**Chapter 113: GROWTH OFFSET REGULATION**

SUMMARY: This regulation establishes certain licensing requirements for new and existing sources of nonattainment pollutant emissions mandated under the New Source Review provisions of the Clean Air Act Amendments of 1990. Major new sources and major modifications of existing sources proposing to emit significant levels of non-attainment pollutants must obtain offsetting emission reductions from other sources. Under this offset program, the total emissions from new and existing sources will be reduced. Offset credits are regulatory allowances and do not constitute property rights or an investment security or commodity.

**1. Applicability and Exemptions**

 **A. Applicability**

 (1) The following types of stationary sources that seek to locate or expand within the geographical bounds of a nonattainment area, would have a significant impact in a nonattainment area, or seek to locate or expand within the Ozone Transport Region (concerning ozone precursor pollutants only) must obtain offset credits as provided for in this Chapter:

(a) Any new source or proposed new source that has the potential to emit significant emissions of the nonattainment pollutant or its precursor(s) after application of Lowest Achievable Emission Rate (LAER);

(b) Any existing major source proposing a modification that would result in a significant emissions increase of the nonattainment pollutant or its precursor(s) after application of LAER;

(c) Any existing minor source proposing a modification that would result in an increase of the source's potential to emit the nonattainment pollutant or its precursor(s) by a level of significant emissions after application of LAER; or

(d) Any source for which (b) or (c) above occurs after August 7, 1980, because of the relaxation of a license requirement or federally enforceable limitation on the capacity of the source to otherwise emit a pollutant, such as a restriction on hours of operation.

 (2) Sources that seek to voluntarily generate and/or trade offset credits will be subject to provisions in this Chapter pertaining to generation of offset credits.

(3) In cases where emission reductions have occurred through facility shutdown and for which the certification process has not been initiated by either the licensee or the Department, an applicant proposing a major new source or major modification in Maine may request certification of those reductions for use as offset credits in the licensing of the major new source or major modification through the applicable process as established in this Chapter.

**B. Exemptions**

 (1) Offsets for nitrogen oxides (NOx) emissions are not required in those areas that have received a NOx waiver under Section 182(f) of the Clean Air Act.

(2) Provisions in Section 4 of this Chapter will not apply to offset credits generated in states other than Maine, with the exception of provisions contained in Section 4(A)(2).

**2. General Provisions**

**A.** Violations in offset credit use will be the responsibility of the offset credit user.

**B.** For licensed sources, offset credits must be certified by the Department, or the air pollution control agency in the state in which the offset credits were generated, before use as offset credits in a new or amended license issued to the source using the offset credits. For unlicensed sources generating offset reductions, offset credits must be certified by the Department before use in accordance with Sections 5 and 6 of this Chapter.

**C**. Unless otherwise provided by rule or statute, surplus emission reductions that occur as a result of state-mandated or federally-mandated controls on sources other than licensed stationary sources will revert to the Department for use in meeting present or future state or federal air quality requirements.

 **D.** All offset credit generation shall follow public review procedures as specified by Section 6 of this Chapter.

**3. Use of Offset Credits**

 **A.** Sources that meet the applicability requirements pursuant to Section 1 of this Chapter must obtain offset credits for that nonattainment pollutant, or its precursors, as directed in Subsection 3(E) below.

 **B.** The new source or modification may not commence operation until the Department has determined that emission reductions of the nonattainment pollutant have occurred and that all requirements of Section 4 of this Chapter are met.

 **C.** Offset credit reductions must be federally enforceable by the time the air emission license for the user is issued.

 **D.** At a minimum, the total offset credits required shall be greater than the potential emission increase from a new major source or new major modification pursuant to this section.

