

SUBCHAPTER C—AIR PROGRAMS (CONTINUED)

PART 72—PERMITS REGULATION

Subpart A—Acid Rain Program General Provisions

- Sec.
- 72.1 Purpose and scope.
 - 72.2 Definitions.
 - 72.3 Measurements, abbreviations, and acronyms.
 - 72.4 Federal authority.
 - 72.5 State authority.
 - 72.6 Applicability.
 - 72.7 New units exemption.
 - 72.8 Retired units exemption.
 - 72.9 Standard requirements.
 - 72.10 Availability of information.
 - 72.11 Computation of time.
 - 72.12 Administrative appeals.
 - 72.13 Incorporation by reference.

Subpart B—Designated Representative

- 72.20 Authorization and responsibilities of the designated representative.
- 72.21 Submissions.
- 72.22 Alternate designated representative.
- 72.23 Changing the designated representative, alternate designated representative; changes in the owners and operators.
- 72.24 Certificate of representation.
- 72.25 Objections.
- 72.26 Delegation by designated representative and alternate designated representative.

Subpart C—Acid Rain Permit Applications

- 72.30 Requirement to apply.
- 72.31 Information requirements for Acid Rain permit applications.
- 72.32 Permit application shield and binding effect of permit application.
- 72.33 Identification of dispatch system.

Subpart D—Acid Rain Compliance Plan and Compliance Options

- 72.40 General.
- 72.41 Phase I substitution plans.
- 72.42 Phase I extension plans.
- 72.43 Phase I reduced utilization plans.
- 72.44 Phase II repowering extensions.

Subpart E—Acid Rain Permit Contents

- 72.50 General.
- 72.51 Permit shield.

Subpart F—Federal Acid Rain Permit Issuance Procedures

- 72.60 General.
- 72.61 Completeness.

- 72.62 Draft permit.
- 72.63 Administrative record.
- 72.64 Statement of basis.
- 72.65 Public notice of opportunities for public comment.
- 72.66 Public comments.
- 72.67 Opportunity for public hearing.
- 72.68 Response to comments.
- 72.69 Issuance and effective date of acid rain permits.

Subpart G—Acid Rain Phase II Implementation

- 72.70 Relationship to title V operating permit program.
- 72.71 Acceptance of State Acid Rain programs—general.
- 72.72 Criteria for State operating permit program.
- 72.73 State issuance of Phase II permits.
- 72.74 Federal issuance of Phase II permits.

Subpart H—Permit Revisions

- 72.80 General.
- 72.81 Permit modifications.
- 72.82 Fast-track modifications.
- 72.83 Administrative permit amendment.
- 72.84 Automatic permit amendment.
- 72.85 Permit reopenings.

Subpart I—Compliance Certification

- 72.90 Annual compliance certification report.
- 72.91 Phase I unit adjusted utilization.
- 72.92 Phase I unit allowance surrender.
- 72.93 Units with Phase I extension plans.
- 72.94 Units with repowering extension plans.
- 72.95 Allowance deduction formula.
- 72.96 Administrator's action on compliance certifications.

APPENDIX A TO PART 72—METHODOLOGY FOR ANNUALIZATION OF EMISSIONS LIMITS

APPENDIX B TO PART 72—METHODOLOGY FOR CONVERSION OF EMISSIONS LIMITS

APPENDIX C TO PART 72—ACTUAL 1985 YEARLY SO₂ EMISSIONS CALCULATION

APPENDIX D TO PART 72—CALCULATION OF POTENTIAL ELECTRIC OUTPUT CAPACITY

AUTHORITY: 42 U.S.C. 7401, 7403, 7410, 7411, 7426, 7601, *et seq.*

SOURCE: 58 FR 3650, Jan. 11, 1993, unless otherwise noted.

Subpart A—Acid Rain Program General Provisions

§ 72.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish certain general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program, pursuant to title IV of the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Public Law 101-549 (November 15, 1990).

(b) *Scope.* The regulations under this part set forth certain generally applicable provisions under the Acid Rain Program. The regulations also set forth requirements for obtaining three types of Acid Rain permits, during Phases I and II, for which an affected source may apply: Acid Rain permits issued by the United States Environmental Protection Agency during Phase I; the Acid Rain portion of an operating permit issued by a State permitting authority during Phase II; and the Acid Rain portion of an operating permit issued by EPA when it is the permitting authority during Phase II. The requirements under this part supplement, and in some cases modify, the requirements under parts 70 and 71 of this chapter and other regulations implementing title V for approving and implementing State operating permit programs and for Federal issuance of operating permits under title V, as such requirements apply to affected sources under the Acid Rain Program.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55475, Oct. 24, 1997]

§ 72.2 Definitions.

The terms used in this part, in parts 73, 74, 75, 76, 77 and 78 of this chapter shall have the meanings set forth in the Act, including sections 302 and 402 of the Act, and in this section as follows:

Account number means the identification number given by the Administrator to each Allowance Tracking System account pursuant to § 73.31(d) of this chapter.

Acid Rain compliance option means one of the methods of compliance used by an affected unit under the Acid Rain Program as described in a compliance

plan submitted and approved in accordance with subpart D of this part, part 74 of this chapter or part 76 of this chapter.

Acid Rain emissions limitation means:

(1) For purposes of sulfur dioxide emissions:

(i) The tonnage equivalent of the allowances authorized to be allocated to the affected units at a source for use in a calendar year under section 404(a)(1), (a)(3), and (h) of the Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;

(ii) As adjusted:

(A) By allowances allocated by the Administrator pursuant to section 403, section 405 (a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and section 406 of the Act;

(B) By allowances allocated by the Administrator pursuant to subpart D of this part; and thereafter

(C) By allowance transfers to or from the compliance account for that source that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in § 73.35 of this chapter, after deductions and other adjustments are made pursuant to § 73.34(c) of this chapter; and

(2) For purposes of nitrogen oxides emissions, the applicable limitation under part 76 of this chapter.

Acid Rain emissions reduction requirement means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

Acid Rain permit or permit means the legally binding written document or portion of such document, including any permit revisions, that is issued by a permitting authority under this part and specifies the Acid Rain Program requirements applicable to an affected source and to the owners and operators and the designated representative of the affected source or the affected unit.

Acid Rain Program means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with title IV of the Act, this

Environmental Protection Agency

§ 72.2

part, and parts 73, 74, 75, 76, 77, and 78 of this chapter.

Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.* as amended by Public Law No. 101-549 (November 15, 1990).

Actual SO₂ emissions rate means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; *provided* that, if the unit is listed in the NADB, the "1985 actual SO₂ emissions rate" for the unit shall be the rate specified by the Administrator in the NADB under the data field "SO₂RTE."

Add-on control means a pollution reduction control technology that operates independent of the combustion process.

Additional advance auction means the auction of advance allowances that were offered the previous year for sale in an advance sale.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Advance allowance means an allowance that may be used for purposes of compliance with a source Acid Rain sulfur dioxide emissions limitation requirements beginning no earlier than seven years following the year in which the allowance is first offered for sale.

Advance auction means an auction of advance allowances.

Advance sale means a sale of advance allowances.

Affected source means a source that includes one or more affected units.

Affected States means any affected States as defined in part 71 of this chapter.

Affected unit means a unit that is subject to any Acid Rain emissions reduction requirement or Acid Rain emissions limitation under § 72.6 or part 74 of this chapter.

Affiliate shall have the meaning set forth in section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11), as of November 15, 1990.

Air Emission Testing Body (AETB) means a company or other entity that provides to the owner or operator the certification required by section

6.1.2(b) of appendix A to part 75 of this chapter.

Allocate or allocation means the initial crediting of an allowance by the Administrator to an Allowance Tracking System compliance account or general account.

Allowable SO₂ emissions rate means the most stringent federally enforceable emissions limitation for sulfur dioxide (in lb/mmBtu) applicable to the unit or combustion source for the specified calendar year, or for such subsequent year as determined by the Administrator where such a limitation does not exist for the specified year; *provided* that, if a Phase I or Phase II unit is listed in the NADB, the "1985 allowable SO₂ emissions rate" for the Phase I or Phase II unit shall be the rate specified by the Administrator in the NADB under the data field "1985 annualized boiler SO₂ emission limit."

Allowance means an authorization by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

Allowance deduction, or deduct when referring to allowances, means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance account to account for the number of tons of SO₂ emissions from the affected units at an affected source for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in part 75 of this chapter, or for any other allowance surrender obligations of the Acid Rain Program.

Allowances held or hold allowances means the allowances recorded by the Administrator, or submitted to the Administrator for recordation in accordance with § 73.50 of this chapter, in an Allowance Tracking System account.

Allowance reserve means any bank of allowances established by the Administrator in the Allowance Tracking System pursuant to sections 404(a)(2) (Phase I extension reserve), 404(g) (energy conservation and renewable energy reserve), or 416(b) (special allowance reserve) of the Act, and implemented in accordance with part 73, subpart B of this chapter.

Allowance Tracking System or ATS means the Acid Rain Program system

by which the Administrator allocates, records, deducts, and tracks allowances.

Allowance Tracking System account means an account in the Allowance Tracking System established by the Administrator for purposes of allocating, holding, transferring, and using allowances.

Allowance transfer deadline means midnight of March 1 (or February 29 in any leap year) or, if such day is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected source's compliance account for the purposes of meeting the source's Acid Rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

Alternative monitoring system means a system or a component of a system designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow, that is demonstrated to the Administrator as having the same precision, reliability, accessibility, and timeliness as the data provided by a certified CEMS or certified CEMS component in accordance with part 75 of this chapter.

As-fired means the taking of a fuel sample just prior to its introduction into the unit for combustion.

Auction subaccount means a subaccount in the Special Allowance Reserve, as specified in section 416(b) of the Act, which contains allowances to be sold at auction in the amount of 150,000 per year from calendar year 1995 through 1999, inclusive, and 200,000 per year for each year beginning in calendar year 2000, subject to the adjustments noted in the regulations in part 73, subpart E of this chapter.

Authorized account representative means a responsible natural person who is authorized, in accordance with part 73 of this chapter, to transfer and otherwise dispose of allowances held in an Allowance Tracking System general account; or, in the case of a compliance account, the designated representative of the owners and operators of the affected source and the affected units at the source.

Automated data acquisition and handling system means that component of the CEMS, COMS, or other emissions monitoring system approved by the Administrator for use in the Acid Rain Program, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, moisture monitors, opacity monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by part 75 of this chapter.

Award means the conditional set-aside by the Administrator, based on the submission of an early ranking application pursuant to subpart D of this part, of an allowance from the Phase I extension reserve, for possible future allocation to a Phase I extension applicant's Allowance Tracking System unit account.

Backup fuel means a fuel for a unit where: (1) For purposes of the requirements of the monitoring exception of appendix E of part 75 of this chapter, the fuel provides less than 10.0 percent of the heat input to a unit during the three calendar years prior to certification testing for the primary fuel and the fuel provides less than 15.0 percent of the heat input to a unit in each of those three calendar years; or the Administrator approves the fuel as a backup fuel; and (2) For all other purposes under the Acid Rain Program, a fuel that is not the primary fuel (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

Baseline means the annual average quantity of fossil fuel consumed by a unit, measured in millions of British Thermal Units (expressed in mmBtu) for calendar years 1985 through 1987; *provided* that in the event that a unit is listed in the NADB, the baseline will be calculated for each unit-generator pair that includes the unit, and the unit's baseline will be the sum of such unit-generator baselines. The unit-generator baseline will be as provided in the NADB under the data field "BASE8587", as adjusted by the outage hours listed in the NADB under the data field "OUTAGEHR" in accordance with the following equation:

Environmental Protection Agency

§ 72.2

Baseline = $\text{BASE8587} \times \{26280 / (26280 - \text{OUTAGEHR})\} \times \{36 / (36 - \text{months not on line})\} \times 10^6$

“Months not on line” is the number of months during January 1985 through December 1987 prior to the commencement of firing for units that commenced firing in that period, i.e., the number of months, in that period, prior to the on-line month listed under the data field “BLRMNONL” and the on-line year listed in the data field “BLRYRONL” in the NADB.

Basic Phase II allowance allocations means:

(1) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j).

(2) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j).

Bias means systematic error, resulting in measurements that will be either consistently low or high relative to the reference value.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

Bypass operating quarter means a calendar quarter during which emissions pass through a stack, duct or flue that bypasses add-on emission controls.

Bypass stack means any duct, stack, or conduit through which emissions from an affected unit may or do pass to the atmosphere, which either augments or substitutes for the principal stack exhaust system or ductwork during any portion of the unit’s operation.

Calibration error means the difference between:

(1) The response of a gaseous monitor to a calibration gas and the known concentration of the calibration gas;

(2) The response of a flow monitor to a reference signal and the known value of the reference signal; or

(3) The response of a continuous opacity monitoring system to an at-

tenuation filter and the known value of the filter after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

Calibration gas means:

(1) A standard reference material;

(2) A standard reference material-equivalent compressed gas primary reference material;

(3) A NIST traceable reference material;

(4) NIST/EPA-approved certified reference materials;

(5) A gas manufacturer’s intermediate standard;

(6) An EPA protocol gas;

(7) Zero air material; or

(8) A research gas mixture.

Capacity factor means either:

(1) The ratio of a unit’s actual annual electric output (expressed in MWe/hr) to the unit’s nameplate capacity (or maximum observed hourly gross load (in MWe/hr) if greater than the nameplate capacity) times 8760 hours; or

(2) The ratio of a unit’s annual heat input (in million British thermal units or equivalent units of measure) to the unit’s maximum rated hourly heat input rate (in million British thermal units per hour or equivalent units of measure) times 8,760 hours.

CEMS precision or precision as applied to the monitoring requirements of part 75 of this chapter, means the closeness of a measurement to the actual measured value expressed as the uncertainty associated with repeated measurements of the same sample or of different samples from the same process (e.g., the random error associated with simultaneous measurements of a process made by more than one instrument). A measurement technique is determined to have increasing “precision” as the variation among the repeated measurements decreases.

Centroidal area means a representational concentric area that is geometrically similar to the stack or duct cross section, and is not greater than 1 percent of the stack or duct cross-sectional area.

Certificate of representation means the completed and signed submission required by § 72.20, for certifying the appointment of a designated representative for an affected source or a group of

§72.2

40 CFR Ch. I (7-1-21 Edition)

identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters under the Acid Rain Program.

Certifying official, for purposes of part 73 of this chapter, means:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(2) For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

(3) For a local government entity or State, Federal, or other public agency, either a principal executive officer or ranking elected official.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank" (as incorporated by reference in §72.13).

Coal-derived fuel means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquified or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

Coal-fired means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel that meets the definition of "very low sulfur fuel" in this section), alone or in combination with any other fuel, where:

(1) For purposes of the requirements of part 75 of this chapter, a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and

(2) For all other purposes under the Acid Rain Program, except for purposes of applying part 76 of this chapter, a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); *provided* that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL".

Cogeneration unit means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes, through sequential use of energy.

Combustion source means a stationary fossil fuel fired boiler, turbine, or internal combustion engine that has submitted or intends to submit an opt-in permit application under §74.14 of this chapter to enter the Opt-in Program.

Commence commercial operation means to have begun to generate electricity for sale, including the sale of test generation.

Commence construction means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

Commence operation means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

Common pipe means an oil or gas supply line through which the same type of fuel is distributed to two or more affected units.

Common pipe operating time means the portion of a clock hour during which fuel flows through a common pipe. The common pipe operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

Common stack means the exhaust of emissions from two or more units through a single flue.

Compensating unit means an affected unit that is not otherwise subject to Acid Rain emissions limitation or Acid Rain emissions reduction requirements during Phase I and that is designated as a Phase I unit in a reduced utilization plan under §72.43; provided that an opt-in source shall not be a compensating unit.

Compliance account means an Allowance Tracking System account, established by the Administrator under §73.31(a) or (b) of this chapter or §74.40(a) of this chapter for an affected source and for each affected unit at the source.

Environmental Protection Agency

§ 72.2

Compliance certification means a submission to the Administrator or permitting authority, as appropriate, that is required by this part, by part 73, 74, 75, 76, 77, or 78 of this chapter, to report an affected source or an affected unit's compliance or non-compliance with a provision of the Acid Rain Program and that is signed and verified by the designated representative in accordance with subparts B and I of this part and the Acid Rain Program regulations generally.

Compliance plan, for the purposes of the Acid Rain Program, means the document submitted for an affected source in accordance with subpart C of this part or subpart E of part 74 of this chapter, or part 76 of this chapter, specifying the method(s) (including one or more Acid Rain compliance options as provided under subpart D of this part or subpart E of part 74 of this chapter, or part 76 of this chapter) by which each affected unit at the source will meet the applicable Acid Rain emissions limitation and Acid Rain emissions reduction requirements.

Compliance use date means the first calendar year for which an allowance may be used for purposes of meeting a source's Acid Rain emissions limitation for sulfur dioxide.

Conditionally valid data means data from a continuous monitoring system that are not quality-assured, but which may become quality-assured if certain conditions are met. Examples of data that may qualify as conditionally valid are: data recorded by an uncertified monitoring system prior to its initial certification; or data recorded by a certified monitoring system following a significant change to the system that may affect its ability to accurately measure and record emissions. A monitoring system must pass a probationary calibration error test, in accordance with section 2.1.1 of appendix B to part 75 of this chapter, to initiate the conditionally valid data status. In order for conditionally valid emission data to become quality-assured, one or more quality assurance tests or diagnostic tests must be passed within a specified time period in accordance with § 75.20(b)(3).

Conservation Verification Protocol means a methodology developed by the

Administrator for calculating the kilowatt hour savings from energy conservation measures and improved unit efficiency measures for the purposes of title IV of the Act.

Construction means fabrication, erection, or installation of a unit or any portion of a unit.

Consumer Price Index or CPI means, for purposes of the Acid Rain Program, the U.S. Department of Labor, Bureau of Labor Statistics unadjusted Consumer Price Index for All Urban Consumers for the U.S. city average, for All Items on the latest reference base, or if such index is no longer published, such other index as the Administrator in his or her discretion determines meets the requirements of the Clean Air Act Amendments of 1990.

(1) *CPI (1990)* means the CPI for all urban consumers for the month of August 1989. The "CPI (1990)" is 124.6 (with 1982-1984 = 100). Beginning in the month for which a new reference base is established, "CPI (1990)" will be the CPI value for August 1989 on the new reference base.

(2) *CPI (year)* means the CPI for all urban consumers for the month of August of the previous year.

Continuous emission monitoring system or CEMS means the equipment required by part 75 of this chapter used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO₂, NO_x, or CO₂ emissions or stack gas volumetric flow rate. The following are the principal types of continuous emission monitoring systems required under part 75 of this chapter. Sections 75.10 through 75.18, and § 75.71(a) of this chapter indicate which type(s) of CEMS is required for specific applications:

(1) A sulfur dioxide monitoring system, consisting of an SO₂ pollutant concentration monitor and an automated DAHS. An SO₂ monitoring system provides a permanent, continuous record of SO₂ emissions in units of parts per million (ppm);

(2) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent,

§ 72.2

40 CFR Ch. I (7-1-21 Edition)

continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(3) A nitrogen oxides (NO_x) emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated DAHS. A NO_x-diluent monitoring system provides a permanent, continuous record of: NO_x concentration in units of parts per million (ppm), diluent gas concentration in units of percent O₂ or CO₂ (% O₂ or CO₂), and NO_x emission rate in units of pounds per million British thermal units (lb/mmBtu);

(4) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated DAHS. A NO_x concentration monitoring system provides a permanent, continuous record of NO_x emissions in units of parts per million (ppm). This type of CEMS is used only in conjunction with a flow monitoring system to determine NO_x mass emissions (in lb/hr) under subpart H of part 75 of this chapter;

(5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO₂ emissions in units of percent CO₂ (% CO₂); and

(6) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H₂O (% H₂O)

Continuous opacity monitoring system or COMS means the equipment required by part 75 of this chapter to sample, measure, analyze, and provide, with readings taken at least once every 6 minutes, a permanent record of opacity or transmittance. The following components are included in a continuous opacity monitoring system:

- (1) Opacity monitor; and
- (2) An automated data acquisition and handling system.

Control unit means a unit employing a qualifying Phase I technology in ac-

cordance with a Phase I extension plan under § 72.42.

Coverage Factor k means, in general, a value chosen on the basis of the desired level of confidence to be associated with the interval defined by $U = k u_c$. Typically, k is in the range 2 to 3. When the normal distribution applies and u_c is a reliable estimate of the standard deviation of y , $U = 2 u_c$ (*i.e.*, $k = 2$) defines an interval having a level of confidence of approximately 95%, and $U = 3 u_c$ (*i.e.*, $k = 3$) defines an interval having a level of confidence greater than 99%.

Customer means a purchaser of electricity not for the purposes of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

Decisional body means any EPA employee who is or may reasonably be expected to act in a decision-making role in a proceeding under part 78 of this chapter, including the Administrator, a member of the Environmental Appeals Board, and a Presiding Officer, and any staff of any such person who are participating in the decisional process.

Demand-side measure means a measure:

(1) To improve the efficiency of consumption of electricity from a utility by customers of the utility; or

(2) To reduce the amount of consumption of electricity from a utility by customers of the utility without increasing the use by the customer of fuel other than: Biomass (*i.e.*, combustible energy-producing materials from biological sources, which include wood, plant residues, biological wastes, landfill gas, energy crops, and eligible components of municipal solid waste), solar, geothermal, or wind resources; or industrial waste gases where the party making the submission involved certifies that there is no net increase in sulfur dioxide emissions from the use of such gases. "Demand-side measure" includes the measures listed in part 73, appendix A, section 1 of this chapter.

Designated representative means a responsible natural person authorized by the owners and operators of an affected

source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with subpart B of this part, to represent and legally bind each owner and operator, as a matter of Federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in part 70 of this chapter, in any other regulations implementing title V of the Act, or in a State operating permit program, it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.

Desulfurization refers to various procedures whereby sulfur is removed from petroleum during or apart from the refining process. "Desulfurization" does not include such processes as dilution or blending of low sulfur content diesel fuel with high sulfur content diesel fuel from a diesel refinery not eligible under 40 CFR part 73, subpart G.

Diesel-fired unit means, for the purposes of part 75 of this chapter, an oil-fired unit that combusts diesel fuel as its fuel oil, where the supplementary fuel, if any, shall be limited to natural gas or gaseous fuels containing no more sulfur than natural gas.

Diesel fuel means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials standard ASTM D975-91, "Standard Specification for Diesel Fuel Oils," grades 1-GT or 2-GT, as defined by ASTM D2880-90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396-90a, "Standard Specification for Fuel Oils" (incorporated by reference in § 72.13).

Diesel reciprocating engine unit means an internal combustion engine that combusts only diesel fuel and that thereby generates electricity through the operation of pistons, rather than by heating steam or water.

Diluent cap value means a default value of percent CO₂ or O₂ which may be used to calculate the hourly NO_x emission rate, when the measured hourly average percent CO₂ is below the default value or when the measured hourly average percent O₂ is above the

default value. The diluent cap values for boilers are 5.0 percent CO₂ and 14.0 percent O₂. For combustion turbines, the diluent cap values are 1.0 percent CO₂ and 19.0 percent O₂.

Diluent gas means a major gaseous constituent in a gaseous pollutant mixture, which in the case of emissions from fossil fuel-fired units are carbon dioxide and oxygen.

Diluent gas monitor means that component of the continuous emission monitoring system that measures the diluent gas concentration in a unit's flue gas.

Direct public utility ownership means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

Dispatch means the assignment within a dispatch system of generating levels to specific units and generators to effect the reliable and economical supply of electricity, as customer demand rises or falls, and includes:

(1) The operation of high-voltage lines, substations, and related equipment; and

(2) The scheduling of generation for the purpose of supplying electricity to other utilities over interconnecting transmission lines.

Draft Acid Rain permit or draft permit means the version of the Acid Rain permit, or the Acid Rain portion of an operating permit, that a permitting authority offers for public comment.

Dual-fuel reciprocating engine unit means an internal combustion engine that combusts any combination of natural gas and diesel fuel and that thereby generates electricity through the operation of pistons, rather than by heating steam or water.

Eligible Indian tribe means any eligible Indian tribe as defined in part 71 of this chapter.

