *

(3) * * *

(viii) The estimated annual amount of total thermal energy to be reduced at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy to be reduced starting April 1, July 1, or October 1 respectively and ending on December 31;

(ix) The estimated amount of total thermal energy at each replacement unit for the calendar year prior to the year for which the plan is to take effect, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy for the portion of such calendar year starting April 1, July 1, or October 1 respectively;

(x) The estimated annual amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

(xi) The estimated annual amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing thermal energy at the opt-in source, and, for a plan starting April 1, July 1, or October 1, such estimated amount of thermal energy replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

(xii) The estimated annual total fuel input at each replacement unit after replacing thermal energy at the opt-in source and, for a plan starting April 1, July 1, or October 1, such estimated total fuel input after replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

* * * * *

(4) *Submission*. The designated representative of the opt-in source seeking to qualify for the transfer of allowances based on the replacement of thermal energy shall submit a thermal energy plan to the permitting authority by no later than six months prior to the first calendar quarter for which the plan is to be in effect. The thermal energy plan shall be signed and certified by the designated representative of the opt-in source and each replacement unit covered by the plan.

* * * * *

13. Section 74.50 is amended by redesignating the introductory text paragraph (a) as paragraph (a)(1), redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv), and adding paragraph (a)(2) to read as follows:

§ 74.50 Deducting opt-in source allowances from ATS accounts.

(a) * * *

(2) An opt-in allowance may not be deducted under paragraph (a)(1) of this section from any Allowance Tracking System Account other than the account of the opt-in source allocated such allowance:

(i) After the Administrator has completed the process of recordation as set forth in § 73.34(a) of this chapter following the deduction of allowances from the opt-in source's compliance subaccount for the year for which such allowance may first be used; or

(ii) If the opt-in source includes in the annual compliance certification report estimates of any reduction in heat input resulting from improved efficiency under § 74.44(a)(1)(i), after the Administrator has completed action on the confirmation report concerning such estimated reduction pursuant to §§ 74.44(c)(2)(iii)(E)(3), (4), and (5) for the year for which such allowance may first be used.

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