 **E.** Offset Credit Requirements

 (1) Volatile Organic Compounds (VOC) and NOx Offset Credits

1. VOC and NOx Offset Ratios. For a new major source or major modification subject to this Chapter, the offset ratio for VOC and NOx is based on the current ozone nonattainment area classification or other designation for the area in which the new major source or major modification will locate, and on the distance between the new major source or major modification and the source from which offset credits are obtained, as specified below. If the location of a new major source or major modification is subject to more than one classification, the more restrictive offset ratio shall apply.

(b) NOx offset credits may be used to offset increased VOC emissions, and VOC offset credits may be used to offset increased NOx emissions, if approved by the EPA and the Department. In areas subject to a NOx waiver under section 182(f) of the Clean Air Act, NOx credits may be used to offset VOC emissions to the extent allowed under the Clean Air Act and upon written notification of approval from the EPA. The same number of offset credits must be obtained whether NOx or VOC credits are used. Approval by the Department will be based on whether the Department finds that the same estimated ozone reduction will be achieved whether VOC offset credits or NOx offset credits are used.

(c) Location of Offset Credits for VOC and NOx Offset credits for VOC and NOx shall be obtained from sources in the same ozone designation area, except that such offset credits may be obtained from a source in another ozone designation area if the conditions of either (i) or (ii), whichever is relevant, are met:

 (i) Locating in an Ozone Nonattainment Area: For a new major source or major modification subject to this Chapter locating in an ozone nonattainment area:

1. The ozone nonattainment area from which offset credits are obtained has an equal or higher (i.e., more serious) nonattainment classification than the ozone nonattainment area in which the new major source or major modification subject to this Chapter is locating; and
2. Emissions from the ozone nonattainment area from which offset credits are obtained contribute to a violation of a National Ambient Air Quality Standard in the ozone nonattainment area in which the new major source or major modification subject to this Chapter is locating;
3. Offset credits are obtained based on the classification of the area in which the new major source or major modification is locating, per the minimum offset ratios listed below:

|  |  |
| --- | --- |
| **Ozone Classification for Area****in Which New Major Source or** **Major Modification is Locating** | **Minimum Offset Ratio** |
|  |  |
| Serious nonattainment area | 1.2 to 1 |
|  |  |
| Moderate nonattainment area | 1.15 to 1 |
|  |  |
| Marginal nonattainment area(not included in the OTR) | 1.1 to 1 |
|  |  |
| Areas within the OTR | 1.15 to 1 |

(ii) Locating In an Ozone Attainment Area in the OTR: For a new major source or major modification subject to this Chapter locating in an ozone attainment area in the OTR, the source from which the offset credits are being obtained must be located in the OTR and may be located within another ozone attainment area or within an ozone nonattainment area if approved by the Department and EPA. Sources locating in an ozone attainment area within the OTR must obtain VOC offset credits at a ratio of 1.15 to 1.

A new major source or major modification subject to this Chapter locating in an ozone attainment area that does not have a NOx waiver under section 182(f) of the Clean Air Act must obtain NOx offset credits at a ratio of 1.15 to 1.

(2) Offset Credits for SO2, PM10, PM2.5, NO2, CO, or Lead

(a) Offset credits for sulfur dioxide (SO2), particulate matter smaller than 10 microns in diameter (PM10), particulate matter smaller than 2.5 microns in diameter (PM2.5), nitrogen dioxide (NO2), carbon monoxide (CO), or lead (Pb) must be obtained in a ratio that is greater than 1 to 1.

1. Demonstration of a Net Air Quality Benefit

 When the new major source or major modification subject to this Chapter is locating in or has a significant impact on an SO2, NO2, PM10, PM2.5, CO, or Lead nonattainment area, and the offset credits are not obtained from an existing stationary source on the same premises or in the vicinity (within 250 meters), and the pollutants are not emitted from substantially the same effective stack height of the new source or modification, a demonstration of a net air quality benefit shall be made on the basis of atmospheric dispersion modeling.