Emergency fuel means either:

(1) For purposes of the requirements for a fuel flowmeter used in an excepted monitoring system under appendix D or E of part 75 of this chapter, the fuel identified by the designated representative in the unit's monitoring plan as the fuel which is combusted

only during emergencies where the primary fuel is not available; or

(2) For purposes of the requirement for stack testing for an excepted monitoring system under appendix E of part 75 of this chapter, the fuel identified in a federally-enforceable permit for a plant and identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative and as determined by the Administrator, in accordance with the emissions monitoring requirements of part 75 of this chapter.

Environmental Appeals Board means the three-member board established pursuant to §1.25(e) of this chapter and authorized to hear appeals pursuant to part 78 of this chapter.

EPA means the United States Environmental Protection Agency.

EPA Protocol Gas means a calibration gas mixture prepared and analyzed according to section 2 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, as amended August 25, 1999, EPA-600/R-97/121 (incorporated by reference, see §72.13) or such revised procedure as approved by the Administrator.

EPA Protocol Gas Production Site means a site that produces or blends calibration gas mixtures prepared and analyzed according to section 2 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, as amended August 25, 1999, EPA-600/R-97/121 (incorporated by reference, see §72.13) or such revised procedure as approved by the Administrator.

EPA Protocol Gas Verification Program or PGVP means a calibration gas audit program described in §75.21(g) of this chapter and implemented by EPA in cooperation with the National Institute of Standards and Technology (NIST).

EPA trial staff means an employee of EPA, whether temporary or permanent, who has been designated by the

Administrator to investigate, litigate, and present evidence, arguments, and positions of EPA in any evidentiary hearing under part 78 of this chapter. Any EPA or permitting authority employee, consultant, or contractor who is called as a witness in the evidentiary hearing by EPA trial staff shall be deemed to be "EPA trial staff".

Equivalent diameter means a value, calculated using the Equation 1-1 in section 12.2 of Method 1 in part 60, appendix A of this chapter, and used to determine the upstream and downstream distances for locating CEMS or CEMS components in flues or stacks with rectangular cross sections.

Ex parte communication means any communication, written or oral, relating to the merits of an adjudicatory proceeding under part 78 of this chapter, that was not originally included or stated in the administrative record, in a pleading, or in an evidentiary hearing or oral argument under part 78 of this chapter, between the decisional body and any interested person outside EPA or any EPA trial staff. *Ex parte* communication shall not include:

(1) Communication between EPA employees other than between EPA trial staff and a member of the decisional body; or

(2) Communication between the decisional body and interested persons outside the Agency, or EPA trial staff, where all parties to the proceeding have received prior written notice of the proposed communication and are given an opportunity to be present and to participate therein.

Excepted monitoring system means a monitoring system that follows the procedures and requirements of §75.15 of this chapter, §75.19 of this chapter, §75.81(b) of this chapter or of appendix D, or E to part 75 for approved exceptions to the use of continuous emission monitoring systems.

Excess emissions means:

(1) Any tonnage of sulfur dioxide emitted by the affected units at an affected source during a calendar year that exceeds the Acid Rain emissions limitation for sulfur dioxide for the source; and

(2) Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual

Environmental Protection Agency

§ 72.2

tonnage equivalent of the Acid Rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

Existing unit means a unit (including a unit subject to section 111 of the Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an "existing unit."

Expanded uncertainty means a measure of uncertainty that defines an interval about the measurement result y within which the value of the measurand Y can be confidently asserted to lie. Although the combined standard uncertainty u_c is used to express the uncertainty of many measurement results, for some commercial, industrial, and regulatory applications (e.g., when health and safety are concerned), what is often required is an expanded uncertainty, suggested symbol U , and is obtained by multiplying $u_c(y)$ by a coverage factor, suggested symbol k . Thus $U = k u_c(y)$ and it is confidently believed that Y is greater than or equal to $y - U$, and is less than or equal to $y + U$, which is commonly written as $Y = y \pm U$.

Facility means any institutional, commercial, or industrial structure, installation, plant, source, or building.

File means to send or transmit a document, information, or correspondence to the official custody of the person specified to take possession in accordance with the applicable regulation. Compliance with any "filing" deadline shall be determined by the date that person receives the document, information, or correspondence.

Flow meter accuracy means the closeness of the measurement made by a flow meter to the reference value of the fuel flow being measured, expressed as the difference between the measurement and the reference value.

Flow monitor means a component of the continuous emission monitoring system that measures the volumetric flow of exhaust gas.

Flue means a conduit or duct through which gases or other matter are exhausted to the atmosphere.

Flue gas desulfurization system means a type of add-on emission control used to remove sulfur dioxide from flue gas, commonly referred to as a "scrubber."

Forced outage means the removal of a unit from service due to an unplanned component failure or other unplanned condition that requires such removal immediately or within 7 days from the onset of the unplanned component failure or condition. For purposes of §§ 72.43, 72.91, and 72.92, "forced outage" also includes a partial reduction in the heat input or electrical output due to an unplanned component failure or other unplanned condition that requires such reduction immediately or within 7 days from the onset of the unplanned component failure or condition.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year (expressed in mmBtu).

Fuel flowmeter QA operating quarter means a unit operating quarter in which the unit combusts the fuel measured by the fuel flowmeter for at least 168 unit operating hours (as defined in this section).

Fuel flowmeter system means an accepted monitoring system (as defined in this section) which provides a continuous record of the flow rate of fuel oil or gaseous fuel, in accordance with appendix D to part 75 of this chapter. A fuel flowmeter system consists of one or more fuel flowmeter components, all necessary auxiliary components (e.g., transmitters, transducers, etc.), and a data acquisition and handling system (DAHS).

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing

§72.2

40 CFR Ch. I (7-1-21 Edition)

and Materials in ASTM D396-90a, "Standard Specification for Fuel Oils" (incorporated by reference in §72.13), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state; *provided* that for purposes of the monitoring requirements of part 75 of this chapter, "fuel oil" shall be limited to the petroleum-based fuels for which applicable ASTM methods are specified in Appendices D, E, or F of part 75 of this chapter.

Fuel supply agreement means a legally binding agreement between a new IPP or a firm associated with a new IPP and a fuel supplier that establishes the terms and conditions under which the fuel supplier commits to provide fuel to be delivered to the new IPP.

Fuel usage time means the portion of a clock hour during which a unit combusts a particular type of fuel. The fuel usage time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

Gas-fired means:

(1) For all purposes under the Acid Rain Program, except for part 75 of this chapter, the combustion of:

(i) Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90.0 percent of the unit's average annual heat input during the previous three calendar years and for at least 85.0 percent of the annual heat input in each of those calendar years; and

(ii) Any fuel, except coal or solid or liquid coal-derived fuel, for the remaining heat input, if any.

(2) For purposes of part 75 of this chapter, the combustion of:

(i) Natural gas or other gaseous fuel (including coal-derived gaseous fuel) for at least 90.0 percent of the unit's average annual heat input during the previous three calendar years and for at least 85.0 percent of the annual heat input in each of those calendar years; and

(ii) Fuel oil, for the remaining heat input, if any.

(3) For purposes of part 75 of this chapter, a unit may initially qualify as gas-fired if the designated representative demonstrates to the satisfaction of the Administrator that the requirements of paragraph (2) of this defini-

tion are met, or will in the future be met, through one of the following submissions:

(i) For a unit for which a monitoring plan has not been submitted under §75.62 of this chapter, the designated representative submits either:

(A) Fuel usage data for the unit for the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under §75.62; or

(B) If a unit does not have fuel usage data for one or more of the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under §75.62, the unit's designated fuel usage; all available fuel usage data (including the percentage of the unit's heat input derived from the combustion of gaseous fuels), beginning with the date on which the unit commenced commercial operation; and the unit's projected fuel usage.

(ii) For a unit for which a monitoring plan has already been submitted under §75.62, that has not qualified as gas-fired under paragraph (3)(i) of this definition, and whose fuel usage changes, the designated representative submits either:

(A) Three calendar years of data following the change in the unit's fuel usage, showing that no less than 90.0 percent of the unit's average annual heat input during the previous three calendar years, and no less than 85.0 percent of the unit's annual heat input during any one of the previous three calendar years, is from the combustion of gaseous fuels and the remaining heat input is from the combustion of fuel oil; or

(B) A minimum of 720 hours of unit operating data following the change in the unit's fuel usage, showing that no less than 90.0 percent of the unit's heat input is from the combustion of gaseous fuels and the remaining heat input is from the combustion of fuel oil, and a statement that this changed pattern of fuel usage is considered permanent and is projected to continue for the foreseeable future.

(iii) If a unit qualifies as gas-fired under paragraph (3)(i) or (ii) of this definition, the unit is classified as gas-

fired as of the date of the submission under such paragraph.

(4) For purposes of part 75 of this chapter, a unit that initially qualifies as gas-fired under paragraph (3)(i) or (ii) of this definition must meet the criteria in paragraph (2) of this definition each year in order to continue to qualify as gas-fired. If such a unit combusts only gaseous fuel and fuel oil but fails to meet such criteria for a given year, the unit no longer qualifies as gas-fired starting January 1 of the year after the first year for which the criteria are not met. If such a unit combusts fuel other than gaseous fuel or fuel oil and fails to meet such criteria in a given year, the unit no longer qualifies as gas-fired starting the day after the first day for which the criteria are not met. If a unit failing to meet the criteria in paragraph (2) of this definition initially qualified as a gas-fired unit under paragraph (3) of this definition, the unit may qualify as a gas-fired unit for a subsequent year only if the designated representative submits the data specified in paragraph (3)(ii)(A) of this definition.

Gas manufacturer's intermediate standard (GMIS) means a compressed gas calibration standard that has been assayed and certified by direct comparison to a standard reference material (SRM), an SRM-equivalent PRM, a NIST/EPA-approved certified reference material (CRM), or a NIST traceable reference material (NTRM), in accordance with section 2.1.2.1 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, EPA-600/R-97/121.

Gaseous fuel means a material that is in the gaseous state at standard atmospheric temperature and pressure conditions and that is combusted to produce heat.

General account means an Allowance Tracking System account that is not a compliance account.

Generator means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

Generator Output capacity means the full-load continuous rating of a gener-

ator under specific conditions as designed by the manufacturer.

Hearing clerk means an EPA employee designated by the Administrator to establish a repository for all books, records, documents, and other materials relating to proceedings under part 78 of this chapter.

Heat input rate means the product (expressed in mmBtu/hr) of the gross calorific value of the fuel (expressed in mmBtu/mass of fuel) and the fuel feed rate into the combustion device (expressed in mass of fuel/hr) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Hour before and hour after means, for purposes of the missing data substitution procedures of part 75 of this chapter, the quality-assured hourly SO₂ or CO₂ concentration, hourly flow rate, hourly NO_x concentration, hourly moisture, hourly O₂ concentration, or hourly NO_x emission rate (as applicable) recorded by a certified monitor during the unit or stack operating hour immediately before and the unit or stack operating hour immediately after a missing data period.

Hybrid generation facility means a plant that generates electrical energy derived from a combination of qualified renewable energy (wind, solar, biomass, or geothermal) and one or more other energy resources.

Independent auditor means a professional engineer who is not an employee or agent of the source being audited.

Independent Power Production Facility (IPP) means a source that:

(1) Is nonrecourse project financed, as defined by the Secretary of Energy at 10 CFR part 715;

(2) Is used for the generation of electricity, eighty percent or more of which is sold at wholesale; and

(3) Is a new unit required to hold allowances under Title IV of the Clean Air Act; but only if direct public utility ownership of the equipment comprising the facility does not exceed 50 percent.

Investor-owned utility means a utility that is organized as a tax-paying for-profit business.

Kilowatthour saved or savings means the net savings in electricity use (expressed in Kwh) that result directly from a utility's energy conservation measures or programs.

Least-cost plan or least-cost planning process means an energy conservation and electric power planning methodology meeting the requirements of §73.82(a)(4) of this chapter.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Long-term cold storage means the complete shutdown of a unit intended to last for an extended period of time (at least two calendar years) where notice for long-term cold storage is provided under §75.61(a)(7).

Low mass emissions unit means an affected unit that is "gas-fired" or "oil-fired" (as defined in this section), and that qualifies to use the low mass emissions excepted methodology in §75.19 of this chapter.

Mail or serve by mail means to submit or serve by means other than personal service.

Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate

and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

Maximum potential NO_x emission rate or MER means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F to part 75 of this chapter, using the maximum potential nitrogen oxides concentration (MPC), as defined in section 2.1.2.1 of appendix A to part 75 of this chapter, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂) under all operating conditions of the unit except for unit start-up, shutdown, and upsets. The diluent cap value, as defined in this section, may be used in lieu of the maximum O₂ or minimum CO₂ concentration to calculate the MER. As a second alternative, when the NO_x MPC is determined from emission test results or from historical CEM data, as described in section 2.1.2.1 of appendix A to part 75 of this chapter, quality-assured diluent gas (*i.e.*, O₂ or CO₂) data recorded concurrently with the MPC may be used to calculate the MER. For the purposes of §§75.4(f), 75.19(b)(3), and 75.33(c)(7) in part 75 of this chapter and section 2.5 in appendix E to part 75 of this chapter, the MER is specific to the type of fuel combusted in the unit.

Maximum rated hourly heat input rate means a unit-specific maximum hourly heat input rate (mmBtu/hr) which is the higher of the manufacturer's maximum rated hourly heat input rate or the highest observed hourly heat input rate.

Missing data period means the total number of consecutive hours during which any certified CEMS or approved alternative monitoring system is not providing quality-assured data, regardless of the reason.

Monitor accuracy means the closeness of the measurement made by a CEMS to the reference value of the emissions

Environmental Protection Agency

§ 72.2

or volumetric flow being measured, expressed as the difference between the measurement and the reference value.

Monitor operating hour means any unit operating hour or portion thereof over which a CEMS, or other monitoring system approved by the Administrator under part 75 of this chapter is operating, regardless of the number of measurements (*i.e.*, data points) collected during the hour or portion of an hour.

Most stringent federally enforceable emissions limitation means the most stringent emissions limitation for a given pollutant applicable to the unit, which has been approved by the Administrator under the Act, whether in a State implementation plan approved pursuant to title I of the Act, a new source performance standard, or otherwise. To determine the most stringent emissions limitation for sulfur dioxide, each limitation shall be converted to lbs/mmBtu, using the appropriate conversion factors in appendix B of this part; *provided* that for determining the most stringent emissions limitation for sulfur dioxide for 1985, each limitation shall also be annualized, using the appropriate annualization factors in appendix A of this part.

Multi-header generator means a generator served by ductwork from more than one unit.

Multi-header unit means a unit with ductwork serving more than one generator.

Multiple stack configuration refers to an exhaust configuration in which the flue gases from a particular unit discharge to the atmosphere through two or more stacks. The term also refers to a unit for which emissions are monitored in two or more ducts leading to the exhaust stack, in lieu of monitoring at the stack.

Nameplate capacity means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

National Allowance Data Base or *NADB* means the data base established by the Administrator under section 402(4)(C) of the Act.

Natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot. Natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

NERC region means the North American Electric Reliability Council region or, if any, subregion.

Net income neutrality means, in the case of energy conservation measures undertaken by an investor-owned utility whose rates are regulated by a State utility regulatory authority, rates and charges established by the State utility regulatory authority that ensure that the net income earned by the utility on its State-jurisdictional equity investment will be *no lower* as a consequence of its expenditures on cost-effective qualified energy conservation measures and any associated lost sales than it would have been had the utility not made such expenditures, or that the State utility regulatory authority has implemented a ratemaking approach designed to meet this objective.

New independent power production facility or *new IPP* means a unit that:

- (1) Commences commercial operation on or after November 15, 1990;
- (2) Is nonrecourse project-financed, as defined in 10 CFR part 715;
- (3) Sells 80% of electricity generated at wholesale; and
- (4) Does not sell electricity to any affiliate or, if it does, demonstrates it

§ 72.2

40 CFR Ch. I (7–1–21 Edition)

cannot obtain the required allowances from such an affiliate.

New unit means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

Ninetieth (90th) percentile means a value that would divide an ordered set of increasing values so that at least 90 percent are less than or equal to the value and at least 10 percent are greater than or equal to the value.

Ninety-fifth (95th) percentile means a value that would divide an ordered set of increasing values so that at least 95 percent of the set are less than or equal to the value and at least 5 percent are greater than or equal to the value.

NIST/EPA-approved certified reference material or NIST/EPA-approved CRM means a calibration gas mixture that has been approved by EPA and the National Institutes of Standards and Technologies (NIST) as having specific known chemical or physical property values certified by a technically valid procedure as evidenced by a certificate or other documentation issued by a certifying standard-setting body.

NIST traceable reference material (NTRM) means a calibration gas mixture tested by and certified by the National Institutes of Standards and Technologies (NIST) to have a certain specified concentration of gases. NTRMs may have different concentrations from those of standard reference materials.

Offset plan means a plan pursuant to part 77 of this chapter for offsetting excess emissions of sulfur dioxide that have occurred at an affected source in any calendar year.

Oil-fired means:

(1) For all purposes under the Acid Rain Program, except part 75 of this chapter, the combustion of:

(i) Fuel oil for more than 10.0 percent of the average annual heat input during the previous three calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years; and

(ii) Any solid, liquid or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-de-

rived solid or liquid fuel, for the remaining heat input, if any.

(2) For purposes of part 75 of this chapter, combustion of only fuel oil and gaseous fuels, provided that the unit involved does not meet the definition of gas-fired.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating when referring to a combustion or process source seeking entry into the Opt-in Program, means that the source had documented consumption of fuel input for more than 876 hours in the 6 months immediately preceding the submission of a combustion source's opt-in application under § 74.16(a) of this chapter.

Operating permit means a permit issued under part 70 of this chapter and any other regulations implementing title V of the Act.

Opt in or opt into means to elect to become an affected unit under the Acid Rain Program through the issuance of the final effective opt-in permit under § 74.14 of this chapter.

Opt-in permit means the legally binding written document that is contained within the Acid Rain permit and sets forth the requirements under part 74 of this chapter for a combustion source or a process source that opts into the Acid Rain Program.

Opt-in source means a combustion source or process source that has elected to become an affected unit under the Acid Rain Program and whose opt-in permit has been issued and is in effect.

Out-of-control period means any period:

(1) Beginning with the hour corresponding to the completion of a daily calibration error, linearity check, or quality assurance audit that indicates that the instrument is not measuring and recording within the applicable performance specifications; and

(2) Ending with the hour corresponding to the completion of an additional calibration error, linearity check, or quality assurance audit following corrective action that demonstrates that the instrument is measuring and recording within the applicable performance specifications.

Environmental Protection Agency

§ 72.2

Oversubscription payment deadline means 30 calendar days prior to the allowance transfer deadline.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in an affected unit or in a combustion source or process source; or

(2) Any holder of a leasehold interest in an affected unit or in a combustion source or process source; or

(3) Any purchaser of power from an affected unit or from a combustion source or process source under a life-of-the-unit, firm power contractual arrangement as the term is defined herein and used in section 408(i) of the Act. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

(4) With respect to any Allowance Tracking System general account, any person identified in the submission required by § 73.31(c) of this chapter that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

Owner or operator means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

Ozone nonattainment area means an area designated as a nonattainment area for ozone under subpart C of part 81 of this chapter.

Ozone season means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

Ozone transport region means the ozone transport region designated under Section 184 of the Act.

Peaking unit means:

(1) A unit that has:

(i) An average capacity factor of no more than 10.0 percent during the previous three calendar years and

(ii) A capacity factor of no more than 20.0 percent in each of those calendar years.

(2) For purposes of part 75 of this chapter, a unit may initially qualify as a peaking unit if the designated representative demonstrates to the satisfaction of the Administrator that the requirements of paragraph (1) of this definition are met, or will in the future be met, through one of the following submissions:

(i) For a unit for which a monitoring plan has not been submitted under § 75.62, the designated representative submits either:

(A) Capacity factor data for the unit for the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under § 75.62; or

(B) If a unit does not have capacity factor data for one or more of the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under § 75.62, all available capacity factor data, beginning with the date on which the unit commenced commercial operation; and projected capacity factor data.

(ii) For a unit for which a monitoring plan has already been submitted under § 75.62, that has not qualified as a peaking unit under paragraph (2)(i) of this definition, and where capacity factor changes, the designated representative submits either:

(A) Three calendar years of data following the change in the unit's capacity factor showing an average capacity factor of no more than 10.0 percent during the three previous calendar years and a capacity factor of no more than 20.0 percent in each of those calendar years; or

(B) One calendar year of data following the change in the unit's capacity factor showing a capacity factor of no more than 10.0 percent and a statement that this changed pattern of operation resulting in a capacity factor less than 10.0 percent is considered permanent and is projected to continue for the foreseeable future.

(3) For purposes of part 75 of this chapter, a unit that initially qualifies as a peaking unit must meet the criteria in paragraph (1) of this definition

each year in order to continue to qualify as a peaking unit. If such a unit fails to meet such criteria for a given year, the unit no longer qualifies as a peaking unit starting January 1 of the year after the year for which the criteria are not met. If a unit failing to meet the criteria in paragraph (1) of this definition initially qualified as a peaking unit under paragraph (2) of this definition, the unit may qualify as a peaking unit for a subsequent year only if the designated representative submits the data specified in paragraph (2)(ii)(A) of this definition.

(4) A unit required to comply with the provisions of subpart H of part 75 of this chapter, under a State or Federal NO_x mass emissions reduction program, may, pursuant to § 75.74(c)(11) in part 75 of this chapter, qualify as a peaking unit on an ozone season basis rather than an annual basis, if the owner or operator reports NO_x mass emissions and heat input data only during the ozone season.

Permit revision means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in subpart H of this part.

Permitting authority means either:

(1) When the Administrator is responsible for administering Acid Rain permits under subpart G of this part, the Administrator or a delegatee agency authorized by the Administrator; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to administer Acid Rain permits under subpart G of this part and part 70 of this chapter.

Person includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

Phase I means the Acid Rain Program period beginning January 1, 1995 and ending December 31, 1999.

Phase I unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I; or any unit exempt

under § 72.8 that, but for such exemption, would be subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I.

Phase II means the Acid Rain Program period beginning January 1, 2000, and continuing into the future thereafter.

Phase II unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation during Phase II only.

Pipeline natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions, and which is provided by a supplier through a pipeline. Pipeline natural gas contains 0.5 grains or less of total sulfur per 100 standard cubic feet. Additionally, pipeline natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot.

Pollutant concentration monitor means that component of the continuous emission monitoring system that measures the concentration of a pollutant in a unit's flue gas.

Potential electrical output capacity means the MWe capacity rating for the units which shall be equal to 33 percent of the maximum design heat input capacity of the steam generating unit, as calculated according to appendix D of part 72.

Power distribution system means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

Power purchase commitment means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

- (1) A power sales agreement;
- (2) A state regulatory authority order requiring a utility to:
 - (i) Enter into a power sales agreement with the facility;
 - (ii) Purchase from the facility; or

Environmental Protection Agency

§ 72.2

(iii) Enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;

(3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993 or, where the letter of intent does not specify a time frame, a power sale agreement applicable to the source is executed on or before November 15, 1993; or

(4) A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

Power sales agreement is a legally binding agreement between a QF, IPP, new IPP, or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

Presiding Officer means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at a hearing in an appeal under part 78 of this chapter or an EPA lawyer designated to preside at any such hearing under § 78.6(b)(3)(ii) of this chapter.

Primary fuel or primary fuel supply means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

Probationary calibration error test means an on-line calibration error test performed in accordance with section 2.1.1 of appendix B to part 75 of this chapter that is used to initiate a conditionally valid data period.

Proposed Acid Rain permit or proposed permit means, in the case of a State operating permit program, the version of an Acid Rain permit that the permitting authority submits to the Administrator after the public comment period, but prior to completion of the EPA permit review period, as provided for in part 70 of this chapter.

QA operating quarter means a calendar quarter in which there are at least 168 unit operating hours (as de-

defined in this section) or, for a common stack or bypass stack, a calendar quarter in which there are at least 168 stack operating hours (as defined in this section).

