

require that the designated representative of any Phase I unit with utilization below baseline apply formulas in §§ 72.91 and 72.92 estimating the emissions (if any) resulting from such underutilization and surrender allowances covering the estimated emissions. In this way, the emissions consequences of shifting generation from Phase I units are accounted for, and Phase I SO₂ emission reduction goals are preserved, without the designation of specific compensating units.

In addition, the January 11, 1993 regulations require the submission of a reduced utilization plan for any Phase I unit that is planned to be utilized below baseline as a method of complying with SO₂ emissions limitations. However, if the allowance surrender requirements are met and the unit meets criteria in § 72.43(e), a plan is not required. The criteria are broadly drawn. For example, under these criteria, a plan need not be submitted for underutilization caused by economic dispatching that reflected increases in generation costs (e.g., allowance costs) at the unit. The Agency adopted this approach of limiting the plan submission requirement because of concern that, *inter alia*, economic dispatch and operation of utility systems or power pools might be inhibited because utilities might be unable to designate compensating units. 56 FR 63021.

II. Reduced Utilization Plans

As noted above, § 72.43(e) of the January 11, 1993 regulations sets forth criteria for making retrospective determinations as to whether a Phase I unit was underutilized for the purpose of complying with SO₂ emissions limitations. If underutilization was for the purpose of compliance, then the unit must have a reduced utilization plan. If underutilization was incidental to utility operations, no plan is needed. In particular, a plan is not required if the allowance surrender requirements under §§ 72.91 and 72.92 are met and one of several demonstrations are made. The demonstrations involve showing that the unit's underutilization was caused by a dispatch-system-wide sales decline, a forced outage at the unit, or economic dispatching. If none of these demonstrations can be made, the Agency determines on a case-by-case basis, considering certain indicators set forth in § 72.43(e)(2), whether a plan should have been submitted.

The Agency has concluded that this approach is unnecessarily complicated and burdensome. Because of concerns that Phase I units would be unable to designate compensating units, the

criteria in § 72.43(e) for avoiding submission of a reduced utilization plan were designed to apply broadly. In particular, a plan is not required to the extent underutilization is caused by economic dispatching. Consequently, under these criteria, plan submission is largely optional so long as the allowance surrender requirements are met.

However, despite their broad scope, the criteria still leave some uncertainty as to whether the Agency will agree that a reduced utilization plan is not required even if allowances are surrendered. Further, owners and operators of Phase I units carry the burden of showing that the criteria are met. In fact, the January 11, 1993 regulations require Phase I unit owners and operators to show in their annual compliance certification reports the amounts of underutilization caused by sales decline, forced outage, or economic dispatching. 40 CFR 72.92(a)(2) (1993). The annual reports must also include specified information on forced outages at Phase I units. 40 CFR 72.92(a)(3) (1993). Additional submissions are required during the year in the event of a forced outage that will permanently shut down a Phase I unit and result in shifting generation to other units. 40 CFR 72.92(b)(1) (1993). Yet, this uncertainty and burden serve no real purpose if the allowance surrender requirements of §§ 72.91 and 72.92 are met. The allowance surrender procedures account for the emissions consequences of underutilization and therefore obviate the need for a reduced utilization plan under section 408(c)(1)(B) of the Act. Once underutilization is accounted for under §§ 72.91 and 72.92, there is no basis for requiring any further accounting through the designation of compensating units or energy conservation or unit efficiency measures.

The Agency concludes that § 72.43(e) should be revised so that the requirement to submit a reduced utilization plan for an underutilized Phase I unit is eliminated if the allowance surrender and reporting requirements of §§ 72.91 and 72.92 are met. This is a reasonable way of harmonizing sections 408(c)(1)(B) and 403(d) of the Act. The other criteria in § 72.43(e) are therefore superfluous and are removed. Sections 72.92(a)(2) and (3) and (b)(1) of the January 11, 1993 regulations, requiring submission of information in annual and other reports related to the removed criteria in

§ 72.43(e), are also unnecessary and are removed.¹

III. Dispatch System

The dispatch system of a unit plays an important role in the allowance surrender calculations under §§ 72.91 and 72.92. For example, if a Phase I unit has a reduced utilization plan, the amount of reduced utilization accounted for under the plan (by a compensating unit, conservation or improved unit efficiency measures, or sulfur-free generators) must be determined. See 40 CFR 72.91(a)(3) (1993) (requiring calculation of "plan reductions"). The percentage change in the total sales of the dispatch system is a factor in calculating reduced utilization accounted for by a sulfur-free generator. 40 CFR 72.91(a)(3)(iii) (1993). As a further example, the total generation produced by the units and generators in a dispatch system during a Phase I calendar year must be used to determine the percentage of total dispatch system sales for the year that was generated by units and generators in the dispatch system. That percentage is used in calculating the emissions rate that is in turn used to determine how many allowances must be surrendered for the year. 40 CFR 72.92(c)(2)(v)(A) (1993).

The Agency is revising § 72.33(a), (b), and (c) to clarify certain matters concerning the determination of a unit's dispatch system. In addition, while § 72.33(f) allowed owners and operators of Phase I units to request that a Phase I unit be apportioned among its owners and their dispatch systems, certain revisions of the provision are needed to make it more workable and to coordinate it with the allowance surrender procedures under §§ 72.91 and 72.92.

A. Utility System and Identification of Dispatch System

Under § 72.33, each Phase I unit must be treated as part of a dispatch system for purposes of the allowance surrender procedures,² and the unit's utility

¹ In addition, § 72.91(a) of the January 11, 1993 regulations is revised to make it clear that the reporting requirements in § 72.91 apply only to calendar years in Phase I. Since § 72.92(a) applies to calendar years covered by § 72.91, this limitation applies to reporting under both sections. This reflects the fact that reduced utilization is a problem only in Phase I, when a minority of utility units are subject to Acid Rain SO₂ emissions limitations. See 56 FR 63018 and 58 FR 3605.

² Because the allowance surrender procedures are found in both § 72.91 and § 72.92, § 72.33(a) is revised to refer to both sections. The same change is made, for the same reason, in § 72.33(c)(4) and (e)(2) and § 72.33(f)(2) (iv) and (v). This conforms