(c) Location of Offset Credits

 Offset credits for SO2, PM10, PM2.5, NO2, CO, and Lead shall be obtained from the same source or other sources located in the same nonattainment area or in another nonattainment area if

1. The other area has an equal or higher (worse) nonattainment classification than the area in which the source is located; and
2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(d) NOx offsets generated in Maine cannot be used by a source located outside of Maine, unless that source is located on the outer continental shelf and Maine has been determined to be the corresponding onshore area for the source pursuant to 40 C.F.R. Part 55.

**4. Generation of Offset Credits**

 **A.** All offset credits must be quantifiable and calculated according to the same method and averaging time for the base case and future case.

(1) For offset credits generated within the State of Maine, the base case from which to measure offset credits shall be the annual average actual emissions for any consecutive 24-month period which precedes the particular date and which is representative of normal source operation. A different time period may be used upon a determination that it is more representative of normal source operation. Actual emissions, for the purposes of quantifying offset credits, shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. To be creditable as offsets, emissions reductions made in Maine must be made on or after May 31, 1995.

(2) To be creditable as offsets, emissions reductions made in states other than Maine must be made on or after November 15, 1990, and certified in accordance with CAA requirements.

 **B.** When quantifying offset credits generated by reducing actual emissions from existing sources that are exceeding emission limits, only those emission reductions below the licensed or otherwise allowable emissions for the existing source are creditable as offset credits.

 **C.** In no case shall offset credits be allowed for reductions in emissions that were required by any federally enforceable license conditions developed pursuant to 40 C.F.R. Parts 51, 52, 70, and 71, or other requirements of the Clean Air Act or other applicable federal or state law or requirement, including without limitation in achieving attainment of National Ambient Air Quality Standards or Reasonable Further Progress. If incidental emission reductions not required under the Clean Air Act or other federal or state law or requirement meet the applicable requirements of this rule for offset credits, such emission reductions may be creditable as offset credits. Emission reductions used to meet air quality attainment requirements are surplus as long as they are not otherwise relied on in an air quality-related program in the Maine State Implementation Plan (SIP), SIP-related requirements, other State air quality programs not in the SIP, a consent decree, or federal rules that focus on reducing criteria pollutants or their precursors.

 **D.** Prior to the new major source or major modification subject to this Chapter commencing operation, the offset credit generator must have made reductions in actual emissions as certified by the Department.

 **E.** Prior to the new major source or major modification commencing operation, the user of the offset credits must demonstrate to the Department that the offset credits have been certified by the Department, and shall provide other documentation and information as requested by the Department.

 **F.** In addition to the other limitations of this rule, emission reductions will qualify as offset credits only to the extent that they are in surplus of all the following at the time the application is filed:

(1) Emission reductions required by state laws specifically identified in the SIP as being necessary for the State to meet Clean Air Act attainment requirements; and

(2) Emission reductions already relied on for SIP planning purposes.

Emission reductions that occur from a source when complying with a MACT standard may be eligible to be used as nonattainment new source review (NNSR) offset credits provided the emission reduction is not relied on for attaining and maintaining the NAAQS and for complying with the MACT standard. For example, if a source reduced a hazardous air pollutant such as methanol in order to comply with a MACT standard and also reduced other VOC that were not HAPs, the reduction in non-HAP VOCs may be eligible as a NNSR offset for VOC if the State did not rely on the reduction to attain or maintain compliance with the ozone NAAQS.

 **G.** Emission reductions may qualify as offset credits only if they are made federally enforceable through new source review licenses issued in accordance with federally approved Maine regulations, SIP revisions, or applicable EPA-approved state regulations that reflect a reduced level of actual or allowable emissions.

 **H.** To qualify, offset credits must be either:

1. Emission reductions generated by a source that has been licensed or otherwise allowed to emit and has been actually operating and emitting the pollutant for at least two years; or
2. Offset credits previously certified for use in the licensing of a new major source or major modification which never commenced operation and whose license has been surrendered, revoked, or otherwise terminated.