Qualified individual (QI) means an individual who is identified by an AETB as meeting the requirements described in ASTM D 7036-04 "Standard Practice for Competence of Air Emission Testing Bodies" (incorporated by reference, see § 72.13), as of the date of testing.

Qualifying facility (QF) means a "qualifying small power production facility" within the meaning of section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of section 3(18)(B) of the Federal Power Act.

Qualifying Phase I technology means a technological system of continuous emission reduction that is demonstrated to achieve a ninety (90) percent (or greater) reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fossil fuels that were not subject to treatment prior to combustion, as provided in § 72.42.

Qualifying power purchase commitment means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

(1) The identity of the electric output purchaser; or

(2) The identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and

(3) The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the Acid Rain Program to be shifted to the purchaser.

Qualifying repowering technology means:

(1) Replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these

technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990; or

(2) Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

Quality-assured monitor operating hour means any unit operating hour or portion thereof over which a certified CEMS, or other monitoring system approved by the Administrator under part 75 of this chapter, is operating:

(1) Within the performance specifications set forth in part 75, appendix A of this chapter and the quality assurance/quality control procedures set forth in part 75, appendix B of this chapter, without unscheduled maintenance, repair, or adjustment; and

(2) In accordance with §75.10(d), (e), and (f) of this chapter.

Receive or receipt of means the date the Administrator or a permitting authority comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official log, or by a notation made on the information or correspondence, by the Administrator or the permitting authority in the regular course of business.

Recordation, record, or recorded means, with regard to allowances, the transfer of allowances by the Administrator from one Allowance Tracking System account to another.

Reduced utilization means a reduction, during any calendar year in Phase I, in the heat input (expressed in mmBtu for the calendar year) at a Phase I unit below the unit's baseline, where such reduction subjects the unit to the requirement to submit a reduced utilization plan under §72.43; or, in the case of an opt-in source, means a reduction in the average utilization, as specified in §74.44 of this chapter, of an opt-in source below the opt-in source's baseline.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in part 60, appendix A of this chapter.

Reference value or reference signal means the known concentration of a calibration gas, the known value of an electronic calibration signal, or the known value of any other measurement standard approved by the Administrator, assumed to be the true value for the pollutant or diluent concentration or volumetric flow being measured.

Relative accuracy means a statistic designed to provide a measure of the systematic and random errors associated with data from continuous emission monitoring systems, and is expressed as the absolute mean difference between the pollutant or moisture concentration or volumetric flow measured by the pollutant concentration or flow monitor or moisture monitor and the value determined by the applicable reference method(s) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the reference method tests in accordance with part 75 of this chapter.

Replacement unit means an affected unit replacing the thermal energy provided by an opt-in source, where both the affected unit and the opt-in source are governed by a thermal energy plan.

Research gas mixture (RGM) means a calibration gas mixture developed by agreement of a requestor and NIST that NIST analyzes and certifies as "NIST traceable." RGMs may have concentrations different from those of standard reference materials.

Schedule of compliance means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct non-compliance, with an applicable requirement of the Acid Rain Program, including any applicable Acid Rain permit requirement.

Secretary of Energy means the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

Serial number means, when referring to allowances, the unique identification number assigned to each allowance by the Administrator, pursuant to §73.34(d) of this chapter.

Environmental Protection Agency

§ 72.2

Simple combustion turbine means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

Site lease, as used in part 73, subpart E of this chapter, means a legally-binding agreement signed between a new IPP or a firm associated with a new IPP and a site owner that establishes the terms and conditions under which the new IPP or the firm associated with the new IPP has the binding right to utilize a specific site for the purposes of operating or constructing the new IPP.

Small diesel refinery means a domestic motor diesel fuel refinery or portion of a refinery that, as an annual average of calendar years 1988 through 1990 and as reported to the Department of Energy on Form 810, had bona fide crude oil throughput less than 18,250,000 barrels per year, and the refinery or portion of a refinery is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year.

Solid waste incinerator means a source as defined in section 129(g)(1) of the Act.

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Act, provided that one or more combustion or process sources that have, under § 74.4(c) of this chapter, a different designated representative than the designated representative for one or more affected utility units at a source shall be treated as being included in a separate source from the source that includes such utility units for purposes of parts 72 through 78 of this chapter, but shall be treated as being included in the same source as the source that includes such utility units for purposes of section 502(c) of the Act. For purposes of section 502(c) of the Act, a "source", including a

"source" with multiple units, shall be considered a single "facility."

Span means the highest pollutant or diluent concentration or flow rate that a monitor component is required to be capable of measuring under part 75 of this chapter.

Specialty Gas Company means an organization that wholly or partially owns or operates one or more EPA Protocol gas production sites.

Spot allowance means an allowance that may be used for purposes of compliance with a source's Acid Rain sulfur dioxide emissions limitation requirements beginning in the year in which the allowance is offered for sale.

Spot auction means an auction of a spot allowance.

Spot sale means a sale of a spot allowance.

Stack means a structure that includes one or more flues and the housing for the flues.

Stack operating hour means a clock hour during which flue gases flow through a particular stack or duct (either for the entire hour or for part of the hour) while the associated unit(s) are combusting fuel.

Stack operating time means the portion of a clock hour during which flue gases flow through a particular stack or duct while the associated unit(s) are combusting fuel. The stack operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

Standard conditions means 68 °F at 1 atm (29.92 in. of mercury).

Standard reference material or *SRM* means a calibration gas mixture issued and certified by NIST as having specific known chemical or physical property values.

Standard reference material-equivalent compressed gas primary reference material (SRM-equivalent PRM) means those gas mixtures listed in a declaration of equivalence in accordance with section 2.1.2 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, EPA-600/R-97/121.

State means one of the 48 contiguous States and the District of Columbia, any non-federal authorities in or including such States or the District of Columbia (including local agencies,

§ 72.2

40 CFR Ch. I (7-1-21 Edition)

interstate associations, and State-wide agencies), and any eligible Indian tribe in an area in such State or the District of Columbia. The term “State” shall have its conventional meaning where such meaning is clear from the context.

State operating permit program means an operating permit program that the Administrator has approved under part 70 of this chapter.

Stationary gas turbine means a turbine that is not self-propelled and that combusts natural gas, other gaseous fuel with a total sulfur content no greater than the total sulfur content of natural gas, or fuel oil in order to heat inlet combustion air and thereby turn a turbine in addition to or instead of producing steam or heating water.

Steam sales agreement is a legally binding agreement between a QF, IPP, new IPP, or firm associated with such facility and an industrial or commercial establishment requiring steam that establishes the terms and conditions under which the facility will supply steam to the establishment.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other equivalent means of dispatch, or transmission, and delivery. Compliance with any “submission”, “service”, or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Substitute data means emissions or volumetric flow data provided to assure 100 percent recording and reporting of emissions when all or part of the continuous emission monitoring system is not functional or is operating outside applicable performance specifications.

Substitution unit means an affected unit, other than a unit under section 410 of the Act, that is designated as a Phase I unit in a substitution plan under § 72.41.

Sulfur-free generation means the generation of electricity by a process that does not have any emissions of sulfur

dioxide, including hydroelectric, nuclear, solar, or wind generation. A “sulfur-free generator” is a generator that is located in one of the 48 contiguous States or the District of Columbia and produces “sulfur-free generation.”

Supply-side measure means a measure to improve the efficiency of the generation, transmission, or distribution of electricity, implemented by a utility in connection with its operations or facilities to provide electricity to its customers, and includes the measures set forth in part 73, appendix A, section 2 of this chapter.

Thermal energy means the thermal output produced by a combustion source used directly as part of a manufacturing process but not used to produce electricity.

Ton or tonnage means any “short ton” (*i.e.*, 2,000 pounds). For the purpose of determining compliance with the Acid Rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with part 75 of this chapter, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

Total planned net output capacity means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990; “Total installed net output capacity” shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

Transfer unit means a Phase I unit that transfers all or part of its Phase I emission reduction obligations to a control unit designated pursuant to a Phase I extension plan under § 72.42.

Underutilization means a reduction, during any calendar year in Phase I, of the heat input (expressed in mmBtu for the calendar year) at a Phase I unit below the unit’s baseline.

Environmental Protection Agency

§ 72.2

Unit means a fossil fuel-fired combustion device.

Unit load means the total (*i.e.*, gross) output of a unit or source in any calendar year (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

(1) The total electrical generation (MWe) for use within the plant and for sale; or

(2) In the case of a unit or source that uses part of its heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit or source.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour means a clock hour during which a unit combusts any fuel, either for part of the hour or for the entire hour.

Unit operating quarter means a calendar quarter in which a unit combusts any fuel.

Unit operating time means the portion of a clock hour during which a unit combusts any fuel. The unit operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

Utility means any person that sells electricity.

Utility competitive bid solicitation is a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new IPP may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

Utility regulatory authority means an authority, board, commission, or other entity (limited to the local-, State-, or federal-level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

Utility system means all interconnected units and generators operated by the same utility operating company.

Utility unit means a unit owned or operated by a utility:

(1) That serves a generator in any State that produces electricity for sale, or

(2) That during 1985, served a generator in any State that produced electricity for sale.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the Acid Rain Program.

(4) Notwithstanding paragraphs (1) and (2) of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the Acid Rain Program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

Utilization means the heat input (expressed in mmBtu/time) for a unit.

Very low sulfur fuel means either:

(1) A fuel with a total sulfur content no greater than 0.05 percent sulfur by weight;

(2) Natural gas or pipeline natural gas, as defined in this section; or

(3) Any gaseous fuel with a total sulfur content no greater than 20 grains of sulfur per 100 standard cubic feet.

Volumetric flow means the rate of movement of a specified volume of gas past a cross-sectional area (e.g., cubic feet per hour).

Zero air material means either:

(1) A calibration gas certified by the gas vendor not to contain concentrations of SO₂, NO_x, or total hydrocarbons above 0.1 parts per million (ppm), a concentration of CO above 1 ppm, or a concentration of CO₂ above 400 ppm;

(2) Ambient air conditioned and purified by a CEMS for which the CEMS manufacturer or vendor certifies that the particular CEMS model produces conditioned gas that does not contain concentrations of SO₂, NO_x, or total hydrocarbons above 0.1 ppm, a concentration of CO above 1 ppm, or a concentration of CO₂ above 400 ppm;

§ 72.3

(3) For dilution-type CEMS, conditioned and purified ambient air provided by a conditioning system concurrently supplying dilution air to the CEMS; or

(4) A multicomponent mixture certified by the supplier of the mixture that the concentration of the component being zeroed is less than or equal to the applicable concentration specified in paragraph (1) of this definition, and that the mixture's other components do not interfere with the CEM readings.

[58 FR 3650, Jan. 11, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 72.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 72.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

acfh—actual cubic feet per hour.
atm—atmosphere.
bbl—barrel.
Btu—British thermal unit.
°C—degree Celsius (centigrade).
CEMS—continuous emission monitoring system.
cfm—cubic feet per minute.
cm—centimeter.
dcf—dry cubic feet.
DOE—Department of Energy.
dscf—dry cubic feet at standard conditions.
dscfh—dry cubic feet per hour at standard conditions.
EIA—Energy Information Administration.
eq—equivalent.
°F—degree Fahrenheit.
fps—feet per second.
gal—gallon.
hr—hour.
in—inch.
°K—degree Kelvin.
kacfm—thousands of cubic feet per minute at actual conditions.
kscfh—thousands of cubic feet per hour at standard conditions.
Kwh—kilowatt hour.
lb—pounds.
m—meter.
mmBtu—million Btu.
min—minute.
mol. wt.—molecular weight.
MWe—megawatt electrical.
MWge—gross megawatt electrical.
NIST—National Institute of Standards and Technology.
ppm—parts per million.

40 CFR Ch. I (7–1–21 Edition)

psi—pounds per square inch.
°R—degree Rankine.
RATA—relative accuracy test audit.
scf—cubic feet at standard conditions.
scfh—cubic feet per hour at standard conditions.
sec—second.
std—at standard conditions.
CO₂—carbon dioxide.
NO_x—nitrogen oxides.
O₂—oxygen.
THC—total hydrocarbon content.
SO₂—sulfur dioxide.

[58 FR 3650, Jan. 11, 1993, as amended at 64 FR 28588, May 26, 1999]

§ 72.4 Federal authority.

(a) The Administrator reserves all authority under sections 112(r)(9), 113, 114, 120, 301, 303, 304, 306, and 307(a) of the Act, including, but not limited to, the authority to:

(1) Secure information needed for the purpose of developing, revising, or implementing, or of determining whether any person is in violation of, any standard, method, requirement, or prohibition of the Act, this part, parts 73, 74, 75, 76, 77, and 78 of this chapter;

(2) Make inspections, conduct tests, examine records, and require an owner or operator of an affected unit to submit information reasonably required for the purpose of developing, revising, or implementing, or of determining whether any person is in violation of, any standard, method, requirement, or prohibition of the Act, this part, parts 73, 74, 75, 76, 77, and 78 of this chapter.

(3) Issue orders, call witnesses, and compel the production of documents.

(b) The Administrator reserves the right under title IV of the Act to take any action necessary to protect the orderly and competitive functioning of the allowance system, including actions to prevent fraud and misrepresentation.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995]

§ 72.5 State authority.

Consistent with section 116 of the Act, the provisions of the Acid Rain Program shall not be construed in any manner to preclude any State from adopting and enforcing any other air quality requirement (including any continuous emissions monitoring) that is not less stringent than, and does not

Environmental Protection Agency

§ 72.6

alter, any requirement applicable to an affected unit or affected source under the Acid Rain Program; *provided* that such State requirement, if articulated in an operating permit, is in a portion of the operating permit separate from the portion containing the Acid Rain Program requirements.

§ 72.6 Applicability.

(a) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the Acid Rain Program:

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

(2) A unit that is listed in table 2 or 3 of § 73.10 of this chapter and any other existing utility unit, except a unit under paragraph (b) of this section.

(3) A utility unit, except a unit under paragraph (b) of this section, that:

(i) Is a new unit; or

(ii) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990.

(iii) Was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;

(iv) Was an exempt cogeneration facility under paragraph (b)(4) of this section but during any three calendar year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

(v) Was an exempt qualifying facility under paragraph (b)(5) of this section but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(vi) Was an exempt IPP under paragraph (b)(6) of this section but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(vii) Was an exempt solid waste incinerator under paragraph (b)(7) of this

section but during any three calendar year period after November 15, 1990 consumes 20 percent or more (on a Btu basis) fossil fuel.

(b) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

(1) A simple combustion turbine that commenced commercial operation before November 15, 1990.

(2) Any unit that commenced commercial operation before November 15, 1990 and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

(3) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(4) A cogeneration facility which:

(i) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, the Administrator will presume that actual operation from 1985 through 1987 is consistent with such purpose. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program; or

(ii) For units which commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than

§ 72.6

40 CFR Ch. I (7-1-21 Edition)

one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

(5) A qualifying facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator may exercise discretion to designate which units are exempt.

(6) An independent power production facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the Administrator may exercise discretion to designate which units are exempt.

(7) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For solid waste incinerators which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For solid waste incinerators which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an af-

ected source under the Acid Rain Program.

(8) A non-utility unit.

(9) A unit for which an exemption under § 72.7 or § 72.8 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of § 72.7 or § 72.8, as applicable to the exemption.

(c) A certifying official of an owner or operator of any unit may petition the Administrator for a determination of applicability under this section.

(1) *Petition Content.* The petition shall be in writing and include identification of the unit and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statement set forth at § 72.21(b)(2). Within 10 business days of receipt of any written determination by the Administrator covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Administrator's response.

(2) *Timing.* The petition may be submitted to the Administrator at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit.

(3) *Submission.* All submittals under this section shall be made by the certifying official to the Director, Acid Rain Division, (6204J), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(4) *Response.* The Administrator will issue a written response based upon the factual submittal meeting the requirements of paragraph (c)(1) of this section.

(5) *Administrative appeals.* The Administrator's determination of applicability is a decision appealable under 40 CFR part 78 of this chapter.

(6) *Effect of determination.* The Administrator's determination of applicability shall be binding upon the permitting authority, unless the petition is found to have contained significant errors or omissions.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15648, Mar. 23, 1993; 62 FR 55475, Oct. 24, 1997; 64 FR 28588, May 26, 1999; 66 FR 12978, Mar. 1, 2001]

§ 72.7 New units exemption.

(a) *Applicability.* This section applies to any new utility unit that has not previously lost an exemption under paragraph (f)(4) of this section and that, in each year starting with the first year for which the unit is to be exempt under this section:

(1) Serves during the entire year (except for any period before the unit commenced commercial operation) one or more generators with total nameplate capacity of 25 MWe or less;

(2) Burns fuel that does not include any coal or coal-derived fuel (except coal-derived gaseous fuel with a total sulfur content no greater than natural gas); and

(3) Burns gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section) and non-gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section).

(b)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is not allocated any allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13.

(2) The exemption under paragraph (b)(1) of this section shall be effective on January 1 of the first full calendar year for which the unit meets the requirements of paragraph (a) of this section. By December 31 of the first year for which the unit is to be exempt under this section, a statement signed by the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall be submitted to permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement, which shall be in a format prescribed by the Administrator, shall identify the unit, state the nameplate capacity of each generator served by the unit

and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight, and state that the owners and operators of the unit will comply with paragraph (f) of this section.

(3) After receipt of the statement under paragraph (b)(2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (b)(1), (d), and (f) of this section.

(c)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is allocated one or more allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13, if each of the following requirements are met:

(i) The designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit submits to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a statement (in a format prescribed by the Administrator) that:

(A) Identifies the unit and states the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight;

(B) States that the owners and operators of the unit will comply with paragraph (f) of this section;

(C) Surrenders allowances equal in number to, and with the same or earlier compliance use date as, all of those allocated to the unit under subpart B of part 73 of this chapter for the first year that the unit is to be exempt under this section and for each subsequent year; and

(D) Surrenders any proceeds for allowances under paragraph (c)(1)(i)(C) or this section withheld from the unit

§ 72.7

40 CFR Ch. I (7-1-21 Edition)

under § 73.10 of this chapter. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator.

(ii) The Administrator deducts from the compliance account of the source that includes the unit allowances under paragraph (c)(1)(i)(C) of this section and receives proceeds under paragraph (c)(1)(i)(D) of this section. Within 5 business days of receiving a statement in accordance with paragraph (c)(1)(i) of this section, the Administrator shall either deduct the allowances under paragraph (c)(1)(i)(C) of this section or notify the owners and operators that there are insufficient allowances to make such deductions.

(2) The exemption under paragraph (c)(1) of this section shall be effective on January 1 of the first full calendar year for which the requirements of paragraphs (a) and (c)(1) of this section are met. After notification by the Administrator under the third sentence of paragraph (c)(1)(ii) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (c)(1), (d), and (f) of this section.

(d) Compliance with the requirement that fuel burned during the year have an annual average sulfur content of 0.05 percent by weight or less shall be determined as follows using a method of determining sulfur content that provides information with reasonable precision, reliability, accessibility, and timeliness:

(1) For gaseous fuel burned during the year, if natural gas is the only gaseous fuel burned, the requirement is assumed to be met;

(2) For gaseous fuel burned during the year where other gas in addition to or besides natural gas is burned, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, for the gaseous fuel burned shall be calculated as follows:

$$\%S_{\text{annual}} = \frac{\sum_{n=1}^{\text{last}} \%S_n V_n d_n}{\sum_{n=1}^{\text{last}} V_n d_n}$$

where:

$\%S_{\text{annual}}$ = annual average sulfur content of the fuel burned during the year by the unit, as a percentage by weight;

$\%S_n$ = sulfur content of the nth sample of the fuel delivered during the year to the unit, as a percentage by weight;

V_n = volume of the fuel in a delivery during the year to the unit of which the nth sample is taken, in standard cubic feet; or, for fuel delivered during the year to the unit continuously by pipeline, volume of the fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in standard cubic feet;

d_n = density of the nth sample of the fuel delivered during the year to the unit, in lb per standard cubic foot; and

n = each sample taken of the fuel delivered during the year to the unit, taken at least once for each delivery; or, for fuel that is delivered during the year to the unit continuously by pipeline, at least once each quarter during which the fuel is delivered.

(3) For nongaseous fuel burned during the year, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, shall be calculated using the equation in paragraph (d)(2) of this section. In lieu of the factor, volume times density ($V_n d_n$), in the equation, the factor, mass (M_n), may be used, where M_n is: mass of the nongaseous fuel in a delivery during the year to the unit of which the nth sample is taken, in lb; or, for fuel delivered during the year to the unit continuously by pipeline, mass of the nongaseous fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in lb.

(e)(1) A utility unit that was issued a written exemption under this section and that meets the requirements of paragraph (a) of this section shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13 and shall be subject to the requirements of paragraphs (a), (d),

(e)(2), and (f) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (e)(1) and paragraphs (a), (d), (e)(2), and (f) of this section.

(2) If a utility unit under paragraph (e)(1) of this section is allocated one or more allowances under subpart B of part 73 of this chapter, the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit to the permitting authority that issued the written exemption a statement (in a format prescribed by the Administrator) meeting the requirements of paragraph (c)(1)(i)(C) and (D) of this section. The statement shall be submitted by June 31, 1998 and, if the Administrator is not the permitting authority, a copy shall be submitted to the Administrator.

(f) *Special Provisions.* (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall:

(i) Comply with the requirements of paragraph (a) of this section for all periods for which the unit is exempt under this section; and

(ii) Comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section:

(i) For purposes of applying parts 70 and 71 of this chapter, the unit shall not be treated as an affected unit under the Acid Rain Program and shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(ii) The unit shall not be eligible to be an opt-in source under part 74 of chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt

under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority.

(i) Such records shall include, for each delivery of fuel to the unit or for fuel delivered to the unit continuously by pipeline, the type of fuel, the sulfur content, and the sulfur content of each sample taken.

(ii) The owners and operators bear the burden of proof that the requirements of paragraph (a) of this section are met.

(4) Loss of exemption. (i) On the earliest of the following dates, a unit exempt under paragraphs (b), (c), or (e) of this section shall lose its exemption and for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program:

(A) The date on which the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe;

(B) The date on which the unit burns any coal or coal-derived fuel except for coal-derived gaseous fuel with a total sulfur content no greater than natural gas; or

(C) January 1 of the year following the year in which the annual average sulfur content for gaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section) or for nongaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section).

(ii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.

(iii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced

§ 72.8

40 CFR Ch. I (7–1–21 Edition)

commercial operation on the first date on which the unit is no longer exempt.

[62 FR 55476, Oct. 24, 1997, as amended at 71 FR 25377, Apr. 28, 2006; 70 FR 25334, May 12, 2005]

§ 72.8 Retired units exemption.

(a) This section applies to any affected unit (except for an opt-in source) that is permanently retired.

(b)(1) Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter.

(2) The exemption under paragraph (b)(1) of this section shall become effective on January 1 of the first full calendar year during which the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subpart B of this part), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (b)(1) and (d) of this section.

(c) A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter, and shall be subject to the requirements of paragraph (d) of this section in lieu of

the requirements set forth in the written exemption. The permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (c) and paragraph (d) of this section.

(d) *Special Provisions.* (1) A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of part 73 of this chapter. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of this part 72 and an annual certification report in accordance with §§ 72.90 through 72.92 and is subject to §§ 72.95 and 72.96.

(2) A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete Acid Rain permit application under § 72.31 for the unit not less than 24 months prior to the later of January 1, 2000 or the date on which the unit is first to resume operation.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) For any period for which a unit is exempt under this section:

(i) For purposes of applying parts 70 and 71 of this chapter, the unit shall not be treated as an affected unit under the Acid Rain Program and shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(ii) The unit shall not be eligible to be an opt-in source under part 74 of chapter.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt

under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) Loss of exemption. (i) On the earlier of the following dates, a unit exempt under paragraph (b) or (c) of this section shall lose its exemption and for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program:

(A) The date on which the designated representative submits an Acid Rain permit application under paragraph (d)(2) of this section; or

(B) The date on which the designated representative is required under paragraph (d)(2) of this section to submit an Acid Rain permit application.

(ii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

[62 FR 55477, Oct. 24, 1997; 62 FR 66279, Dec. 18, 1997, as amended at 71 FR 25377, Apr. 28, 2006]

§ 72.9 Standard requirements.

(a) *Permit Requirements.* (1) The designated representative of each affected source and each affected unit at the source shall:

(i) Submit a complete Acid Rain permit application (including a compliance plan) under this part in accordance with the deadlines specified in § 72.30;

(ii) Submit in a timely manner a complete reduced utilization plan if required under § 72.43; and

(iii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit.

(2) The owners and operators of each affected source and each affected unit at the source shall:

(i) Operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the permitting authority; and

(ii) Have an Acid Rain Permit.

(b) *Monitoring Requirements.* (1) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in part 75 of this chapter.

(2) The emissions measurements recorded and reported in accordance with part 75 of this chapter shall be used to determine compliance by the source or unit, as appropriate, with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.

(3) The requirements of part 75 of this chapter shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

(c) *Sulfur Dioxide Requirements.* (1) The owners and operators of each source and each affected unit at the source shall:

(i) Hold allowances, as of the allowance transfer deadline, in the source's compliance account (after deductions under § 73.34(c) of this chapter) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the affected units at the source; and

(ii) Comply with the applicable Acid Rain emissions limitation for sulfur dioxide.

(2) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

(3) An affected unit shall be subject to the requirements under paragraph (c)(1) of this section as follows:

(i) Starting January 1, 1995, an affected unit under § 72.6(a)(1);

§ 72.9

40 CFR Ch. I (7-1-21 Edition)

(ii) Starting on or after January 1, 1995 in accordance with §§ 72.41 and 72.43, an affected unit under § 72.6(a) (2) or (3) that is a substitution or compensating unit;

(iii) Starting January 1, 2000, an affected unit under § 72.6(a)(2) that is not a substitution or compensating unit; or

(iv) Starting on the later of January 1, 2000 or the deadline for monitor certification under part 75 of this chapter, an affected unit under § 72.6(a)(3) that is not a substitution or compensating unit.

(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.

(5) An allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1)(i) of this section, prior to the calendar year for which the allowance was allocated.

(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or an exemption under §§ 72.7 or 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

(d) *Nitrogen Oxides Requirements.* The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain emissions limitation for nitrogen oxides.

(e) *Excess Emissions Requirements.* (1) The designated representative of an affected source that has excess emissions in any calendar year shall submit a proposed offset plan, as required under part 77 of this chapter.

(2) The owners and operators of an affected source that has excess emissions in any calendar year shall:

(i) Pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by part 77 of this chapter; and

(ii) Comply with the terms of an approved offset plan, as required by part 77 of this chapter.

(f) *Recordkeeping and Reporting Requirements.* (1) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Administrator or permitting authority.

(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with § 72.24; *provided* that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(ii) All emissions monitoring information, in accordance with part 75 of this chapter; *provided* that to the extent that part 75 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program.

(iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under subpart I of this part and part 75 of this chapter.

(g) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or an exemption under § 72.7 or § 72.8, including any requirement for the payment of any penalty owed to the United States,

Environmental Protection Agency

§ 72.12

shall be subject to enforcement pursuant to section 113(c) of the Act.

(2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement pursuant to section 113(c) of the Act and 18 U.S.C. 1001.

(3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(4) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.

(5) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

(6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit.

(7) Each violation of a provision of this part, parts 73, 74, 75, 76, 77, and 78 of this chapter, by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

(h) *Effect on Other Authorities.* No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or an exemption under § 72.7 or § 72.8 shall be construed as:

(1) Except as expressly provided in title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans.

(2) Limiting the number of allowances a source can hold; *provided*, that the number of allowances held by the source shall not affect the source's obligation to comply with any other provisions of the Act.

(3) Requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law.

(4) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act.

(5) Interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 62 FR 55478, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001; 70 FR 25334, May 12, 2005]

§ 72.10 Availability of information.

The availability to the public of information provided to, or otherwise obtained by, the Administrator under the Acid Rain Program shall be governed by part 2 of this chapter.

§ 72.11 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Acid Rain Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Acid Rain Program, to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Acid Rain Program, falls on a weekend or a Federal holiday, the time period shall be extended to the next business day.

(d) Whenever a party or interested person has the right, or is required, to act under the Acid Rain Program within a prescribed time period after service of notice or other document upon him or her by mail, 3 days shall be added to the prescribed time.

§ 72.12 Administrative appeals.

The procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

§ 72.13

§ 72.13 Incorporation by reference.

The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) The following materials are available for purchase from the following address: American Society for Testing and Material (ASTM) International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959, phone: 610-832-9585, http://www.astm.org/DIGITAL_LIBRARY/index.shtml.

(1) ASTM D388-92, Standard Classification of Coals by Rank for § 72.2 of this chapter.

(2) ASTM D396-90a, Standard Specification for Fuel Oils, for § 72.2 of this chapter.

(3) ASTM D975-91, Standard Specification for Diesel Fuel Oils, for § 72.2 of this chapter.

(4) ASTM D2880-90a, Standard Specification for Gas Turbine Fuel Oils, for § 72.2 of this part.

(5) ASTM D 7036-04, Standard Practice for Competence of Air Emission Testing Bodies, for § 72.2.

(b) A copy of the following material is available from <http://www.epa.gov/ttn/emc/news.html> (see postings for Sections 1, 2, 3, 4, Appendices, Spreadsheets, and the "Read before downloading Section 2" revision posted August 27, 1999): EPA-600/R-97/121, EPA Traceability Protocol for Assay and Certification of

40 CFR Ch. I (7-1-21 Edition)

Gaseous Calibration Standards, September 1997, as amended August 25, 1999, U.S. Environmental Protection Agency, for § 72.2.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 26526, May 17, 1995; 62 FR 55478, Oct. 24, 1997; 76 FR 17306, Mar. 28, 2011]

Subpart B—Designated Representative

§ 72.20 Authorization and responsibilities of the designated representative.

(a) Except as provided under § 72.22, each affected source, including all affected units at the source, shall have one and only one designated representative, with regard to all matters under the Acid Rain Program concerning the source or any affected unit at the source.

(b) Upon receipt by the Administrator of a complete certificate of representation, the designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the affected source represented and each affected unit at the source in all matters pertaining to the Acid Rain Program, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators shall be bound by any order issued to the designated representative by the Administrator, the permitting authority, or a court.

(c) The designated representative shall be selected and act in accordance with the certifications set forth in § 72.24(a) (4), (5), (7), and (9).

(d) No Acid Rain permit shall be issued to an affected source, nor shall any allowance transfer be recorded for an Allowance Tracking System account of an affected unit at a source, until the Administrator has received a complete certificate of representation for the designated representative of the source and the affected units at the source.

[58 FR 3650, Jan. 11, 1993, as amended at 71 FR 25378, Apr. 28, 2006]

Environmental Protection Agency

§ 72.22

§ 72.21 Submissions.

(a) Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

(b) In each submission under the Acid Rain Program, the designated representative shall certify, by his or her signature:

(1) The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made."

(2) The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(c) The Administrator and the permitting authority shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with paragraphs (a) and (b) of this section.

(d)(1) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

(i) By the date of submission, of any Acid Rain Program submissions by the designated representative and

(ii) Within 10 business days of receipt of a determination, of any written determination by the Administrator or the permitting authority,

(iii) Provided that the submission or determination covers the source or the unit.

(2) The designated representative of a source shall provide each owner and operator of an affected unit at the source

a copy of any submission or determination under paragraph (d)(1) of this section, unless the owner or operator expressly waives the right to receive such a copy.

(e) The provisions of this section shall apply to a submission made under parts 73, 74, 75, 76, 77, and 78 of this chapter only if it is made or signed or required to be made or signed, in accordance with parts 73, 74, 75, 76, 77, and 78 of this chapter, by:

(1) The designated representative; or

(2) The authorized account representative or alternate authorized account representative of a compliance account.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 70 FR 25334, May 12, 2005]

§ 72.22 Alternate designated representative.

(a) The certificate of representation may designate one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for the owners and operators of the source and affected units at the source to authorize the alternate designated representative to act in lieu of the designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation that meets the requirements of § 72.24 (including those applicable to the alternate designated representative), any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be an action, representation, or failure to act by the designated representative.

(c) In the event of a conflict, any action taken by the designated representative shall take precedence over any action taken by the alternate designated representative if, in the Administrator's judgment, the actions are concurrent and conflicting.

(d) Except in this section, § 72.23, and § 72.24, whenever the term "designated representative" is used under the Acid Rain Program, the term shall be construed to include the alternate designated representative.

§ 72.23

40 CFR Ch. I (7–1–21 Edition)

(e)(1) Notwithstanding paragraph (a) of this section, the certification of representation may designate two alternate designated representatives for a unit if:

(i) The unit and at least one other unit, which are located in two or more of the contiguous 48 States or the District of Columbia, each have a utility system that is a subsidiary of the same company; and

(ii) The designated representative for the units under paragraph (e)(1)(i) of this section submits a NO_x averaging plan under § 76.11 of this chapter that covers such units and is approved by the permitting authority, *provided* that the approved plan remains in effect.

(2) Except in this paragraph (e), whenever the term “alternate designated representative” is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e). Except in this section, § 72.23, and § 72.24, whenever the term “designated representative” is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e).

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55480, Oct. 24, 1997; 71 FR 25378, Apr. 28, 2006]

§ 72.23 Changing the designated representative, alternate designated representative; changes in the owners and operators.

(a) *Changing the designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative prior to the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and on the owners and operators of the source represented and the affected units at the source.

(b) *Changing the alternate designated representative.* The alternate designated representative may be changed at any

time upon receipt by the Administrator of a superseding complete certificate of representation. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative prior to the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative and on the owners and operators of the source represented and the affected units at the source.

(c) *Changes in the owners and operators.* (1) In the event an owner or operator of an affected source or an affected unit is not included in the list of owners and operators submitted in the certificate of representation, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternative designated representative of the source or unit, and the decisions, actions, and inactions of the Administrator and permitting authority, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of an affected unit, including the addition of a new owner or operator, the designated representative or any alternative designated representative shall submit a revision to the certificate of representation amending the list of owners and operators to include the change.

[58 FR 3650, Jan. 11, 1993, as amended at 71 FR 25378, Apr. 28, 2006]

§ 72.24 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the affected source and each affected unit at the source for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

Environmental Protection Agency

§ 72.25

(2) The name, address, and telephone and facsimile numbers of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the affected source and of each affected unit at the source.

(4) The following statement: "I certify that I was selected as the 'designated representative' or 'alternate designated representative,' as applicable, by an agreement binding on the owners and operators of the affected source and each affected unit at the source."

(5) [Reserved]

(6) The following statement: "I certify that I have all necessary authority to carry out my duties and responsibilities under the Acid Rain Program on behalf of the owners and operators of the affected source and of each affected unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(7) [Reserved]

(8) The following statement: "I certify that the owners and operators of the affected source and of each affected unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(9) The following statement: "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit under a life-of-the-unit, firm power contractual arrangement, I certify that:

(i) "I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the affected source and of each affected unit at the source; and

(ii) "Allowances and proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of allowances by contract, that allow-

ances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract."

(10) [Reserved]

(11) The signature of the designated representative and any alternate designated representative who is authorized in the certificate of representation and the date signed.

(b) Unless otherwise required by the Administrator or the permitting authority, documents of agreement or notice referred to in the certificate of representation shall not be submitted to the Administrator or the permitting authority. Neither the Administrator nor the permitting authority shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55480, Oct. 24, 1997; 71 FR 25378, Apr. 28, 2006; 70 FR 25334, May 12, 2005; 72 FR 59205, Oct. 19, 2007]

§ 72.25 Objections.

(a) Once a complete certificate of representation has been submitted in accordance with § 72.24, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate is received by the Administrator.

(b) Except as provided in § 72.23, no objection or other communication submitted to the Administrator or the permitting authority concerning the authorization, or any representation, action, inaction, or submission, of the designated representative shall affect any representation, action, inaction, or submission of the designated representative, or the finality of any decision by the Administrator or permitting authority, under the Acid Rain Program. In the event of such communication, the Administrator and the permitting authority are not required to stay any allowance transfer, any submission, or the effect of any action or inaction under the Acid Rain Program.

§ 72.26

(c) Neither the Administrator nor any permitting authority will adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55480, Oct. 24, 1997; 71 FR 25378, Apr. 28, 2006]

§ 72.26 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission (in a format prescribed by the Administrator) to the Administrator provided for or required under this part and parts 73 through 77 of this chapter.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission (in a format prescribed by the Administrator) to the Administrator provided for or required under this part and parts 73 through 77 of this chapter.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representa-

40 CFR Ch. I (7-1-21 Edition)

tive or alternate designated representative, as appropriate:

(i) "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 72.26(d) shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 72.26(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 72.26 is terminated."

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

[71 FR 25378, Apr. 28, 2006]

Subpart C—Acid Rain Permit Applications

§ 72.30 Requirement to apply.

(a) *Duty to apply.* The designated representative of any source with an affected unit shall submit a complete Acid Rain permit application by the

applicable deadline in paragraphs (b) and (c) of this section, and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its Acid Rain program requirements.

(b) *Deadlines*—(1) *Phase I*. (i) The designated representative shall submit a complete Acid Rain permit application governing an affected unit during Phase I to the Administrator on or before February 15, 1993 for:

(A) Any source with such a unit under § 72.6(a)(1); and

(B) Any source with such a unit under § 72.6(a) (2) or (3) that is designated a substitution or compensating unit in a substitution plan or reduced utilization plan submitted to the Administrator for approval or conditional approval.

(ii) Notwithstanding paragraph (b)(1)(i) of this section, if a unit at a source not previously permitted is designated a substitution or compensating unit in a submission requesting revision of an existing Acid Rain permit, the designated representative of the unit shall submit a complete Acid Rain permit application on the date that the submission requesting the revision is made.

(2) *Phase II*. (i) For any source with an existing unit under § 72.6(a)(2), the designated representative shall submit a complete Acid Rain permit application governing such unit during Phase II to the permitting authority on or before January 1, 1996.

(ii) For any source with a new unit under § 72.6(a)(3)(i), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

(iii) For any source with a unit under § 72.6(a)(3)(ii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(iv) For any source with a unit under § 72.6(a)(3)(iii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

(v) For any source with a unit under § 72.6(a)(3)(iv), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

(vi) For any source with a unit under § 72.6(a)(3)(v), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

(vii) For any source with a unit under § 72.6(a)(3)(vi), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

(viii) For any source with a unit under § 72.6(a)(3)(vii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

(c) *Duty to reapply*. The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months prior to the expiration of an existing Acid Rain permit governing

§ 72.31

the unit during Phase II or an opt-in permit governing an opt-in source or such longer time as may be approved under part 70 of this chapter that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.

(d) The original and three copies of all permit applications for Phase I and where the Administrator is the permitting authority, for Phase II, shall be submitted to the EPA Regional Office for the Region where the affected source is located. The original and three copies of all permit applications for Phase II, where the Administrator is not the permitting authority, shall be submitted to the State permitting authority for the State where the affected source is located.

(e) Where two or more affected units are located at a source, the permitting authority may, in its sole discretion, allow the designated representative of the source to submit, under paragraph (a) or (c) of this section, two or more Acid Rain permit applications covering the units at the source, *provided* that each affected unit is covered by one and only one such application.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15649, Mar. 23, 1993; 60 FR 17113, Apr. 4, 1995; 62 FR 55480, Oct. 24, 1997]

§ 72.31 Information requirements for Acid Rain permit applications.

A complete Acid Rain permit application shall include the following elements in a format prescribed by the Administrator:

(a) Identification of the affected source for which the permit application is submitted;

(b) Identification of each Phase I unit at the source for which the permit application is submitted for Phase I or each affected unit (except for an opt-in source) at the source for which the permit application is submitted for Phase II;

(c) A complete compliance plan for each unit, in accordance with subpart D of this part;

(d) The standard requirements under § 72.9; and

(e) If the Acid Rain permit application is for Phase II and the unit is a new unit, the date that the unit has

40 CFR Ch. I (7-1-21 Edition)

commenced or will commence operation and the deadline for monitor certification.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55480, Oct. 24, 1997]

§ 72.32 Permit application shield and binding effect of permit application.

(a) Once a designated representative submits a timely and complete Acid Rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an Acid Rain permit under § 72.9(a)(2) and § 72.30(a); *provided* that any delay in issuing an Acid Rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the permitting authority, necessary to issue a permit.

(b) Prior to the date on which an Acid Rain permit is issued or denied, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.

(c) A complete Acid Rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of an Acid Rain permit covering the units.

(d) If agency action concerning a permit is appealed under part 78 of this chapter, issuance or denial of the permit shall occur when the Administrator takes final agency action subject to judicial review.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55480, Oct. 24, 1997]

§ 72.33 Identification of dispatch system.

(a) Every Phase I unit shall be treated as part of a dispatch system for purposes of §§ 72.91 and 72.92 in accordance with this section.

(b)(1) The designated representatives of all affected units in a group of all units and generators that are interconnected and centrally dispatched and that are included in the same utility system, holding company, or power pool, may jointly submit to the Administrator a complete identification of dispatch system.

(2) Except as provided in paragraph (f) of this section, each unit or generator may be included in only one dispatch system.

(3) Any identification of dispatch system must be submitted by January 30 of the first year for which the identification is to be in effect. A designated representative may request, and the Administrator may grant at his or her discretion, an exemption allowing the submission of an identification of dispatch system after the otherwise applicable deadline for such submission.

(c) A complete identification of dispatch system shall include the following elements in a format prescribed by the Administrator:

(1) The name of the dispatch system.

(2) The list of all units and generators (including sulfur-free generators) in the dispatch system.

(3) The first calendar year for which the identification is to be in effect.

(4) The following statement: "I certify that, except as otherwise required under a petition as approved under 40 CFR 72.33(f), the units and generators listed herein are and will continue to be interconnected and centrally dispatched, and will be treated as a dispatch system under 40 CFR 72.91 and 72.92, during the period that this identification of dispatch system is in effect. During such period, all information concerning these units and generators and contained in any submissions under 40 CFR 72.91 and 72.92 by me and the other designated representatives of these units shall be consistent and shall conform with the data in the dispatch system data reports under 40 CFR 72.92(b). I am aware of, and will comply with, the requirements imposed under 40 CFR 72.33(e)(2)."

(5) The signatures of the designated representative for each affected unit in the dispatch system.

(d) In order to change a unit's current dispatch system, complete identi-

fications of dispatch system shall be submitted for the unit's current dispatch system and the unit's new dispatch system, reflecting the change.

(e)(1) Any unit or generator not listed in a complete identification of dispatch system that is in effect shall treat its utility system as its dispatch system and, if such unit or generator is listed in the NADB, shall treat the utility system reported under the data field "UTILNAME" of the NADB as its utility system.

(2) During the period that the identification of dispatch system is in effect all information that concerns the units and generators in a given dispatch system and that is contained in any submissions under §§ 72.91 and 72.92 by designated representative of these units shall be consistent and shall conform with the data in the dispatch system data reports under § 72.92(b). If this requirement is not met, the Administrator may reject all such submissions and require the designated representatives to make the submissions under §§ 72.91 and 72.92 (including the dispatch system data report) treating the utility system of each unit or generator as its respective dispatch system and treating the identification of dispatch system as no longer in effect.

(f)(1) Notwithstanding paragraph (e)(1) of this section or any submission of an identification of dispatch system under paragraphs (b) or (d) of this section, the designated representative of a Phase I unit with two or more owners may petition the Administrator to treat, as the dispatch system for an owner's portion of the unit, the dispatch system of another unit.

(i) The owner's portion of the unit shall be based on one of the following apportionment methods:

(A) *Owner's share of the unit's capacity in 1985-1987.* Under this method, the baseline of the owner's portion of the unit shall equal the baseline of the unit multiplied by the average of the owner's percentage ownership of the capacity of the unit for each year during 1985-1987. The actual utilization of the owner's portion of the unit for a year in Phase I shall equal the actual utilization of the unit for the year that is attributed to the owner.

(B) *Owner's share of the unit's baseline.* Under this method, the baseline of the owner's portion of the unit shall equal the average of the unit's annual utilization in 1985-1987 that is attributed to the owner. The actual utilization of the owner's portion of the unit for a year in Phase I shall equal the actual utilization of the unit for the year that is attributed to the owner.

(ii) The annual or actual utilization of a unit shall be attributed, under paragraph (f)(1)(i) of this section, to an owner of the unit using accounting procedures consistent with those used to determine the owner's share of the fuel costs in the operation of the unit during the period for which the annual or actual utilization is being attributed.

(iii) Upon submission of the petition, the designated representative may not change the election of the apportionment method or the baseline of the owner's portion of the unit.

The same apportionment method must be used for all portions of the unit for all years in Phase I for which any petition under paragraph (f)(1) of this section is approved and in effect.

(2) The petition under paragraph (f)(1) of this section shall be submitted by January 30 of the first year for which the dispatch system proposed in the petition will take effect, if approved. A complete petition shall include the following elements in a format prescribed by the Administrator:

(i) The election of the apportionment method under paragraph (f)(1)(i) of this section.

(ii) The baseline of the owner's portion of the unit and the baseline of any other owner's portion of the unit for which a petition under paragraph (f)(1) of this section has been approved or has been submitted (and not disapproved) and a demonstration that the sum of such baselines and the baseline of any remaining portion of the unit equals 100 percent of the baseline of the unit. The designated representative shall also submit, upon request, either:

(A) Where the unit is to be apportioned under paragraph (f)(1)(i)(A) of this section, documentation of the average of the owner's percentage ownership of the capacity of the unit for each year during 1985-1987; or

(B) Where the unit is to be apportioned under paragraph (f)(1)(i)(B) of this section, documentation showing the attribution of the unit's utilization in 1985, 1986, and 1987 among the portions of the unit and the calculation of the annual average utilization for 1985-1987 for the portions of the unit.

(iii) The name of the proposed dispatch system and a list of all units (including portions of units) and generators in that proposed dispatch system and, upon request, documentation demonstrating that the owner's portion of the unit, along with the other units in the proposed dispatch system, are a group of all units and generators that are interconnected and centrally dispatched by a single utility company, the service company of a single holding company, or a single power pool.

(iv) The following statement, signed by the designated representatives of all units in the proposed dispatch system: "I certify that the units and generators in the dispatch system proposed in this petition are and will continue to be interconnected and centrally dispatched, and will be treated as a dispatch system under 40 CFR 72.91 and 72.92, during the period that this petition, as approved, is in effect."

(v) The following statement, signed by the designated representatives of all units in all dispatch systems that will include any portion of the unit if the petition is approved: "During the period that this petition, if approved, is in effect, all information that concerns the units and generators in any dispatch system including any portion of the unit apportioned under the petition and that is contained in any submissions under 40 CFR 72.91 and 72.92 by me and the other designated representatives of these units shall be consistent and shall conform to the data in the dispatch system data reports under 40 CFR 72.92(b). I am aware of, and will comply with, the requirements imposed under 40 CFR 72.33(f) (4) and (5)."

(3)(i) The Administrator will approve in whole, in part, or with changes or conditions, or deny the petition under paragraph (f)(1) of this section within 90 days of receipt of the petition. The Administrator will treat the petition, as changed or conditioned upon approval, as amending any identification

Environmental Protection Agency

§ 72.33

of dispatch system that is submitted prior to the approval and includes any portion of the unit for which the petition is approved. Where any portion of a unit is not covered by an approved petition, that remaining portion of the unit shall continue to be part of the unit's dispatch system.

(ii) In approving the petition, the Administrator will determine, on a case-by-case basis, the proper calculation and treatment, for purposes of the reports required under §§ 72.91 and 72.92, of plan reductions and compensating generation provided to other units.

(4) The designated representative for the unit for which a petition is approved under paragraph (f)(3) of this section and the designated representatives of all other units included in all dispatch systems that include any portion of the unit shall submit all annual compliance certification reports, dispatch system data reports, and other reports required under §§ 72.91 and 72.92 treating, as a separate Phase I unit, each portion of the unit for which a petition is approved under paragraph (f)(3) of this section and the remaining portion of the unit. The reports shall include all required calculations and demonstrations, treating each such portion of the unit as a separate Phase I unit. Upon request, the designated representatives shall demonstrate that the data in all the reports under §§ 72.91 and 72.92 has been properly attributed or apportioned among the portions of the unit and the dispatch systems and that there is no undercounting or double-counting with regard to such data.