 **I.** To qualify as offset credits, shutdowns or curtailments of plant production resulting in reduced emissions must meet the following conditions:

 (1) The source must demonstrate to the satisfaction of the Department that demand for the services or products affected by the shutdown or curtailment will not shift to other similar sources in the State that are not required to offset new emissions, such that the expected decrease in emissions would fail to occur; and

 (2) If the owner or operator of a licensed source subject to this Chapter plans to generate and trade offset credits, any shutdown or curtailment shall require an amendment to, surrender of, or termination of its air emission license.

 **J.** Prior to the use of VOC or NOx offset credits, the credit generator must demonstrate to the Department that the portion of the offset credits to be used during the ozone season are generated primarily during the ozone season.

 **K**. NOx offset credits may be granted for emission reductions which occur in an area with a NOx waiver under section 182(f) of the Clean Air Act only upon written notification of approval from the USEPA.

**L.** An applicant for a license for a major new source or major modification requiring emission offsets may request in its application that the Department certify emission reductions that have occurred in the State at a different facility, which no longer holds a valid air emission license, and which reductions have not already been utilized by another major new source or major modification project. Certification of these reduction credits may be requested by an applicant who is not a prior licensee of the source where the emission reductions occurred. The Department will grant such a request for credit certification in the course of its action on the application if all of the following conditions are met:

(1) The reductions are associated with a formerly licensed facility which no longer holds a valid air emission license;

(2) The party applying to utilize the emissions reductions has an application accepted for processing and pending with the Department for a project in Maine that would use said offset credits;

1. The emission reductions meet all of the requirements in this Chapter for determining the amount of emission reductions eligible as emission reduction credits; and
2. The emission reductions are not the subject of a pending request for certification in another application that the Department has accepted as complete for processing.

 **M.** Offset credits that the Department certified under subsection 4(L) in the course of approving a license for a major new source or major modification may not be sold or otherwise transferred; and in the event that such a license is subsequently surrendered, revoked, or otherwise terminated, such credits shall again become available for use in future licensing of major new sources or major modifications, to the same extent as previously uncertified emission reductions, in accordance with the process set forth in subsection 4(L), or otherwise used in meeting state or federal air quality requirements.

**Note:** Information regarding emission reductions that have occurred in the State and that may be available for certification as offset credits in accordance with subsection 4(L) is available from the Department upon request.

**5. Quantification of Offset Credits for Credit Generators**

 **A**. Offset credits shall be quantified in an average hourly or daily emission rate expressed in pounds.

 **B**. Quantification of offset credits shall follow the two-step process provided below, including quantification of the base creditand adjustment of the base credit for compliance assurance.

 **C**. Step One: Replicable methods must be used to establish the baseline which reflects the lower of actual or allowable emissions and which serves as the level below which emission reductions are considered surplus, and to quantify base credit reflecting the real emission reduction below baseline. Replicable methods must include the following, as appropriate, for the specific offset credit application:

(1) Continuous Emission Monitoring System (CEMS): Direct determination through the use of a certified CEMS; or

1. Mass Balance Calculations: Mass balance calculations which are a function of process and control equipment parameters, inventory records, usage and disposal records, activity levels, and/or throughput production consistent with good engineering practice and methods as approved by the Department and EPA; or

(3) Stack Testing: Calculations based on direct measurement of emissions by use of a test method contained in 40 C.F.R. Part 60 Appendices; or

(4) Capture and Control Efficiencies: Testing of capture and control efficiencies using approved testing methods, mass balance, and corresponding calculations as approved by the Department and EPA; or

(5) Parametric Monitoring: Parametric monitoring programs approved by the Department where the owner or operator identifies one or more indicators of the performance of an applicable control device or process at a pollutant-specific emission unit subject to this Chapter, and, for each indicator identified, provides a credible demonstration of the validity of the indicator monitored which includes the following:

(a) The demonstrated relationship between the indicator and emissions from the emissions specific unit; and

(b) The demonstrated margin of compliance with the applicable emission standard; and

(c) The potential variability of emissions under normal and anticipated operating conditions; or

(6) Emission Factors: Use of EPA-approved emission factors for pollutants and for estimates of capture and controls, with and emission calculation methods described in "Compilation of Air Pollutant Emission Factors, EPA, AP-42 Volume 1: Stationary and Area Sources," including the most recent supplements at the time of application; and "Guidance for Procedures for Emission Inventory Preparation," U.S. EPA 450/4-81-02, as is appropriate for the application under consideration.

**D**. Step Two: Emission reductions will be certified by the Department as offset credits after application of a compliance assurance multiplier~~.~~ reflecting the method of measurement used to determine the base credit numerical value. The applicable compliance assurance multiplier will be determined as provided in the table below.

|  |  |
| --- | --- |
| Method of Measurement | Compliance Assurance Multiplier |
| Continuous Emission Monitoring System (CEMS) | 0.95 |
| Mass Balance Calculations | 0.95 |
| Stack Testing | 0.85 |
| Capture and Control Efficiencies | as set by the Department and EPA |
| Parametric Monitoring | 0.50 - 0.85, as determined by the Department and EPA |
| Emission Factors | 0.50 - 0.85, as determined by the Department and EPA |

**6. Certification Procedures**

**A.** A completeness review shall be performed on any application for certification of offset credits that has been submitted to the Department documenting the proposed offset credits generation pursuant to this Chapter. The Department shall conduct a technical review of the application, and a draft Department Order shall be issued describing the Department's preliminary determination on the acceptability of the proposal to generate offset credits.

**B**. Public review procedures shall be followed by any source that seeks to generate offset credits. A public comment period shall be held on the draft Department Order as follows:

(1) The applicant shall provide a copy of the draft Department Order, its application for offset credits generation, any supporting documentation, and any subsequent amendments to the application to the municipal clerk of the municipality where the source is located, or, if the project is in an unorganized area, to the county commissioners. This material shall also be available at the Department's Augusta office. This material must be on file for public comment for thirty (30) calendar days.

(2) The Department shall provide a copy of the draft Department Order and the application for offset credits generation, any supporting documentation, and any subsequent amendments to the application to EPA. EPA shall have thirty (30) days to review the draft***.***

(3) A Notice of Draft Availability shall be published at the beginning of the comment period, at the applicant's expense, once in the public notice section of a newspaper of general circulation in the region in which the source is located. The Notice of Draft Availability shall include:

(a) the name and address of the applicant;

(b) a citation of the statutes or rules under which the application is being processed;

(c) the location of the proposed action;

(d) a summary of the proposed action including the quantity and type of emissions offsets to be certified;

(e) a statement of the availability of the application and supporting documents and the Department's preliminary determination in the form of a draft Order;

(f) a statement of written public comment opportunity, with the mailing address of the Department; and

(g) the date, place, and time a public meeting may be held, if a written request is received by the Department within 15 calendar days from the date on which the notice is published. The date on which the public meeting is held shall be at least 30 days after the date the notice is published.

(4) Any person may request in writing that the Department hold a public meeting. The written request shall state the issues which the person requesting the meeting would like addressed. If the Department's Augusta office receives a written request for a public meeting within fifteen (15) calendar days from the date on which the notice is published and which raises a material issue, a public meeting shall be held on the date and time as identified in the public notice. Whenever the Department holds a public meeting, or for other good cause, the duration of the public comment period may be extended to the close of the public meeting or extended to a later date announced at the public meeting.

(5) The Department shall receive comments for at least thirty (30) days, beginning the day on which the Notice of Draft Availability is published.

(6) The Department shall consider and keep records of all analyses and all written comments received during the public comment period, and all comments received at any public meeting in making a final decision on the approvability of the draft Order. The Department shall maintain all written comments for public inspection at the Department's Augusta office.

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