(i) The baseline of each portion of the unit for which a petition is approved shall be determined under paragraphs (f)(1) (i) and (ii) of this section. The baseline of the remaining portion of such unit shall equal the baseline of the unit less the sum of the baselines of any portions of the unit for which a petition is approved.

(ii) The actual utilization of each portion of the unit for which a petition is approved shall be determined under paragraphs (f)(1) (i) and (ii) of this section. The actual utilization of the remaining portion of such unit shall equal the actual utilization of the unit less the sum of the actual utilizations of any portions of the unit for which a

petition is approved. Upon request, the designated representative of the unit shall demonstrate in the annual compliance certification report that the requirements concerning calculation of actual utilization under paragraph (f)(1)(ii) and any requirements established under paragraph (f)(3) of this section are met.

(iii) Except as provided in paragraph (f)(5) of this section, the designated representative shall surrender for deduction the number of allowances calculated using the formula in § 72.92(c) and treating, as a separate Phase I unit, each portion of unit for which a petition is approved under paragraph (f)(3) of this section and the remaining portion of the unit.

(5) In the event that the designated representatives fail to make all the proper attributions, apportionments, calculations, and demonstrations under paragraph (f)(4) of this section and §§ 72.91 and 72.92, the Administrator may require that:

(i) All portions of the unit be treated as part of the dispatch system of the unit in accordance with paragraph (e)(1) of this paragraph and any identification of dispatch system submitted under paragraph (b) or (d) of this section;

(ii) The designated representatives make all submissions under §§ 72.91 and 72.92 (including the dispatch system data report), treating the entire unit as a single Phase I unit, in accordance with paragraph (e)(1) of this paragraph and any identification of dispatch system submitted under paragraph (b) or (d) of this section; and

(iii) The designated representative surrender for deduction the number of allowances calculated, consistent with the reports under paragraph (f)(5)(ii) of this section and §§ 72.91 and 72.92, using the formula in § 72.92(c) and treating the entire unit as a single Phase I unit.

(6) The designated representative may submit a notification to terminate an approved petition by January 30 of the first year for which the termination is to take effect. The notification must be signed and certified by the designated representatives of all units included in all dispatch systems

§ 72.40

that include any portion of the unit apportioned under the petition. Upon receipt of the notification meeting the requirements of the prior two sentences by the Administrator, the approved petition is no longer in effect for that year and the remaining years in Phase I and the designated representatives shall make all submissions under §§ 72.91 and 72.92 treating the petition as no longer in effect for all such years.

(7) Except as expressly provided in paragraphs (f)(1) through (6) of this section or the Administrator's approval of the petition, all provisions of the Acid Rain Program applicable to an affected source or an affected unit shall apply to the entire unit regardless of whether a petition has been submitted or approved, or reports have been submitted, under such paragraphs. Approval of a petition under such paragraphs shall not constitute a determination of the percentage ownership in a unit under any other provision of the Acid Rain Program and shall not change the liability of the owners and operators of an affected unit that has excess emissions under § 72.9(e).

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 18468, Apr. 11, 1995; 62 FR 55481, Oct. 24, 1997]

Subpart D—Acid Rain Compliance Plan and Compliance Options

§ 72.40 General.

(a) For each affected unit included in an Acid Rain permit application, a complete compliance plan shall:

(1) For sulfur dioxide emissions, certify that, as of the allowance transfer deadline, the designated representative will hold allowances in the compliance account of the source where the unit is located (after deductions under § 73.34(c) of this chapter) not less than the total annual emissions of sulfur dioxide from the affected units at the source. The compliance plan may also specify, in accordance with this subpart, one or more of the Acid Rain compliance options.

(2) For nitrogen oxides emissions, certify that the unit will comply with the applicable emission limitation

40 CFR Ch. I (7–1–21 Edition)

under § 76.5, § 76.6, or § 76.7 of this chapter or shall specify one or more Acid Rain compliance options, in accordance with part 76 of this chapter.

(b) *Multi-unit compliance options.* (1) A plan for a compliance option, under § 72.41, § 72.42, § 72.43, or § 72.44 of this part, under § 74.47 of this chapter, or a NO_x averaging plan under § 76.11 of this chapter, that includes units at more than one affected source shall be complete only if:

(i) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

(ii) A complete permit application is submitted covering each unit governed by such plan.

(2) A permitting authority's approval of a plan under paragraph (b)(1) of this section that includes units in more than one State shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

(c) *Conditional Approval.* In the compliance plan, the designated representative of an affected unit may propose, in accordance with this subpart, any Acid Rain compliance option for conditional approval, except a Phase I extension plan; *provided* that an Acid Rain compliance option under section 407 of 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

Environmental Protection Agency

§ 72.41

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:

§ 72.41

40 CFR Ch. I (7-1-21 Edition)

(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 SO₂ emissions rate; the unit's 1985 allowable SO₂ emissions rate; the unit's 1989 actual SO₂ emissions rate; the unit's 1990 actual SO₂ emissions rate; and, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO₂ 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 SO₂ emissions rate; the unit's 1985 allowable SO₂ emissions rate; the greater of the unit's 1989 or 1990 actual SO₂ emissions rate; or, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO₂ 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 SO₂ 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 SO₂ 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 require-

ments 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 SO₂ 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 SO₂ 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 SO₂ emissions rate; the unit's 1985 allowable SO₂ emissions rate; the greater of the unit's 1989 or 1990 actual SO₂ emissions rate; the most stringent federally enforceable or State enforceable SO₂ emissions limitation, as of November 15, 1990, applicable to the unit in Phase I; or the lesser of the average actual SO₂ emissions rate or the most stringent federally enforceable or State enforceable SO₂ 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 SO₂ 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 SO₂ emissions rate meets the requirement of the prior sentence. If a non-unit-specific federally enforceable SO₂ emissions limitation is not different from a non-unit-specific federally enforceable SO₂ emissions limitation that was effective and applicable to the unit in 1985, the Administrator will apply the non-unit-specific SO₂ emissions limitation by using the 1985 allowable SO₂ emissions rate.

(C) For each year that the actual SO₂ emissions rate of the unit under paragraph (a)(2) of this section exceeds the maximum annual average SO₂ 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 SO₂ emissions rate of the unit under paragraph (a)(2) of this section and the maximum annual average SO₂ 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 SO₂ emissions rate for any year and the average actual SO₂ 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 SO₂ emissions rate and the most stringent federally enforceable or State enforceable SO₂ 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 SO₂ emissions rate for the quarter shall be determined applying the methodology for calculating SO₂ 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 SO₂ 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.

(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 SO₂ 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 Admin-

istrator 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 SO₂ 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 SO₂ 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

§ 72.41

40 CFR Ch. I (7-1-21 Edition)

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 Administrator 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 redesignated 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 SO₂ emissions rate or 1985 allowable SO₂ 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)(I) 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:

(i) The designated representative for each source with a control unit shall submit a Phase I extension plan as a part of the Acid Rain permit application for the source, and

(ii) The designated representative for each source with a unit designated as a transfer unit in any plan submitted under paragraph (b)(2)(i) of this section shall incorporate in the Acid Rain permit application each such plan.

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

(1) Identification of each control unit. All control units in an application must be located at the same source. If the control unit is not a unit under paragraph (a)(1)(i) of this section, a substitution plan or a reduced utilization plan governing the unit shall be submitted by the deadline for submitting a Phase I permit application.

(2) Identification of each transfer unit. A unit shall not be a transfer unit in more than one early ranking application.

§ 72.42

40 CFR Ch. I (7-1-21 Edition)

(3) For each control and transfer unit, the total tonnage of sulfur dioxide emitted in 1988 plus the total tonnage of sulfur dioxide emitted in 1989, divided by 2. The 1988 and 1989 tonnage figures shall be consistent with the data filed on EIA form 767 for those years and the conversion methodology specified in appendix B of this part.

(4) For each control and transfer unit:

(i) The projected annual utilization (in mmBtu) for 1995 multiplied by the projected uncontrolled emissions rate (*i.e.*, the emissions rate in the absence of title IV of the Act) for 1995 (in lbs/mmBtu), divided by 2000 lbs/ton.

(ii) The projected annual utilization (in mmBtu) for 1996 multiplied by the projected uncontrolled emissions rate (*i.e.*, the emissions rate in the absence of title IV of the Act) for 1996 (in lbs/mmBtu), divided by 2000 lbs/ton.

(5) For each control and transfer unit, the number of Phase I extension reserve allowances requested for 1995 and for 1996, not to exceed the difference between:

(i) The lesser of the value for the unit under paragraph (c)(3) of this section and the value for the unit for that year under paragraph (c)(4) of this section, and

(ii) Each unit's baseline multiplied by 2.5 lb/mmBtu, divided by 2000 lbs/ton.

(6) Documentation that the annual emissions reduction obligations transferred from all transfer units to all control units do not exceed those authorized under this section, as follows:

(i) For each control unit, the difference, calculated separately for 1995 and 1996, between:

(A) The control unit's allowance allocation in table 1 of § 73.10(2) of this chapter, the allocation under § 72.41 if the control unit is a substitution unit, or the allocation under § 72.43 if the control unit is a compensating unit; and

(B) The projected emissions resulting from 90% control after installing the qualifying Phase I technology, *i.e.*, 10% of the projected uncontrolled emissions for the control unit for the year in accordance with paragraph (c)(4) of this section.

(ii) The sum, by year, of the results under paragraph (c)(6)(i) of this section for all control units.

(iii) The sum, by year, of Phase I extension reserve allowances requested for all transfer units.

(iv) A showing that, for each year, the sum under paragraph (c)(6)(ii) of this section is greater than or equal to the sum under paragraph (c)(6)(iii) of this section.

(7) For each control and transfer unit, the projected controlled emissions for 1997, for 1998, and for 1999 calculated as follows:

Projected annual utilization (in mmBtu) multiplied by the projected controlled emission rate (in lbs/mmBtu), divided by 2000 lbs/ton.¹

(8) For each control unit, the number of Phase I extension reserve allowances requested for 1997, for 1998, and for 1999, calculated as follows:

The unit's baseline multiplied by 1.2 lbs/mmBtu and divided by 2000 lbs/ton, minus the projected controlled emissions (in tons/yr) under paragraph (c)(7) of this section for the given year.

(9) The total of Phase I extension reserve allowances requested for all units in the plan for 1995 through 1999.

(10) With regard to each executed contract for the design engineering and construction of qualifying Phase I technology at each control unit governed by the early ranking application, either a copy of the contract or a certification that the contract is on site at the source and will be submitted to the Administrator upon written request. The contract or contracts may be contingent on the Administrator approving the Phase I extension plan.

(11) For each contract for which a certification is submitted under paragraph (c)(10) of this section, a binding letter agreement, signed and dated by each party and specifying:

¹In the case of a transfer unit that shares a common stack with a unit not listed in table 1 of § 73.10(a) of this chapter and whose emissions of sulfur dioxide are not monitored separately or apportioned in accordance with part 75 of this chapter, the projected figures for the transfer unit under paragraph (c)(7) of this section must be for the units combined.

Environmental Protection Agency

§ 72.42

(i) The type of qualifying Phase I technology to which the contract applies;

(ii) The parties to the contract;

(iii) The date each party executed the contracts;

(iv) The unit to which the contract applies;

(v) A brief list identifying each provision of the contract;

(vi) Any dates to which the parties agree, including construction completion date; and

(vii) The total dollar amount of the contract.

(12) A vendor certification of the sulfur dioxide removal efficiency guaranteed to be achievable by the qualifying Phase I technology for the type and range of fossil fuels (before any treatment prior to combustion) that will be used at the control unit; *provided* that a vendor certification shall not be a defense against a control unit's failure to achieve 90% control of sulfur dioxide.

(13) The date (not later than December 31, 1996) on which the owners and operators plan to commence operation of the qualifying Phase I technology.

(14) The special provisions of paragraph (f) of this section.

(d) *Contents of Phase I extension plan.* A complete Phase I extension plan shall include the following elements in a format prescribed by the Administrator:

(1) Identification of each unit in the plan.

(2)(i) A statement that the elements in the Phase I extension plan are identical to those in the previously submitted early ranking application for the plan and that such early ranking application is incorporated by reference; or

(ii) All elements that are different from those in the previously submitted early ranking application for the plan and a statement that the early ranking application is incorporated by reference as modified by the newly submitted elements; *provided* that the Phase I extension plan shall not add any new control units or increase the total Phase I extension allowances requested; or

(iii) All elements required for an early ranking application and a state-

ment that no early ranking application for the plan was submitted.

(e) *Administrator's action—(1) Early ranking applications.* (i) The Administrator may approve in whole or in part or with changes or conditions, as appropriate, or disapprove an early ranking application.

(ii) The Administrator will act on each early ranking application in the order of receipt.

(iii) The Administrator will determine the order of receipt by the following procedures:

(A) Hand-delivered submissions and mailed submissions will be deemed to have been received on the date they are received by the Administrator; *provided* that all submissions received by the Administrator prior to the 40th day after publication of this subpart in the FEDERAL REGISTER will be deemed received on the 40th day.

(B) All submissions received by the Administrator on the same day will be deemed to have been received simultaneously.

(C) The order of receipt of all submissions received simultaneously will be determined by a public lottery if allocation of Phase I extension reserve allowances to each of the simultaneous submissions would result in over-subscription of the Phase I extension reserve.

(iv) Based on the allowances requested under paragraph (c)(9) of this section, as adjusted by the Administrator in approving the early ranking application, the Administrator will award Phase I extension reserve allowances for each complete early ranking application to the extent that allowances that have not been awarded remain in the Phase I extension reserve at the time the Administrator acts on the application. The allowances will be awarded in accordance with the procedures set forth the allocation of reserve allowances in paragraph (e)(3) of this section.

(v) The Administrator's action on an early ranking application shall be conditional on the Administrator's action on a timely and complete Acid Rain permit application that includes a complete Phase I extension plan and, where the plan includes a unit under

paragraph (a)(1) (ii) and (iii) of this section, a complete substitution plan or reduced utilization plan, as appropriate.

(vi) Not later than 15 days after receipt of each early ranking application, the Administrator will notify, in writing, the designated representative of each application of the date that the early ranking application was received and one of the following:

(A) The award of allowances if the application was complete and the Phase I extension reserve as not oversubscribed;

(B) A determination that the application was incomplete and is disapproved; or

(C) If the Phase I extension reserve was oversubscribed, a list of the applications received on that date, the number of Phase I extension allowances requested in each application, and the date, time, and location of a lottery to determine the order of receipt for all applications received on that date.

(vii) The date of a lottery for all applications received on a given day will not be earlier than 15 days after the Administrator notifies each designated representative whose applications were received on that date.

(viii) Any early ranking application may be withdrawn from the lottery if a letter signed by the designated representative of each unit governed by the application and requesting withdrawal is received by the Administrator before the lottery takes place.

(2) *Phase I extension plans.* (i) The Administrator will act on each Phase I extension plan in the order that the early ranking application for that plan was received or, if no early ranking application was received, in the order that the Phase I extension plan was received, as determined under paragraph (e)(1)(iii) of this section.

(ii) Based on the allowances requested under paragraph (c)(9) of this section, as adjusted under paragraph (d) of this section and by the Administrator in approving the Phase I extension plan, the Administrator will allocate Phase I extension reserve allowances to the Allowance Tracking System account of each control and transfer unit upon issuance of an Acid Rain permit containing the approved Phase I

extension plan. The allowances will be allocated using the procedures set forth in paragraph (e)(3) of this section.

(iii) The Administrator will not approve a Phase I extension plan, even if it meets the requirements of this section, unless unallocated allowances remain in the Phase I extension reserve at the time the Administrator acts on the plan.

(3) *Allowance allocations.* In addition to any allowances allocated in accordance with table 1 of § 73.10(a) of this chapter and other approved compliance options, the Administrator will allocate Phase I extension reserve allowances to each eligible unit in a Phase I extension plan in the following order.

(i) For 1995, to each control unit in the order in which it is listed in the plan and then to each transfer unit in the order in which it is listed.

(ii) For 1996, to each control unit in the order in which it is listed in the plan and then to each transfer unit in the order in which it is listed.

(iii) For 1997, to each control unit in the order in which it is listed in the plan, then likewise for 1998, and then likewise for 1999.

(iv) The Administrator will allocate any Phase I extension reserve allowances returned to the Administrator to the next Phase I extension plan, in the rank order established under paragraph (e)(1)(iii) of this section, that continues to meet the requirements of this section and this part.

(f) *Special provisions—(1) Emissions Limitations—(i) Sulfur Dioxide.* (A) If a control or transfer unit governed by an approved Phase I extension plan emits in 1997, 1998, or 1999 sulfur dioxide in excess of the projected controlled emissions for the unit specified for the year under paragraph (c)(7) of this section as adjusted under paragraph (d) of this section and by the Administrator in approving the Phase I extension plan, the Administrator will deduct allowances equal to such exceedance from the unit's annual allowance allocation in the following calendar year.²

²In the case of a transfer unit that shares a common stack with a unit not listed in table 1 of § 73.10(a) of this chapter where the units are not monitored separately or apportioned in accordance with part 75 of this chapter, the combined emissions of both

(B) Failure to demonstrate at least a 90% reduction of sulfur dioxide in 1997, 1998, or 1999 in accordance with part 75 of this chapter at a control unit governed by an approved Phase I extension plan shall be a violation of this section. In the event of any such violation, in addition to any other liability under the Act, the Administrator will deduct allowances from the control unit's compliance subaccount for the year of the violation. The deduction will be calculated as follows:

Allowances deducted = (1 - (percent reduction achieved · 90%)) × Phase I extension reserve allowances received

where:

“Percent reduction achieved” is the percent reduction determined in accordance with part 75 of this chapter.

“Phase I extension reserve allowances received” is the number of Phase I extension reserve allowances allocated for the year under paragraph (e)(2)(ii) of this section.

(ii) *Nitrogen Oxides.* (A) Beginning on January 1, 1997, each control and transfer unit shall be subject to the Acid Rain emissions limitations for nitrogen oxides.

(B) Notwithstanding paragraph (f)(1)(ii)(A) of this section, a transfer unit shall be subject to the Acid Rain emissions limitations for nitrogen oxides, under section 407 of the Act and regulations implementing section 407 of the Act, beginning on January 1 of any year for which a transfer unit is allocated fewer Phase I extension reserve allowances than the maximum amount that the designated representative could have requested in accordance with paragraph (c)(5) of this section (as adjusted under paragraph (d) of this section and by the Administrator in approving the Phase I extension plan) unless the transfer unit is the last unit allocated Phase I extension reserve allowances under the plan.

(2) *Monitoring requirements.* Each control unit shall comply with the special monitoring requirements for Phase I extension plans in accordance with part 75 of this chapter.

units will be deemed to be the transfer unit's emissions for purposes of applying paragraph (f)(1)(i) of this section.

(3) *Reporting requirements.* Each control and transfer unit shall comply with the special reporting requirements for Phase I extension plans in accordance with § 72.93.

(4) *Liability.* The owners and operators of a control or transfer unit governed by an approved Phase I extension plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(5) *Termination.* A Phase I extension plan shall be in effect only in Phase I, and no Phase I extension plan shall be terminated before the end of Phase I. The designated representative may, however, withdraw a Phase I extension plan at any time prior to issuance of the Phase I Acid Rain permit that includes the Phase I extension plan, as adjusted.

§ 72.43 Phase I reduced utilization plans.

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

- (1) Any Phase I unit, including:
 - (i) Any unit listed in table 1 of § 73.10(a) of this chapter; and
 - (ii) Any other unit that becomes a Phase I unit (including any unit designated as a compensating unit under this section or a substitution unit under § 72.41).
- (2) Any affected unit that:
 - (i) Is not otherwise subject to any Acid Rain emissions limitation or emissions reduction requirements during Phase I; and
 - (ii) Meets the requirement, as set forth in paragraphs (c)(4)(ii) and (d) of this section, that for each year for which the unit is to be covered by the reduced utilization plan, the unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual SO₂ emissions rate or 1985 allowable SO₂ emissions rate does not exceed the sum of

(A) The lesser of 10 percent of the amount under paragraph (a)(2)(ii) of this section or 200 tons, plus

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of: The greater of the unit's 1989 or

1990 actual SO₂ emissions rate; or, as of November 15, 1990, the most stringent federally enforceable or State enforceable SO₂ emissions limitation covering the unit for 1995–1999.

(b)(1) The designated representative of any unit under paragraph (a)(1) of this section shall include in the Acid Rain permit application for the unit a reduced utilization plan, meeting the requirements of this section, when the owners and operators of the unit plan to:

(i) Reduce utilization of the unit below the unit's baseline to achieve compliance, in whole or in part, with the unit's Phase I Acid Rain emissions limitations for sulfur dioxide; and

(ii) Accomplish such reduced utilization through one or more of the following:

(A) Shifting generation of the unit to a unit under paragraph (a)(2) of this section or to a sulfur-free generator; or

(B) Using one or more energy conservation measures or improved unit efficiency measures.

(2)(i) Energy conservation measures shall be either demand-side measures implemented after December 31, 1987 in the residence or facility of a customer to whom the unit's utility system sells electricity or supply-side measures implemented after December 31, 1987 in facilities of the unit's utility system.

(ii) The utility system shall pay in whole or in part for the energy conservation measures either directly or, in the case of demand-side measures, through payment to another person who purchases the measure.

(iii) Energy conservation measures shall not include:

(A) Conservation programs that are exclusively informational or educational in nature;

(B) Load management measures that lead to reduction of electric energy demands during a utility's peak generating period, unless kilowatt hour savings can be verified under § 72.91(b); or

(C) Utilization of industrial waste gases, unless the designated representative certifies that there is no net increase in sulfur dioxide emissions from such utilization.

(iv) For calendar years when the unit's utility system is a subsidiary of a holding company and the unit's dis-

patch system is or includes all units that are interconnected and centrally dispatched and included in that holding company, then:

(A) Energy conservation measures shall be either demand-side measures implemented in the residence or facility of a customer to whom any utility system in the holding company sells electricity or supply-side measures implemented in facilities of any utility system in the holding company. Such utility system shall pay in whole or in part for the measures either directly or, in the case of demand-side measures, through payment to another person who purchases the measures.

(B) The limitations in paragraph (b)(2)(iii) of this section shall apply.

(3)(i) Improved unit efficiency measures shall be implemented in the unit after December 31, 1987. Such measures include supply-side measures listed in appendix A, section 2.1 of part 73 of this chapter.

(ii) The utility system shall pay in whole or in part for the improved unit efficiency measures.

(4) The requirement to submit a reduced utilization plan shall apply in the event that the owners and operators of a Phase I unit decide, at any time during any Phase I calendar year, to rely on the method of compliance in paragraph (b)(1) of this section. In that case, the designated representative shall submit a reduced utilization plan not later than 6 months (or 90 days if submitted in accordance with § 72.82 or § 72.83), 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.

(5) The designated representative of each source with a unit designated as a compensating unit in any plan submitted under paragraphs (b) (1) or (4) of this section shall incorporate by reference in the permit application each such plan.

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

Environmental Protection Agency

§ 72.43

(1) Identification of each Phase I unit for which the owners and operators plan reduced utilization.

(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 reduced utilization plan is to be in effect. Unless the designated representative specifies an earlier calendar year, the last calendar year shall be deemed to be 1999.

(3) A statement whether the plan designates a compensating unit or relies on sulfur-free generation, any energy conservation measure, or any improved unit efficiency measure to account for any amount of reduced utilization.

(4) If the plan designates a compensating unit, or relies on sulfur-free generation, to account for any amount of reduced utilization:

(i) Identification of each compensating unit or sulfur-free generator.

(ii) For each compensating unit. (A) Each of the following: The unit's 1985 actual SO₂ emissions rate; the unit's 1985 allowable emissions rate; the unit's 1989 actual SO₂ emissions rate; the unit's 1990 actual SO₂ emissions rate; and, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO₂ 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.

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual SO₂ emissions rate or 1985 allowable SO₂ emissions rate.

(C) The unit's baseline divided by 2000 lbs/ton and multiplied by the lesser of: The greater of the unit's 1989 or 1990 actual SO₂ emissions rate; or, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO₂ emissions limitation covering the unit for 1995–1999. Where the most stringent emissions limitation is not the same for every

year in 1995–1999, the calculation in the prior sentence shall be made separately for each year.

(D) The difference between the amount under paragraph (c)(4)(ii)(B) of this section and the amount under paragraph (c)(4)(ii)(C) of this section. If the difference calculated in the prior sentence for any year exceeds the lesser of 10 percent of the amount under paragraph (c)(4)(ii)(B) of this section or 200 tons, the unit shall not be designated as a compensating unit for the year. Where the most stringent unit-specific federally enforceable or State enforceable SO₂ emissions limitation is not the same for every year in 1995–1999, the difference shall be calculated separately for each year.

(E) The allowance allocation calculated as the amount under paragraph (c)(4)(ii)(B) of this section. If the compensating unit is a new unit, it shall be deemed to have a baseline of zero and shall be allocated no allowances.

(F) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable SO₂ emissions limitation covers the unit for any year in 1995–1999, the designated representative shall state each such limitation and propose a method for applying unit-specific and non-unit-specific emissions limitations under paragraph (d) of this section.

(iii) For each sulfur-free generator, identification of any other Phase I units that designate the same sulfur-free generator in another plan submitted under paragraph (b) (1) or (4) of this section.

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the plan relies to accomplish reduced utilization. Such contractual agreements shall identify the specific compensating unit or sulfur-free generator from which the dispatch system acquires such electrical energy.

(5) The special provisions in paragraph (f) of this section.

(d) *Administrator's action.* (1) If the Administrator approves the reduced utilization plan, he or she will allocate allowances, as provided in the approved plan, to the Allowance Tracking System account for any designated compensating unit upon issuance of an Acid Rain permit containing the plan, except that, if the plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan.

(2) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable 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 approving or disapproving the compensating unit. The specified method will not treat a non-unit-specific emissions limitation as a unit-specific emissions limitation and will not result in compensating 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 disapproval and de-designation, and adjustment of the allowances allocated to, the compensating unit and may require the designated representative of the compensating 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) *Failure to submit a plan.* The designated representative of a Phase I unit will be deemed not to violate, during a Phase I calendar year, the requirement to submit a reduced utilization plan under paragraph (b)(1) or (4) of this section if the designated representative complies with the allowance surrender and other requirements of §§ 72.33, 72.91, and 72.92 of this chapter.

(f) *Special provisions—(1) Emissions limitations.* (i) Any compensating unit designated under an approved reduced utilization plan shall become a Phase I unit from January 1 of the calendar year in which the plan takes effect until January 1 of the year for which the plan is no longer in effect or is terminated, except that such unit shall not become subject to the Acid Rain emissions limitations for nitrogen oxides in Phase I under part 76 of this chapter.

(ii) The designated representative of any Phase I unit (including a unit governed by a reduced utilization plan relying on energy conservation, improved unit efficiency, sulfur-free generation, or a compensating unit) shall surrender allowances, and the Administrator will deduct or return allowances, in accordance with paragraph (d)(2) of this section and subpart I of this part.

(2) *Reporting requirements.* The designated representative of any Phase I unit (including a unit governed by a reduced utilization plan relying on energy conservation, improved unit efficiency, sulfur-free generation, or a compensating unit) shall comply with the special reporting requirements under §§ 72.91 and 72.92.

(3) *Liability.* The owners and operators of a unit governed by an approved reduced utilization plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(4) *Termination.* (i) A reduced utilization 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 reduced utilization plan that designates a compensating unit that serves as a control unit under a Phase I extension plan shall be terminated, and no such unit shall be de-designated as a compensating unit, before the end of Phase I.

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

Environmental Protection Agency

§ 72.44

(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 any compensating 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) of this section to each compensating unit for the 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 (f)(3)(ii) are met and upon revision of the permit to terminate the reduced utilization plan, the Administrator will deduct the allowances specified in paragraph (f)(3)(ii)(B) of this section. No reduced utilization plan shall be terminated, and no unit shall be redesignated as a Phase I unit, unless such deduction is made.

[58 FR 3650, Jan. 11, 1993, as amended at 59 FR 60230, Nov. 22, 1994; 60 FR 18470, Apr. 11, 1995; 62 FR 55481, Oct. 24, 1997]

§ 72.44 Phase II repowering extensions.

(a) *Applicability.* (1) This section shall apply to the designated representative of:

(i) Any existing affected unit that is a coal-fired unit and has a 1985 actual SO₂ emissions rate equal to or greater than 1.2 lbs/mmBtu.

(ii) Any new unit that will be a replacement unit, as provided in paragraph (b)(2) of this section, for a unit meeting the requirements of paragraph (a)(1)(i) of this section.

(iii) Any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.

(2) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan

from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.

(b) The designated representative of any unit meeting the requirements of paragraph (a)(1)(i) of this section may include in the unit's Phase II Acid Rain permit application a repowering extension plan that includes a demonstration that:

(1) The unit will be repowered with a qualifying repowering technology in order to comply with the Phase II emissions limitations for sulfur dioxide; or

(2) The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

(c) In order to apply for a repowering extension, the designated representative of a unit under paragraph (a) of this section shall:

(1) Submit to the permitting authority, by January 1, 1996, a complete repowering extension plan;

(2) Submit to the Administrator, before June 1, 1997, a complete petition for approval of repowering technology; and

(3) If the repowering extension plan is submitted for conditional approval, submit by December 31, 1997, a notification to activate the plan in accordance with § 72.40(c).

(d) *Contents and Review of Petition for Approval of Repowering Technology.* (1) A complete petition for approval of repowering technology shall include the following elements, in a format prescribed by the Administrator, concerning the technology to be used in a plan under paragraph (b) of this section and may follow the repowering technology demonstration protocol issued by the Administrator:

(i) Identification and description of the technology.

(ii) Vendor certification of the guaranteed performance characteristics of the technology, including:

(A) Percent removal and emission rate of each pollutant being controlled;

(B) Overall generation efficiency; and

(C) Information on the state, chemical constituents, and quantities of solid waste generated (including information on land-use requirements for disposal) and on the availability of a market to which any by-products may be sold.

(iii) If the repowering technology is not listed in the definition of a qualified repowering technology in § 72.2, a vendor certification of the guaranteed performance characteristics that demonstrate that the technology meets the criteria specified for non-listed technologies in § 72.2; *provided* that the existence of such guarantee shall not be a defense against the failure to meet the criteria for non-listed technologies.

(2) The Administrator may request any supplemental information that is deemed necessary to review the petition for approval of repowering technology.

(3) The Administrator shall review the petition for approval of repowering technology and, in consultation with the Secretary of Energy, shall make a conditional determination of whether the technology described in the petition is a qualifying repowering technology.

(4) Based on the petition for approval of repowering technology and the information provided under paragraph (d)(2) of this section and § 72.94(a), the Administrator will make a final determination of whether the technology described in the petition is a qualifying repowering technology.

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

(1) Identification of the existing unit governed by the plan.

(2) The unit's federally-approved State Implementation Plan sulfur dioxide emissions limitation.

(3) The unit's 1995 actual SO₂ emissions rate.

(4) A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under paragraph (d) of this section, with dates for the following milestones:

(i) Completion of design engineering;

(ii) For a plan under paragraph (b)(1) of this section, removal of the existing unit from operation to install the qualified repowering technology;

(iii) Commencement of construction;

(iv) Completion of construction;

(v) Start-up testing;

(vi) For a plan under paragraph (b)(2) of this section, shutdown of the existing unit; and

(vii) Commencement of commercial operation of the repowering technology.

(5) For a plan under paragraph (b)(2) of this section:

(i) Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

(ii) Certification that the new unit will replace the existing unit.

(iii) Certification that the new unit has the same designated representative as the existing unit.

(iv) Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

(6) The special provisions of paragraph (h) of this section.

(f) *Permitting authority's action on repowering extension plan.* (1) The permitting authority shall not approve a repowering extension plan until the Administrator makes a conditional determination that the technology is a qualified repowering technology, unless the permitting authority conditionally approves such plan subject to the conditional determination of the Administrator.

(2) *Permit issuance.* (i) Upon a conditional determination by the Administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the permitting authority that such plan meets the requirements of this section, the permitting authority shall issue the Acid Rain portion of the operating permit including:

(A) The approved repowering extension plan; and

(B) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to

ensure that Phase II emission reduction requirements under this section will be met.

(ii) Except as otherwise provided in paragraph (g) of this section, the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date (specified in the Acid Rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology; *provided* that the repowering extension shall end no later than December 31, 2003.

(iii) The portion of the operating permit specifying the repowering extension and other requirements under paragraph (f)(2)(i) of this section shall be subject to the Administrator's final determination, under paragraph (d)(4) of this section, that the technology to be used in the repowering extension plan is a qualifying repowering technology.

(3) *Allowance allocation.* The Administrator will allocate allowances after issuance of an operating permit containing the repowering extension plan (or, if the plan is conditionally approved, after the revision of the Acid Rain permit under § 72.40(c) and of the Administrator's final determination, under paragraph (d)(4) of this section, that the technology to be used in such plan is a qualifying repowering technology. Allowances will be allocated (including a pro rata allocation for any fraction of a year), as follows:

(i) To the existing unit under the approved plan, in accordance with § 73.21 of this chapter during the repowering extension under paragraph (f)(2)(ii) of this section; and

(ii) To the existing unit under the approved plan under paragraph (b)(1) of this section or, in lieu of any further allocations to the existing unit, to the new unit under the approved plan under paragraph (b)(2) of this section, in accordance with § 73.21 of this chapter, after the repowering extension under paragraph (f)(2)(ii) of this section ends.

(g) *Failed repowering projects.* (1)(i) If, at any time before the end of the repowering extension under paragraph

(f)(2)(ii) of this section, the designated representative of a unit governed by an approved repowering extension plan notifies the Administrator in writing that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing and demonstrates, in a requested permit modification, to the Administrator's satisfaction that such efforts were in good faith, the unit shall not be deemed in violation of the Act because of such a termination. If the Administrator is not the permitting authority, a copy of the requested permit modification shall be submitted to the Administrator. Where the preceding requirements of this paragraph are met, the permitting authority shall revise the operating permit in accordance with this paragraph and paragraph (g)(1)(ii) of this section and § 72.81 (permit modification).

(ii) Regardless of whether notification under paragraph (g)(1)(i) of this section is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under § 72.94(d). The Administrator will deduct allowances (including a pro rata deduction for any fraction of a year) from the Allowance Tracking System account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with § 73.21(c)(1) of this chapter.

(2) If the designated representative of a unit governed by an approved repowering extension plan demonstrates to the satisfaction of the Administrator, in a requested permit modification, that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the Act because of such failure to achieve the emissions reduction limitations. If the Administrator

§ 72.50

40 CFR Ch. I (7–1–21 Edition)

is not the permitting authority, a copy of the requested permit modification shall be submitted to the Administrator. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. Where the preceding requirements of this paragraph are met:

(i) The permitting authority shall revise the Acid Rain portion of the operating permit in accordance with paragraphs (g)(2) (ii) and (iii) and § 72.81 (permit modification).

(ii) The existing unit may be retrofitted or repowered with another clean coal or other available control technology.

(iii) The repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003. The Administrator will allocate or deduct allowances as necessary to ensure that allowances are allocated in accordance with paragraph (f)(3) of this section applying the repowering extension under this paragraph.

(h) *Special provisions—(1) Emissions Limitations.* (i) *Sulfur Dioxide.* Allowances allocated during the repowering extension under paragraphs (f)(3) and (g)(2)(iii) of this section to a unit governed by an approved repowering extension plan shall not be transferred to any Allowance Tracking System account other than the unit accounts of other units at the same source as that unit.

(ii) *Nitrogen oxides.* Any existing unit governed by an approved repowering extension plan shall be subject to the Acid Rain emissions limitations for nitrogen oxides in accordance with part 76 of this chapter beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

(iii) No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under section 111(j) of the Act.

(iv) No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under section 111 of the Act.

(2) *Reporting requirements.* Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of § 72.94.

(3) *Liability.* (i) The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(ii) The units governed by the plan under paragraph (b)(2) of this section shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

(4) *Terminations.* Except as provided in paragraph (g) of this section, a repowering extension plan shall not be terminated after December 31, 1999.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15649, Mar. 23, 1993; 62 FR 55481, Oct. 24, 1997]

Subpart E—Acid Rain Permit Contents

§ 72.50 General.

(a) Each Acid Rain permit (including any draft or proposed Acid Rain permit) will contain the following elements in a format prescribed by the Administrator:

(1) All elements required for a complete Acid Rain permit application under § 72.31 of this part, as approved or adjusted by the permitting authority;

(2) The applicable Acid Rain emissions limitation for sulfur dioxide; and

(3) The applicable Acid Rain emissions limitation for nitrogen oxides.

(b) Each Acid Rain permit is deemed to incorporate the definitions of terms under § 72.2 of this part.

§ 72.51 Permit shield.

Each affected unit operated in accordance with the Acid Rain permit that governs the unit and that was issued in compliance with title IV of

the Act, as provided in this part and parts 73, 74, 75, 76, 77, and 78 of this chapter shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in § 72.9(g)(6).

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55481, Oct. 24, 1997]

Subpart F—Federal Acid Rain Permit Issuance Procedures

§ 72.60 General.

(a) *Scope.* This subpart and parts 74, 76, and 78 of this chapter contain the procedures for federal issuance of Acid Rain permits for Phase I of the Acid Rain Program and Phase II for sources for which the Administrator is the permitting authority under § 72.74.

(1) Notwithstanding the provisions of part 71 of this chapter, the provisions of subparts C, D, E, F, and H of this part and of parts 74, 76, and 78 of this chapter shall govern the following requirements for Acid Rain permit applications and permits: submission, content, and effect of permit applications; content and requirements of compliance plans and compliance options; content of permits and permit shield; procedures for determining completeness of permit applications; issuance of draft permits; administrative record; public notice and comment and public hearings on draft permits; response to comments on draft permits; issuance and effectiveness of permits; permit revisions; and administrative appeal procedures. The provisions of part 71 of this chapter concerning Indian tribes, delegation of a part 71 program, affected State review of draft permits, and public petitions to reopen a permit for cause shall apply to Acid Rain permit applications and permits.

(2) The procedures in this subpart do not apply to the issuance of Acid Rain permits by State permitting authorities with operating permit programs approved under part 70 of this chapter, except as expressly provided in subpart G of this part.

(b) *Permit Decision Deadlines.* Except as provided in § 72.74(c)(1)(i), the Administrator will issue or deny an Acid Rain permit under § 72.69(a) within 6 months of receipt of a complete Acid

Rain permit application submitted for a unit, in accordance with § 72.21, at the U.S. EPA Regional Office for the Region in which the source is located.

(c) *Use of Direct Final Procedures.* The Administrator may, in his or her discretion, issue, as single document, a draft Acid Rain permit in accordance with § 72.62 and an Acid Rain permit in final form and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with § 72.65. The Administrator may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, an Acid Rain permit or denial of an Acid Rain permit will be issued in accordance with § 72.69. Any notice provided under this paragraph (c) will include a description of the procedure in the prior sentence.

[62 FR 55481, Oct. 24, 1997]

§ 72.61 Completeness.

(a) *Determination of Completeness.* The Administrator will determine whether the Acid Rain permit application is complete within 60 days of receipt by the U.S. EPA Regional Office for the Region in which the source is located. The permit application shall be deemed to be complete if the Administrator fails to notify the designated representative to the contrary within 60 days of receipt.

(b) *Supplemental Information.* (1) Regardless of whether the Acid Rain permit application is complete under paragraph (a) of this section, the Administrator may require submission of any additional information that the Administrator determines to be necessary in order to review the Acid Rain permit application and issue an Acid Rain permit.

(2)(i) Within a reasonable period determined by the Administrator, the designated representative shall submit the information required under paragraph (b)(1) of this section.

§ 72.62

40 CFR Ch. I (7-1-21 Edition)

(ii) If the designated representative fails to submit the supplemental information within the required time period, the Administrator may disapprove that portion of the Acid Rain permit application for the review of which the information was necessary and may deny the source an Acid Rain permit.

(3) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the Administrator.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55481, Oct. 24, 1997]

§ 72.62 Draft permit.

(a) After the Administrator receives a complete Acid Rain permit application and any supplemental information, the Administrator will issue a draft permit that incorporates in whole, in part, or with changes or conditions as appropriate, the permit application or deny the source a draft permit.

(b) The draft permit will be based on the information submitted by the designated representative of the affected source and other relevant information.

(c) The Administrator will serve a copy of the draft permit and the statement of basis on the designated representative of the affected source.

(d) The Administrator will provide a 30-day period for public comment, and opportunity to request a public hearing, on the draft permit or denial of a draft permit, in accordance with the public notice required under § 72.65(a)(1)(i) of this part.

§ 72.63 Administrative record.

(a) *Contents of the Administrative Record.* The Administrator will prepare an administrative record for an Acid Rain permit or denial of an Acid Rain permit. The administrative record will contain:

(1) The permit application and any supporting or supplemental data submitted by the designated representative;

(2) The draft permit;

(3) The statement of basis;

(4) Copies of any documents cited in the statement of basis and any other documents relied on by the Administrator in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a statement of their location;

(5) Copies of all written public comments submitted on the draft permit or denial of a draft permit;

(6) The record of any public hearing on the draft permit or denial of a draft permit;

(7) The Acid Rain permit; and

(8) Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the Administrator to issue or deny the Acid Rain permit, or, for any such documents that are readily available, a statement of their location.

(b) [Reserved]

§ 72.64 Statement of basis.

(a) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the Administrator relied in issuing or denying the draft permit.

(b) The statement of basis will include:

(1) The reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record; and

(2) The name, address, and telephone, and facsimile numbers of the EPA office processing the issuance or denial of the draft permit.

§ 72.65 Public notice of opportunities for public comment.

(a)(1) The Administrator will give public notice of the following:

(i) The draft permit or denial of a draft permit and the opportunity for public review and comment and to request a public hearing; and

Environmental Protection Agency

§ 72.66

(ii) Date, time, location, and procedures for any scheduled hearing on the draft permit or denial of a draft permit.

(2) Any public notice given under this section may be for the issuance or denial of one or more draft permits.

(b) *Methods.* The Administrator will give the public notice required by this section by:

(1) Serving written notice on the following persons (except where such person has waived his or her right to receive such notice):

- (i) The designated representative;
- (ii) The air pollution control agencies of affected States; and
- (iii) Any interested person.

(2) Giving notice by publication in the FEDERAL REGISTER and in a newspaper of general circulation in the area where the source covered by the Acid Rain permit application is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_x under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the Administrator may, in his or her discretion, provide notice of the draft permit by FEDERAL REGISTER publication and may omit notice by newspaper or State publication.

(c) *Contents.* All public notices issued under this section will contain the following information:

(1) Identification of the EPA office processing the issuance or denial of the draft permit for which the notice is being given.

(2) Identification of the designated representative for the affected source.

(3) Identification of each unit covered by the Acid Rain permit application and the draft permit.

(4) Any compliance options proposed for approval in the draft permit or for disapproval and the total allowances (including any under the compliance options) allocated to each unit if the Acid Rain permit application is approved.

(5) The address and office hours of a public location where the administrative record is available for public inspection and a statement that all information submitted by the designated representative and not protected as confidential under section 114(c) of the Act is available for public inspection as part of the administrative record.

(6) For public notice under paragraph (a)(1)(i) of this section, a brief description of the public comment procedures, including:

(i) A 30-day period for public comment beginning the date of publication of the notice or, in the case of an extension or reopening of the public comment period, such period as the Administrator deems appropriate;

(ii) The address where public comments should be sent;

(iii) Required formats and contents for public comment;

(iv) An opportunity to request a public hearing to occur not earlier than 15 days after public notice is given and the location, date, time, and procedures of any scheduled public hearing; and

(v) Any other means by which the public may participate.

(d) *Extensions and Reopenings of the Public Comment Period.* On the Administrator's own motion or on the request of any person, the Administrator may, at his or her discretion, extend or reopen the public comment period where he or she finds that doing so will contribute to the decision-making process by clarifying one or more significant issues affecting the draft permit or denial of a draft permit. Notice of any such extension or reopening shall be given under paragraph (a)(1)(i) of this section.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55482, Oct. 24, 1997]

§ 72.66 Public comments.

(a) *General.* During the public comment period, any person may submit written comments on the draft permit or the denial of a draft permit.

(b) *Form.* (1) Comments shall be submitted in duplicate.

(2) The submission shall clearly indicate the draft permit issuance or denial to which the comments apply.

§ 72.67

(3) The submission shall clearly indicate the name of the person commenting, his or her interest in the matter, and his or her affiliation, if any, to owners and operators of any unit covered by the Acid Rain permit application.

(c) *Contents.* Timely comments on any aspect of the draft permit or denial or a draft permit will be considered unless they concern:

(1) Any standard requirement under § 72.9;

(2) Issues that are not relevant, such as:

(i) The environmental effects of acid rain, acid deposition, sulfur dioxide, or nitrogen oxides generally; and

(ii) Permit issuance procedures, or actions on other permit applications, that are not relevant to the draft permit issuance or denial in question.

(d) Persons who do not wish to raise issues concerning the issuance or denial of the draft permit, but who wish to be notified of any subsequent actions concerning such matter may so indicate in writing during the public comment period or at any other time. The Administrator will place their names on a list of interested persons.

§ 72.67 Opportunity for public hearing.

(a) During the public comment period, any person may request a public hearing. A request for a public hearing shall be made in writing and shall state the issues proposed to be raised in the hearing.

(b) On the Administrator's own motion or on the request of any person, the Administrator may, at his or her discretion, hold a public hearing whenever the Administrator finds that such a hearing will contribute to the decision-making process by clarifying one or more significant issues affecting the draft permit or denial of a draft permit. Public hearings will not be held on issues under § 72.66(c) (1) and (2).

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

40 CFR Ch. I (7-1-21 Edition)

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

§ 72.68 Response to comments.

(a) The Administrator will consider comments on the draft permit or denial of a draft permit that are received during the public comment period and any public hearing. The Administrator is not required to consider comments otherwise received.

(b) In issuing or denying an Acid Rain permit, the Administrator will:

(1) Identify any permit provision or portion of the statement of basis that has been changed and the reasons for the change; and

(2) Briefly describe and respond to relevant comments under paragraph (a) of this section.

§ 72.69 Issuance and effective date of acid rain permits.

(a) After the close of the public comment period, the Administrator will issue or deny an Acid Rain permit. The Administrator will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on the air pollution control agencies of affected States and any interested person. The Administrator will also give notice in the FEDERAL REGISTER.

(b)(1) The term of every Acid Rain permit shall be 5 years commencing on its effective date.

(2) Every Acid Rain permit for Phase I shall take effect on January 1, 1995.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55482, Oct. 24, 1997]

Subpart G—Acid Rain Phase II Implementation

§ 72.70 Relationship to title V operating permit program.

(a) *Scope.* This subpart sets forth criteria for approval of State operating permit programs and acceptance of State Acid Rain programs, the procedure for including State Acid Rain programs in a title V operating permit program, and the requirements with which State permitting authorities with accepted programs shall comply,

Environmental Protection Agency

§ 72.72

and with which the Administrator will comply in the absence of an accepted State program, to issue Phase II Acid Rain permits.

(b) *Relationship to operating permit program.* Each State permitting authority with an affected source shall act in accordance with this part and parts 70, 74, 76, and 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit. To the extent that this part or part 74, 76, or 78 of this chapter is inconsistent with the requirements of part 70 of this chapter, this part and parts 74, 76, and 78 of this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain portion of an operating permit.

[62 FR 55482, Oct. 24, 1997, as amended at 66 FR 12978, Mar. 1, 2001]

§ 72.71 Acceptance of State Acid Rain programs—general.

(a) Each State shall submit, to the Administrator for review and acceptance, a State Acid Rain program meeting the requirements of §§ 72.72 and 72.73.

(b) The Administrator will review each State Acid Rain program or portion of a State Acid Rain program and accept, by notice in the FEDERAL REGISTER, all or a portion of such program to the extent that it meets the requirements of §§ 72.72 and 72.73. At his or her discretion, the Administrator may accept, with conditions and by notice in the FEDERAL REGISTER, all or a portion of such program despite the failure to meet requirements of §§ 72.72 and 72.73. On the later of the date of publication of such notice in the FEDERAL REGISTER or the date on which the State operating permit program is approved under part 70 of this chapter, the State Acid Rain program accepted by the Administrator will become a portion of the approved State operating permit program. Before accepting or rejecting all or a portion of a State Acid Rain Program, the Administrator will provide notice and opportunity for public comment on such acceptance or rejection.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Administrator

will issue all Acid Rain permits for Phase I. The Administrator reserves the right to delegate the remaining administration and enforcement of Acid Rain permits for Phase I to approved State operating permit programs.

(2) The State permitting authority will issue an opt-in permit for a combustion or process source subject to its jurisdiction if, on the date on which the combustion or process source submits an opt-in permit application, the State permitting authority has opt-in regulations accepted under paragraph (b) of this section and an approved operating permits program under part 70 of this chapter.

[62 FR 55482, Oct. 24, 1997]

§ 72.72 Criteria for State operating permit program.

A State operating permit program (including a State Acid Rain program) shall meet the following criteria. Any aspect of a State operating permits program or any implementation of a State operating permit program that fails to meet these criteria shall be grounds for nonacceptance or withdrawal of all or part of the Acid Rain portion of an approved State operating permit program by the Administrator or for disapproval or withdrawal of approval of the State operating permit program by the Administrator.

(a) *Non-Interference with Acid Rain Program.* The State operating permit program shall not include or implement any measures that would interfere with the Acid Rain Program. In particular, the State program shall not restrict or interfere with allowance trading and shall not interfere with the Administrator's decision on an offset plan. Aspects and implementation of the State program that would constitute interference with the Acid Rain Program, and are thus prohibited, include but are not limited to:

(1) Prohibitions, inconsistent with the Acid Rain Program, on the acquisition or transfer of allowances by an affected unit or affected source under the jurisdiction of the State permitting authority;

(2) Restrictions, inconsistent with the Acid Rain Program, on an affected unit's or an affected source's ability to

sell or otherwise obligate its allowances;

(3) Requirements that an affected unit or affected source maintain a balance of allowances in excess of the level determined to be prudent by any utility regulatory authority with jurisdiction over the owners of the affected unit or affected source;

(4) Failing to notify the Administrator of any State administrative or judicial appeals of, or decisions covering, Acid Rain permit provisions that might affect Acid Rain Program requirements;

(5) Issuing an order, inconsistent with the Acid Rain Program, interpreting Acid Rain Program requirements as not applicable to an affected source or an affected unit in whole or in part or otherwise adjusting the requirements;

(6) Withholding approval of any compliance option that meets the requirements of the Acid Rain Program; or

(7) Any other aspect of implementation that the Administrator determines would hinder the operation of the Acid Rain Program.

(b) The State operating permit program shall require the following provisions, which are adopted to the extent that this paragraph (b) is incorporated by reference or is otherwise included in the State operating permit program.

(1) *Acid Rain Permit Issuance.* Issuance or denial of Acid Rain permits shall follow the procedures under this part, part 70 of this chapter, and, for combustion or process sources, part 74, including:

(i) *Permit application*—(A) *Requirement to comply.* (1) The owners and operators and the designated representative for each affected source, except for combustion or process sources, under jurisdiction of the State permitting authority shall be required to comply with subparts B, C, and D of this part.

(2) The owners and operators and the designated representative for each combustion or process source under jurisdiction of the State permitting authority shall be required to comply with subpart B of this part and subparts B, C, D, and E of part 74 of this chapter.

(B) *Effect of an Acid Rain permit application.* A complete Acid Rain permit

application, except for a permit application for a combustion or process source, shall be binding on the owners and operators and the designated representative of the affected source, all affected units at the source, and any other unit governed by the permit application and shall be enforceable as an Acid Rain permit, from the date of submission of the permit application until the issuance or denial of the Acid Rain permit under paragraph (b)(1)(vii) of this section.

(ii) *Draft Permit.* (A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

(B) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

(iii) *Public Notice and Comment Period.* Public notice of the issuance or denial of the draft Acid Rain permit and the opportunity to comment and request a public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_x under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the State permitting authority may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication.

(iv) *Proposed permit.* The State permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or

process source, with subpart B of part 74 of this chapter, or deny a proposed Acid Rain permit.

(v) *Direct proposed procedures.* The State permitting authority may, in its discretion, issue, as a single document, a draft Acid Rain permit in accordance with paragraph (b)(1)(ii) of this section and a proposed Acid Rain permit and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with paragraph (b)(1)(iii) of this section. The State permitting authority may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the proposed Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, a proposed Acid Rain permit or denial of a proposed Acid Rain permit will be issued in accordance with paragraph (b)(1)(iv) of this section. Any notice provided under this paragraph (b)(1)(v) shall include a description of the procedure in the prior sentence.

(vi) *Acid Rain Permit Issuance.* Following the Administrator's review of the proposed Acid Rain permit, the State permitting authority shall or, under part 70 of this chapter, the Administrator will, incorporate any required changes and issue or deny the Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter.

(vii) *New Owners.* An Acid Rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(viii) Each Acid Rain permit (including a draft or proposed permit) shall contain all applicable Acid Rain requirements, shall be a complete and segregable portion of the operating permit, and shall not incorporate information contained in any other documents, other than documents that are readily available.

(ix) No Acid Rain permit (including a draft or proposed permit) shall be issued unless the Administrator has received a certificate of representation for the designated representative of the

source in accordance with subpart B of this part.

(x) Except as provided in § 72.73(b) and, with regard to combustion or process sources, in § 74.14(c)(6) of this chapter, the State permitting authority shall issue or deny an Acid Rain permit within 18 months of receiving a complete Acid Rain permit application submitted in accordance with § 72.21 or such lesser time approved under part 70 of this chapter.

(2) *Permit Revisions.* In acting on any Acid Rain permit revision, the State permitting authority shall follow the provisions and procedures set forth at subpart H of this part.

(3) *Permit Renewal.* The renewal of an Acid Rain permit for an affected source shall be subject to all the requirements of this subpart pertaining to the issuance of permits.

(4) *Acid Rain Program Forms.* In developing the Acid Rain portion of the operating permit, the permitting authority shall use the applicable forms or other formats prescribed by the Administrator under the Acid Rain Program; provided that the Administrator may waive this requirement in whole or in part.

(5) *Acid Rain Appeal Procedures.* (i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part or part 73, 74, 75, 76, 77, or 78 of this chapter shall be conducted according to procedures established by the State in accordance with part 70 of this chapter. Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under part 78 of this chapter and section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(ii) [Reserved]

(iii) The State permitting authority shall serve written notice on the Administrator of any State administrative or judicial appeal concerning as Acid Rain provision of any operating

§ 72.73

40 CFR Ch. I (7–1–21 Edition)

permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.

(iv) Any State administrative permit appeals procedures shall ensure that the Administrator may intervene as a matter of right in any permit appeal involving an Acid Rain permit provision or denial of an Acid Rain permit.

(v) The State permitting authority shall serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit.

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1) or, with regard to combustion or process sources, § 74.14(b)(6) of this chapter shall be ground for filing an appeal.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 62 FR 55482, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001; 70 FR 25334, May 12, 2005]

§ 72.73 State issuance of Phase II permits.

(a) *State Permit Issuance.* (1) A State that is authorized to administer and enforce an operating permit program under part 70 of this chapter and that has a State Acid Rain program accepted by the Administrator under § 72.71 shall be responsible for administering and enforcing Acid Rain permits effective in Phase II for all affected sources:

(i) That are located in the geographic area covered by the operating permits program; and

(ii) To the extent that the accepted State Acid Rain program is applicable.

(2) In administering and enforcing Acid Rain permits, the State permitting authority shall comply with the procedures for issuance, revision, renewal, and appeal of Acid Rain permits under this subpart.

(b) *Permit Issuance Deadline.* (1) A State, to the extent that it is responsible under paragraph (a) of this section as of December 31, 1997 (or such later date as the Administrator may establish) for administering and enforcing Acid Rain permits, shall:

(i) On or before December 31, 1997, issue an Acid Rain permit for Phase II covering the affected units (other than

opt-in sources) at each source in the geographic area for which the program is approved; *provided* that the designated representative of the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21.

(ii) On or before January 1, 1999, for each unit subject to an Acid Rain NO_x emissions limitation, amend the Acid Rain permit under § 72.83 and add any NO_x early election plan that was approved by the Administrator under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit and add any other Acid Rain Program nitrogen oxides requirements; *provided* that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(2) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date; *provided* that, at the discretion of the permitting authority, an Acid Rain permit for Phase II issued to a source may have a term of less than 5 years where necessary to coordinate the term of such permit with the term of an operating permit to be issued to the source under a State operating permit program. Each Acid Rain permit issued in accordance with paragraph (b)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under § 72.6(a)(3) of this part, the deadline for monitor certification under part 75 of this chapter.

[62 FR 55483, Oct. 24, 1997, as amended at 70 FR 25334, May 12, 2005]

§ 72.74 Federal issuance of Phase II permits.

(a)(1) The Administrator will be responsible for administering and enforcing Acid Rain permits for Phase II for any affected sources to the extent that a State permitting authority is not responsible, as of January 1, 1997 or such later date as the Administrator may establish, for administering and enforcing Acid Rain permits for such sources under § 72.73(a).

(2) After and to the extent the State permitting authority becomes responsible for administering and enforcing

Environmental Protection Agency

§ 72.74

Acid Rain permits under § 72.73(a), the Administrator will suspend federal administration of Acid Rain permits for Phase II for sources and units to the extent that they are subject to the accepted State Acid Rain program, except as provided in paragraph (b)(4) of this section.

(b)(1) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units during any period that the Administrator is administering and enforcing an operating permit program under part 71 of this chapter for the geographic area in which the sources and units are located.

(2) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units otherwise subject to a State Acid Rain program under § 72.73(a) if:

(i) The Administrator determines that the State permitting authority is not adequately administering or enforcing all or a portion of the State Acid Rain program, notifies the State permitting authority of such determination and the reasons therefore, and publishes such notice in the FEDERAL REGISTER;

(ii) The State permitting authority fails either to correct the deficiencies within a reasonable period (established by the Administrator in the notice under paragraph (b)(2)(i) of this section) after issuance of the notice or to take significant action to assure adequate administration and enforcement of the program within a reasonable period (established by the Administrator in the notice) after issuance of the notice; and

(iii) The Administrator publishes in the FEDERAL REGISTER a notice that he or she will administer and enforce Acid Rain permits effective in Phase II for sources and units subject to the State Acid Rain program or a portion of the program. The effective date of such notice shall be a reasonable period (established by the Administrator in the notice) after the issuance of the notice.

(3) When the Administrator administers and enforces Acid Rain permits under paragraph (b)(1) or (b)(2) of this section, the Administrator will administer and enforce each Acid Rain permit issued under the State Acid Rain

program or portion of the program until, and except to the extent that, the permit is replaced by a permit issued under this section. After the later of the date for publication of a notice in the FEDERAL REGISTER that the State operating permit program is currently approved by the Administrator or that the State Acid Rain program or portion of the program is currently accepted by the Administrator, the Administrator will suspend federal administration of Acid Rain permits effective in Phase II for sources and units to the extent that they are subject to the State Acid Rain program or portion of the program, except as provided in paragraph (b)(4) of this section.

(4) After the State permitting authority becomes responsible for administering and enforcing Acid Rain permits effective in Phase II under § 72.73(a), the Administrator will continue to administer and enforce each Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section until, and except to the extent that, the permit is replaced by a permit issued under the State Acid Rain program. The State permitting authority may replace an Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section by issuing a permit under the State Acid Rain program by the expiration of the permit under paragraph (a)(1), (b)(1), or (b)(2) of this section. The Administrator may retain jurisdiction over the Acid Rain permits issued under paragraph (a)(1), (b)(1), or (b)(2) of this section for which the administrative or judicial review process is not complete and will address such retention of jurisdiction in a notice in the FEDERAL REGISTER.

(c) *Permit Issuance Deadline.* (1)(i) On or before January 1, 1998, the Administrator will issue an Acid Rain permit for Phase II setting forth the Acid Rain Program sulfur dioxide requirements for each affected unit (other than opt-in sources) at a source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) of this section for administering and enforcing Acid Rain permits with such requirements; *provided*

§ 72.80

40 CFR Ch. I (7–1–21 Edition)

that the designated representative for the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21. The failure by the Administrator to issue a permit in accordance with this paragraph shall be grounds for the filing of an appeal under part 78 of this chapter.

(ii) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date. Each Acid Rain permit issued in accordance with paragraph (c)(1)(i) of this section shall take effect by the later of January 1, 2000 or, where a permit governs a unit under § 72.6(a)(3), the deadline for monitor certification under part 75 of this chapter.

(2) *Nitrogen Oxides.* Not later than 6 months following submission by the designated representative of an Acid Rain permit application for nitrogen oxides, the Administrator will amend under § 72.83 the Acid Rain permit and add any NO_x early election plan that was approved under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit for Phase II and add any other Acid Rain Program nitrogen oxides requirements for each affected source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) for issuing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(d) *Permit Issuance.* (1) The Administrator may utilize any or all of the provisions of subparts E and F of this part to administer Acid Rain permits as authorized under this section or may adopt by rulemaking portions of a State Acid Rain program in substitution of or in addition to provisions of subparts E and F of this part to administer such permits. The provisions of Acid Rain permits for Phase I or Phase II issued by the Administrator shall not be applicable requirements under part 70 of this chapter.

(2) The Administrator may delegate all or part of his or her responsibility,

under this section, for administering and enforcing Phase II Acid Rain permits or opt-in permits to a State. Such delegation will be made consistent with the requirements of this part and the provisions governing delegation of a part 71 program under part 71 of this chapter.

[62 FR 55483, Oct. 24, 1997]

Subpart H—Permit Revisions

§ 72.80 General.

(a) This subpart shall govern revisions to any Acid Rain permit issued by the Administrator and to the Acid Rain portion of any operating permit issued by a State permitting authority.

(b) Notwithstanding the operating permit revision procedures specified in parts 70 and 71 of this chapter, the provisions of this subpart shall govern revision of any Acid Rain Program permit provision.

(c) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the Acid Rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(d) The terms of the Acid Rain permit shall apply while the permit revision is pending, except as provided in § 72.83 for administrative permit amendments.

(e) The standard requirements of § 72.9 shall not be modified or voided by a permit revision.

(f) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under subpart D of this part and parts 74 and 76 of this chapter.

(g) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or

Environmental Protection Agency

§ 72.82

corrected information to the permitting authority.

(h) For permit revisions not described in §§ 72.81 and 72.82 of this part, the permitting authority may, in its discretion, determine which of these sections is applicable.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55484, Oct. 24, 1997]

§ 72.81 Permit modifications.

(a) Permit revisions that shall follow the permit modification procedures are:

(1) Relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;

(2) Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period;

(3) Determinations concerning failed repowering projects under § 72.44(g)(1)(i) and (2) of this part.

(b) The following permit revisions shall follow, at the option of the designated representative submitting the permit revision, either the permit modification procedures or the fast-track modification procedures under § 72.82 of this part:

(1) Consistent with paragraph (a) of this section, incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process; except that incorporation of a reduced utilization plan that was not submitted during the permit issuance process, that does not designate a compensating unit, and that meets the requirements of § 72.43 of this part, may use the administrative permit amendment procedures under § 72.83 of this part;

(2) Changes in a substitution plan or reduced utilization plan that result in the addition of a new substitution unit or a new compensating unit under the plan;

(3) Addition of a nitrogen oxides averaging plan to a permit;

(4) Changes in a Phase I extension plan, repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension; and

(5) Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allow-

ances transferred for the replacement of thermal energy.

(c)(1) Permit modifications shall follow the permit issuance requirements of:

(i) Subparts E, F, and G of this part, where the Administrator is the permitting authority; or

(ii) Subpart G of this part, where the State is the permitting authority.

(2) For purposes of applying paragraph (c)(1) of this section, a requested permit modification shall be treated as a permit application, to the extent consistent with § 72.80 (c) and (d).

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17114, Apr. 4, 1995; 62 FR 55485, Oct. 24, 1997]

§ 72.82 Fast-track modifications.

The following procedures shall apply to all fast-track modifications.

(a) If the Administrator is the permitting authority, the designated representative shall serve a copy of the fast-track modification on the Administrator and any person entitled to a written notice under § 72.65(b)(1)(ii) and (iii). If a State is the permitting authority, the designated representative shall serve such a copy on the Administrator, the permitting authority, and any person entitled to receive a written notice of a draft permit under the approved State operating permit program. Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the sources are located or in a State publication designed to give general public notice.

(b) The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the permitting authority and to the designated representative.

(c) The designated representative shall submit the fast-track modification to the permitting authority on or before commencement of the public comment period.

(d) Within 30 days of the close of the public comment period if the Administrator is the permitting authority or within 90 days of the close of the public

§ 72.83

40 CFR Ch. I (7-1-21 Edition)

comment period if a State is the permitting authority, the permitting authority shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be subject to the same provisions for review by the Administrator and affected States as are applicable to a permit modification under § 72.81.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55485, Oct. 24, 1997]

§ 72.83 Administrative permit amendment.

(a) Acid Rain permit revisions that shall follow the administrative permit amendment procedures are:

(1) Activation of a compliance option conditionally approved by the permitting authority; *provided* that all requirements for activation under subpart D of this part are met;

(2) Changes in the designated representative or alternative designated representative; *provided* that a new certificate of representation is submitted;

(3) Correction of typographical errors;

(4) Changes in names, addresses, or telephone or facsimile numbers;

(5) Changes in the owners or operators; *provided* that a new certificate of representation is submitted within 30 days;

(6)(i) Termination of a compliance option in the permit; *provided* that all requirements for termination under subpart D of this part are met and this procedure shall not be used to terminate a repowering plan after December 31, 1999 or a Phase I extension plan;

(ii) For opt-in sources, termination of a compliance option in the permit; *provided* that all requirements for termination under § 74.47 of this chapter are met.

(7) Changes in a substitution or reduced utilization plan that do not result in the addition of a new substitution unit or a new compensating unit under the plan;

(8) Changes in the date, specified in a unit's Acid Rain permit, of commencement of operation of qualifying Phase I technology, *provided* that they are in accordance with § 72.42 of this part;

(9) Changes in the date, specified in a new unit's Acid Rain permit, of commencement of operation or the deadline for monitor certification, *provided* that they are in accordance with § 72.9 of this part;

(10) The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, *provided* that the requirements of part 76 of this chapter are met; and

(11) Changes in a thermal energy plan that do not result in the addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

(12) The addition of a NO_x early election plan that was approved by the Administrator under § 76.8 of this chapter;

(13) The addition of an exemption for which the requirements have been met under § 72.7 or § 72.8 and

(14) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(1) through (13) of this section.

(b)(1) The permitting authority will take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, *provided* that the requirements of paragraph (a) of this section are met.

(2) The permitting authority may, on its own motion, make an administrative permit amendment under paragraph (a)(3), (a)(4), (a)(12), or (a)(13) of this section at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.

(c) The permitting authority will designate the permit revision under paragraph (b) of this section as having been made as an administrative permit amendment. Where a State is the permitting authority, the permitting authority shall submit the revised portion of the permit to the Administrator.

Environmental Protection Agency

§ 72.90

(d) An administrative amendment shall not be subject to the provisions for review by the Administrator and affected States applicable to a permit modification under § 72.81.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17114, Apr. 4, 1995; 62 FR 55485, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001]

§ 72.84 Automatic permit amendment.

The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's Acid Rain permit by operation of law without any further review:

(a) Upon recordation by the Administrator under part 73 of this chapter, all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and

(b) Incorporation of an offset plan that has been approved by the Administrator under part 77 of this chapter.

§ 72.85 Permit reopenings.

(a) The permitting authority shall reopen an Acid Rain permit for cause whenever:

(1) Any additional requirement under the Acid Rain Program becomes applicable to any affected unit governed by the permit;

(2) The permitting authority determines that the permit contains a material mistake or that an inaccurate statement was made in establishing the emissions standards or other terms or conditions of the permit, unless the mistake or statement is corrected in accordance with § 72.83; or

(3) The permitting authority determines that the permit must be revised or revoked to assure compliance with Acid Rain Program requirements.

(b) In reopening an Acid Rain permit for cause, the permitting authority shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of subparts E, F, and G of this part.

(c) As provided in §§ 72.73(b)(1) and 72.74(c)(2), the permitting authority shall reopen an Acid Rain permit to incorporate nitrogen oxides requirements, consistent with part 76 of this chapter.

(d) Any reopening of an Acid Rain permit shall not affect the term of the permit.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55485, Oct. 24, 1997]

Subpart I—Compliance Certification

§ 72.90 Annual compliance certification report.

(a) *Applicability and deadline.* For each calendar year during 1995 through 2005 in which a unit is subject to the Acid Rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the Administrator, within 60 days after the end of the calendar year, an annual compliance certification report for the unit.

(b) *Contents of report.* The designated representative shall include in the annual compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning the unit and the calendar year covered by the report:

(1) Identification of the unit;

(2) For all Phase I units, the information in accordance with §§ 72.91(a) and 72.92(a) of this part;

(3) If the unit is governed by an approved Phase I extension plan, then the information in accordance with § 72.93 of this part;

(4) At the designated representative's option, the total number of allowances to be deducted for the year, using the formula in § 72.95 of this part, and the serial numbers of the allowances that are to be deducted;

(5) At the designated representative's option, for units that share a common stack and whose emissions of sulfur dioxide are not monitored separately or apportioned in accordance with part 75 of this chapter, the percentage of the total number of allowances under paragraph (b)(4) of this section for all such units that is to be deducted from each unit's compliance subaccount; and

(6) The compliance certification under paragraph (c) of this section.

(c) *Annual compliance certification.* In the annual compliance certification report under paragraph (a) of this section, the designated representative

§ 72.91

40 CFR Ch. I (7-1-21 Edition)

shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the affected units at the source in compliance with the Acid Rain Program, whether each affected unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the Acid Rain Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the applicable Acid Rain emissions limitations, including whether the unit held allowances, as of the allowance transfer deadline, in its compliance subaccount (after accounting for any allowance deductions under § 73.34(c) of this chapter) not less than the unit's total sulfur dioxide emissions during the calendar year covered by the annual report;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute monitored emissions to the unit;

(3) Whether all the emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditionally valid data, as defined in § 72.2, were reported in the quarterly report. If conditionally valid data were reported, the owner or operator shall indicate whether the status of all conditionally valid data has been resolved and all necessary quarterly report resubmissions have been made.

(4) Whether the facts that form the basis for certification of each monitor at the unit or a group of units (including the unit) using a common stack or for using an Acid Rain Program excepted monitoring method or approved alternative monitoring method, if any, has changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, in-

cluding what method was used to determine emissions when a change mandated the need for monitor recertification.

[58 FR 3650, Jan. 11, 1993, as amended at 64 FR 28588, May 26, 1999; 70 FR 25334, May 12, 2005]

§ 72.91 Phase I unit adjusted utilization.

(a) *Annual compliance certification report.* The designated representative for each Phase I unit shall include in the annual compliance certification report the unit's adjusted utilization for the calendar year in Phase I covered by the report, calculated as follows:

Adjusted utilization = baseline - actual utilization - plan reductions + compensating generation provided to other units

where:

(1) "Baseline" is as defined in § 72.2 of this part.

(2) "Actual utilization" is the actual annual heat input (in mmBtu) of the unit for the calendar year determined in accordance with part 75 of this chapter.

(3) "Plan reductions" are the reductions in actual utilization, for the calendar year, below the baseline that are accounted for by an approved reduced utilization plan. The designated representative for the unit shall calculate the "plan reductions" (in mmBtu) using the following formula and converting all values in Kwh to mmBtu using the actual annual average heat rate (Btu/Kwh) of the unit (determined in accordance with part 75 of this chapter) before the employment of any improved unit efficiency measures under an approved plan:

Plan reductions = reduction from energy conservation + reduction from improved unit efficiency improvements + shifts to designated sulfur-free generators + shifts to designated compensating units

where:

(i) "Reduction from energy conservation" is a good faith estimate of the expected kilowatt hour savings during the calendar year from all conservation measures under the reduced utilization

Environmental Protection Agency

§ 72.91

plan and the corresponding reduction in heat input (in mmBtu) resulting from those savings. The verified amount of such reduction shall be submitted in accordance with paragraph (b) of this section.

(ii) "Reduction from improved unit efficiency" is a good faith estimate of the expected improvement in heat rate during the calendar year and the corresponding reduction in heat input (in mmBtu) at the Phase I unit as a result of all improved unit efficiency measures under the reduced utilization plan. The verified amount of such reduction shall be submitted in accordance with paragraph (b) of this section.

(iii) "Shifts to designated sulfur-free generators" is the reduction in utilization (in mmBtu), for the calendar year, that is accounted for by all sulfur-free generators designated under the reduced utilization plan in effect for the calendar year. This term equals the sum, for all such generators, of the "shift to sulfur-free generator." "Shift

to sulfur-free generator" shall equal the amount, to the extent documented under paragraph (a)(6) of this section, calculated for each generator using the following formula:

$$\text{Shift to sulfur-free generator} = \text{actual sulfur-free utilization} - [(\text{average 1985-87 sulfur-free annual utilization}) (1 + \text{percentage change in dispatch system sales})]$$

where:

(A) "Actual sulfur-free utilization" is the actual annual generation (in Kwh) of the designated sulfur-free generator for the calendar year converted to mmBtus.

(B) "Average 1985-87 sulfur-free utilization" is the sum of annual generation (in Kwh) for 1985, 1986, and 1987 for the designated sulfur-free generator, divided by three and converted to mmBtus.

(C) "Percentage change in dispatch system sales" is calculated as follows:

$$\text{Percentage change in dispatch system sales} = \left[\frac{S_c - \left(\sum_{y=1985}^{1987} S_y \div 3 \right)}{\left(\sum_{y=1985}^{1987} S_y \div 3 \right)} \right]$$

where:

- S = dispatch system sales (in Kwh)
- c = calendar year
- y = 1985, 1986, or 1987

If the result of the formula for percentage change in dispatch system sales is less than or equal to zero, then percentage change in dispatch system sales shall be treated as zero only for purposes of paragraph (a)(3)(iii) of this section.

(D) If the result of the formula for "shift to sulfur-free generator" is less than or equal to zero, then "shift to sulfur-free generator" is zero.

(iv) "Shifts to designated compensating units" is the reduction in utilization (in mmBtu) for the calendar year that is accounted for by increased generation at compensating units designated under the reduced utilization plan in effect for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of the unit reducing utilization multiplied by the sum, for all such compensating units, of the "shift to compensating

unit" for each compensating unit. "Shift to compensating unit" shall equal the amount of compensating generation (in Kwh), to the extent documented under paragraph (a)(6) of this section, that the designated representatives of the unit reducing utilization and the compensating unit have certified (in their respective annual compliance certification reports) as the amount that will be converted to mmBtus and used, in accordance with paragraph (a)(4) of this section, in calculating the adjusted utilization for the compensating unit.

(4) "Compensating generation provided to other units" is the total amount of utilization (in mmBtu) necessary to provide the generation (if any) that was shifted to the unit as a designated compensating unit under any other reduced utilization plans that were in effect for the unit and for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this

section, of such unit multiplied by the sum of each “shift to compensating unit” that is attributed to the unit in the annual compliance certification reports submitted by the Phase I units under such other plans and that is certified under paragraph (a)(3)(iv) of this section.

(5) Notwithstanding paragraphs (a)(3)(i), (ii), and (iii) of this section, where two or more Phase I units include in “plan reductions”, in their annual compliance certification reports for the calendar year, expected kilowatt hour savings or reduction in heat rate from the same specific conservation or improved unit efficiency measures or increased utilization of the same sulfur-free generator:

(i) The designated representatives of all such units shall submit with their annual reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings, reduction in heat rate, or increased utilization among such units.

(ii) Each designated representative shall include in the annual report only the respective unit’s share of the total kilowatt hour savings, reduction in heat rate, or increased utilization, in accordance with the certification under paragraph (a)(5)(i) of this section.

(6)(i) Where a unit includes in “plan reductions” under paragraph (a)(3) of this section the increase in utilization of any sulfur-free generator, the designated representative of the unit shall submit, with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the “shift to sulfur-free generator” attributed to the sulfur-free generator in the annual report was actually acquired by the unit’s dispatch system from the sulfur-free generator.

(ii) Where a unit includes in “plan reductions” under paragraph (a)(3) of this section utilization of any compensating unit, the designated representative of the unit shall submit with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the “shift to compensating unit” attributed to the compensating

unit in the annual report was actually acquired by the unit’s dispatch system from the compensating unit.

(7) Notwithstanding paragraphs (a)(3)(i), (ii), (iii), and (iv), (a)(4), and (a)(5) of this section, “plan reductions” minus “compensating generation provided to other units” shall not exceed “baseline” minus “actual utilization.”

(b) *Confirmation report.* (1) If a unit’s annual compliance certification report estimates any expected kilowatt hour savings or improvement in heat rate from energy conservation or improved unit efficiency measures under a reduced utilization plan, the designated representative shall submit, by July 1 of the year in which the annual report was submitted, a confirmation report. The Administrator may grant, for good cause shown, an extension of the time to file the confirmation report. The confirmation report shall include the following elements in a format prescribed by the Administrator:

(i) The verified kilowatt hour savings from each such energy conservation measure and the verified corresponding reduction in the unit’s heat input resulting from each measure during the calendar year covered by the annual report. For purposes of this paragraph (b), all values in Kwh shall be converted to mmbtu using the actual annual heat rate (Btu/Kwh) of the unit (determined in accordance with part 75 of this chapter) before the employment of any improved unit efficiency measures under an approved reduced utilization plan.

(ii) The verified reduction in the heat rate achieved by each improved unit efficiency measure and the verified corresponding reduction in the unit’s heat input resulting from such measure.

(iii) For each figure under paragraphs (b)(1) (i) and (ii) of this section:

(A) Documentation (which may follow the EPA Conservation Verification Protocol) verifying specified figures to the satisfaction of the Administrator; or

(B) Certification, by a State utility regulatory authority that has rate-making jurisdiction over the utility system that paid for the measures in accordance with §72.43(b)(2) of this part and over rates reflecting any of the amount paid for such measures, or that

Environmental Protection Agency

§ 72.91

meets the criteria in § 73.82(c)(1) (i) and (ii) of this chapter, that such authority verified specified figures related to demand-side measures; and

(C) Certification, by a utility regulatory authority that has ratemaking jurisdiction over the utility system that paid for the measures in accordance with § 72.43(b)(2) of this part and over rates reflecting any of the amount paid for such measures, that such authority verified specified figures related to supply-side measures, except measures relating to generation efficiency.

(iv) The sum of the verified reductions in a unit's heat input from all measures implemented at the unit to reduce the unit's heat rate (whether the measures are treated as supply-side measures or improved unit efficiency measures) shall not exceed the generation (in kwh) attributed to the unit for the calendar year times the difference between the unit's heat rate for 1987 and the unit's heat rate for the calendar year.

(2) Notwithstanding paragraph (b)(1)(i) of this section, where two or more Phase I units include in the confirmation report the verified kilowatt hour savings or reduction in heat rate from the same specific conservation or improved unit efficiency measures:

(i) The designated representatives of all such units shall submit with their confirmation reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or reduction in heat rate among such units.

(ii) Each designated representative shall include in the confirmation report only the respective unit's share of the total savings or reduction in heat rate in accordance with the certification under paragraph (b)(2)(i) of this section.

(3) If the total, included in the confirmation report, of the amounts of verified reduction in the unit's heat input from energy conservation and improved unit efficiency measures equals the total estimated in the unit's annual compliance certification report from such measures for the calendar year, then the designated representatives shall include in the confirmation

report a statement indicating that is true.

(4) If the total, included in the confirmation report, of the amounts of verified reduction in the unit's heat input from energy conservation and improved unit efficiency measures is greater than the total estimated in the unit's annual compliance certification report from such measures for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be credited to the unit's compliance subaccount calculated using the following formula:

$$\text{Allowances credited} = (\text{verified heat input reduction} - \text{estimated heat input reduction}) \times \text{emissions rate} \cdot 2000 \text{ lbs/ton}$$

where:

(i) "Verified heat input reduction" is the total of the amounts of verified reduction in the unit's heat input (in mmBtu) from energy conservation and improved unit efficiency measures included in the confirmation report.

(ii) "Estimated heat input reduction" is the total of the amounts of reduction in the unit's heat input (in mmBtu) accounted for by energy conservation and improved efficiency measures as estimated in the unit's annual compliance certification report for the calendar year.

(iii) "Emissions rate" is the "emissions rate" under § 72.92(c)(2)(v) of this part.

(iv) The allowances credited shall not exceed the total number of allowances deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter.

(5) If the total, included in the confirmation report, of the amount of verified reduction in the unit's heat input for energy conservation and improved unit efficiency measures is less than the total estimated in the unit's annual compliance certification report for such measures for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the unit's compliance subaccount calculated in accordance with this paragraph (b)(5).

(i) If any allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter, then the number of allowances to be deducted under paragraph (b)(5) of this section equals the absolute value of the result of the formula for allowances credited under paragraph (b)(4) of this section (excluding paragraph (b)(4)(iv) of this section).

(ii) If no allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter:

(A) The designated representative shall recalculate the unit's adjusted utilization in accordance with paragraph (a) of this section, replacing the amounts for reduction from energy conservation and reduction from improved unit efficiency by the amount for verified heat input reduction. "Verified heat input reduction" is the total of the amounts of verified reduction in the unit's heat input (in mmBtu) from energy conservation and improved unit efficiency measures included in the confirmation report.

(B) After recalculating the adjusted utilization under paragraph (b)(5)(ii)(A) of this section for all Phase I units that are in the unit's dispatch system and to which paragraph (b)(5) of this section is applicable, the designated representative shall calculate the number of allowances to be surrendered in accordance with § 72.92(c)(2) using the recalculated adjusted utilizations of such Phase I units.

(C) The allowances to be deducted under paragraph (b)(5) of this section shall equal the amount under paragraph (b)(5)(ii)(B) of this section, *provided* that if the amount calculated under this paragraph (b)(5)(ii)(C) is equal to or less than zero, then the amount of allowances to be deducted is zero.

(6) The Administrator will determine the amount of allowances that would have been included in the unit's compliance subaccount and the amount of excess emissions of sulfur dioxide that would have resulted if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the

unit's heat input from energy conservation and improved unit efficiency measures.

(7) The Administrator will determine whether the amount of excess emissions of sulfur dioxide under paragraph (b)(6) of this section differs from the amount of excess emissions determined under § 73.35(b) of this chapter based on the annual compliance certification report. If the amounts differ, the Administrator will determine: The number of allowances that should be deducted to offset any increase in excess emissions or returned to account for any decrease in excess emissions; and the amount of excess emissions penalty (excluding interest) that should be paid or returned to account for the change in excess emissions. The Administrator will deduct immediately from the unit's compliance subaccount the amount of allowances that he or she determines is necessary to offset any increase in excess emissions or will return immediately to the unit's compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions. The designated representative may identify the serial numbers of the allowances to be deducted or returned. In the absence of such identification, the deduction will be on a first-in, first-out basis under § 73.35(b)(2) of this chapter and the return will be at the Administrator's discretion.

(8) If the designated representative of a unit fails to submit on a timely basis a confirmation report (in accordance with paragraph (b) of this section) with regard to the estimate of expected kilowatt hour savings or improvement in heat rate from any energy conservation or improved unit efficiency measure under the reduced utilization plan, then the Administrator will reject such estimate and correct it to equal zero in the unit's annual compliance certification report that includes that estimate. The Administrator will deduct immediately, on a first-in, first-out basis under § 73.35(c)(2) of this chapter, the amount of allowances that he or she determines is necessary to offset

Environmental Protection Agency

§ 72.92

any increase in excess emissions of sulfur dioxide that results from the correction and require the owners and operators to pay an excess emission penalty in accordance with part 77 of this chapter.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 40747, July 30, 1993; 59 FR 60231, Nov. 22, 1994; 60 FR 18470, Apr. 11, 1995; 62 FR 55485, Oct. 24, 1997]

§ 72.92 Phase I unit allowance surrender.

(a) *Annual compliance certification report.* If a Phase I unit's adjusted utilization for the calendar year in Phase I under § 72.91(a) is greater than zero, then the designated representative shall include in the annual compliance certification report the number of allowances that shall be surrendered for adjusted utilization using the formula in paragraph (c) of this section and the calculations that were performed to obtain that number.

(b) *Other submissions.* (1) [Reserved]

(2)(i) If any Phase I unit in a dispatch system is governed during the calendar year by an approved reduced utilization plan relying on sulfur-free generation, then the designated representatives of all affected units in such dispatch system shall jointly submit, within 60 days of the end of the calendar year, a dispatch system data report that includes the following elements in a format prescribed by the Administrator:

(A) The name of the dispatch system as reported under § 72.33;

(B) The calculation of "percentage change in dispatch system sales" under § 72.91(a)(3)(iii)(C);

(C) A certification that each designated representative will use this figure, as appropriate, in its annual compliance certification report and will submit upon request the data supporting the calculation; and

(D) The signatures of all the designated representatives.

(ii) If any Phase I unit in a dispatch system has adjusted utilization greater than zero for the calendar year, then the designated representatives of all Phase I units in such dispatch system shall jointly submit, within 60 days of the end of the calendar year, a dispatch system data report that includes the

following elements in a format prescribed by the Administrator:

(A) The name of the dispatch system as reported under § 72.33;

(B) The calculation of "percentage change in dispatch system sales" under § 72.91(a)(3)(iii)(C);

(C) The calculation of "dispatch system adjusted utilization" under paragraph (c)(2)(i) of this section;

(D) The calculation of "dispatch system aggregate baseline" under paragraph (c)(2)(ii) of this section;

(E) The calculation of "fraction of generation within dispatch system" under paragraph (c)(2)(v)(A) of this section;

(F) The calculation of "dispatch system emissions rate" under paragraph (c)(2)(v)(B) of this section;

(G) The calculation of "fraction of generation from non-utility generators" under paragraph (c)(2)(v)(C) of this section;

(H) The calculation of "non-utility generator average emissions rate" under paragraph (c)(2)(v)(F) of this section;

(I) A certification that each designated representative will use these figures, as appropriate, in its annual compliance certification report and will submit upon request the data supporting these calculations; and

(J) The signatures of all the designated representatives.

(c) *Allowance surrender formula.* (1) As provided under the allowance surrender formula in paragraph (c)(2) of this section:

(i) Allowances are not surrendered for deduction for the portion of adjusted utilization accounted for by:

(A) Shifts in generation from the unit to other Phase I units;

(B) A dispatch-system-wide sales decline;

(C) Plan reductions under a reduced utilization plan as calculated under § 72.91; and

(D) Foreign generation.

(ii) Allowances are surrendered for deduction for the portion of adjusted utilization that is not accounted for under paragraph (c)(1)(i) of this section.

§ 72.92

40 CFR Ch. I (7-1-21 Edition)

(2) The designated representative shall surrender for deduction the number of allowances calculated using the following formula:

$$\text{Allowances surrendered} = [\text{dispatch system adjusted utilization} + (\text{dispatch system aggregate baseline} \times \text{percentage change in dispatch system sales})] \times \text{unit's share} \times \text{emissions rate} \cdot 2000 \text{ lbs/ton.}$$

If the result of the formula for "allowances surrendered" is less than or equal to zero, then no allowances are surrendered.

(i) *Calculating dispatch system adjusted utilization.* "Dispatch system adjusted utilization" (in mmBtu) is the sum of the adjusted utilization under § 72.91(a) for all Phase I units in the dispatch system. If "dispatch system adjusted utilization" is less than or equal to zero, then no allowances are surrendered by any unit in that dispatch system.

(ii) *Calculating dispatch system aggregate baseline.* "Dispatch system aggregate baseline" is the sum of the baselines (as defined in § 72.2 of this chapter) for all Phase I units in the dispatch system.

(iii) *Calculating percentage change in dispatch system sales.* "Percentage change in dispatch system sales" is the "percentage change in dispatch system sales" under § 72.91 (a)(3)(iii)(C); provided that if result of the formula in § 72.91(a)(3)(iii)(C) is greater than or equal to zero, the value shall be treated as zero only for purposes of paragraph (c)(2) of this section.

(iv) *Calculating unit's share.* "Unit's share" is the unit's adjusted utilization divided by the sum of the adjusted utilization for all Phase I units within the dispatch system that have adjusted utilization of greater than zero and is calculated as follows:

$$\text{Unit's share} = \frac{U_{\text{unit}}}{\sum_{i=1}^m U_i}$$

where:

(A) U_{unit} = the unit's adjusted utilization for the calendar year;

(B) U_i = the adjusted utilization of a Phase I unit in the dispatch system for the calendar year; and

(C) m = all Phase I units in the dispatch system having an adjusted utilization greater than 0 for the calendar year.

(v) *Calculating emissions rate.* "Emissions rate" (in lbs/mmBtu) is the weighted average emissions rate for sulfur dioxide of all units and generators, within and outside the dispatch system, that contributed to the dispatch system's electrical output for the year, calculated as follows:

$$\text{Emissions rate} = [\text{fraction of generation within dispatch system} \times \text{dispatch system emissions rate}] + [\text{fraction of generation from non-utility generators} \times \text{non-utility generator average emissions rate}] + [\text{fraction of generation outside dispatch system} \times \text{fraction of non-Phase I and non-foreign generation in NERC region} \times \text{NERC region emissions rate}]$$

where:

(A) "Fraction of generation within dispatch system" is the fraction of the dispatch system's total sales accounted for by generation from units and generators within the dispatch system, other than generation from non-utility generators. This term equals the total generation (in Kwh) by all units and generators within the dispatch system for the calendar year minus the total non-utility generation from non-utility generators within the dispatch system for the calendar year and divided by the total sales (in Kwh) by the dispatch system for the calendar year.

(B) Dispatch system emissions rate" is the weighted average rate (in lbs/mmBtu) for the dispatch system calculated as follows:

Dispatch system emissions rate =

$$\sum_{i=1}^k g_i I_i \div \sum_{i=1}^k g_i$$

where:

g_i = the difference between a Phase II unit's actual utilization for the calendar year and that Phase II unit's baseline. If that difference is less than or equal to zero, then the difference shall be treated as zero only for purposes of paragraph

(c)(2)(v) of this section and that unit will be excluded from the calculation of dispatch system emissions rate. Notwithstanding the prior sentence, if the actual utilization of each Phase II unit for the year is equal to or less than the baseline, then g_i shall equal a Phase II unit's actual utilization for the year. Notwithstanding any provision in this paragraph (c)(2)(v)(B) to the contrary, if the actual utilization of each Phase II unit in the dispatch system is zero or there are no Phase II units in the dispatch system, then the dispatch system emissions rate shall equal the fraction of non-Phase I and non-foreign generation in the NERC region multiplied by the NERC region emissions rate.

r_i = a Phase II unit's emissions rate (in lbs/mmBtu), determined in accordance with part 75 of this chapter, for the calendar year.

k = number of Phase II units in the dispatch system.

(C) "Fraction of generation from non-utility generators" is the fraction of the dispatch system's total sales accounted for by generation acquired from non-utility generators within or outside the dispatch system. This term equals the total non-utility generation from non-utility generators (within or outside the dispatch system) for the calendar year divided by the total sales (in Kwh) by the dispatch system for the calendar year.

(D) "Non-utility generator" is a power production facility (within or outside the dispatch system) that is not an affected unit or a sulfur-free generator and that has a "non-utility generator emissions rate" for the calendar year under paragraph (c)(2)(v)(F) of this section.

(E) "Non-utility generation" is the generation (in Kwh) that the dispatch system acquired from a non-utility generator during the calendar year as required by Federal or State law or an order of a utility regulatory authority or under a contract awarded as the result of a power purchase solicitation required by Federal or State law or an order of a utility regulatory authority.

(F) "Non-utility generator average emissions rate" is the weighted average rate (in lbs/mmBtu) for the non-utility generators calculated as follows:

Non-utility generator average emissions rate =

$$\frac{\sum_{i=1}^n N_i R_i}{\sum_{i=1}^n N_i}$$

where:

N_i = non-utility generation from a non-utility generator;

R_i = non-utility generator emissions rate for the calendar year for a non-utility generator, which shall equal the most stringent federally enforceable or State enforceable SO₂ emissions limitation applicable for the calendar year to such power production facility, as determined in accordance with paragraphs (c)(2)(v)(F) (1), (2), and (3) of this section; and

n = number of non-utility generators from which the dispatch system acquired non-utility generation. If n equals zero, then the non-utility generator average emissions rate shall be treated as zero only for purposes of paragraph (c)(2)(v) of this section.

(1) 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. If an applicable emissions limitation cannot be converted to a unit-specific limitation in lbs/mmBtu under appendix B of this part, then the limitation shall not be used in determining the most stringent emissions limitation. Where the power production facility is subject to different emissions limitations depending on the type of fuel it uses during the calendar year, the most stringent emissions limitation shall be determined separately with regard to each type of fuel and the resulting limitation with the highest amount of lbs/mmBtu shall be treated as the facility's most stringent federally enforceable or State enforceable emissions limitation.

(2) If there is no applicable emissions limitation that can be used in determining the most stringent emissions limitation under paragraph (c)(2)(v)(F)(1) of this section, then the power production facility has no non-utility generator emissions rate for purposes of paragraphs (c)(2)(v) (D) and (F) of this section and the generation from the facility shall be treated, for purposes of this paragraph (c)(2)(v) as generation from units and generators within the dispatch system if the facility is within the dispatch system or as

§ 72.93

generation from units and generators outside the dispatch system if the facility is outside the dispatch system.

(3) Notwithstanding paragraphs (c)(2)(v)(F) (I) and (2) of this section, if the power production facility is authorized under Federal or State law to use only natural gas as fuel, then the most stringent emissions limitation for the facility for the calendar year shall be deemed to be 0.0006 lbs/mmBtu.

(G) "Fraction of generation outside dispatch system" = 1 - fraction of generation within dispatch system - fraction of generation from non-utility generators.

(H) "Fraction of non-Phase I and non-foreign generation in NERC region" is the portion of the NERC region's total sales generated by units and generators other than Phase I units or foreign sources in the unit's NERC region in 1985, as set forth in table 1 of this section.

(I) "NERC region emissions rate" is the weighted average emission rate (in lbs/mmBtu) for the unit's NERC region in 1985, as set forth in table 1 of this section.

TABLE 1—NERC REGION GENERATION AND EMISSIONS RATE IN 1985

NERC region	Fraction of non-phase I and non-foreign generation in NERC region	NERC weighted average emissions rate (lbs/mmBtu)
WSCC	0.847	0.466
SPP	0.948	0.647
SERC	0.749	1.315
NPCC	0.423	1.058
MAPP	0.725	1.171
MAIN	0.682	1.495
MAAC	0.750	1.599
ERCOT	1.000	0.491
ECAR	0.549	1.564

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 40747, July 30, 1993; 60 FR 18470, Apr. 11, 1995]

§ 72.93 Units with Phase I extension plans.

Annual compliance certification report. The designated representative for a control unit governed by a Phase I extension plan shall include in the unit's annual compliance certification report for calendar year 1997, the start-up test

40 CFR Ch. I (7-1-21 Edition)

results upon which the vendor is released from liability under the vendor certification of guaranteed sulfur dioxide removal efficiency under § 72.42(c)(12).

§ 72.94 Units with repowering extension plans.

(a) *Design and engineering and contract requirements.* No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the Administrator and the permitting authority:

(1) Satisfactory documentation of a preliminary design and engineering effort.

(2) A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the Administrator under § 72.44(d)(3).

(3) The letter agreement under paragraph (a)(2) of this section shall be signed and dated by each party and specify:

- (i) The parties to the contract;
- (ii) The date each party executed the contract;
- (iii) The unit to which the contract applies;
- (iv) A brief list identifying each provision of the contract;
- (v) Any dates to which the parties agree, including construction completion date;
- (vi) The total dollar amount of the contract; and
- (vii) A statement that a copy of the contract is on site at the source and will be submitted upon written request of the Administrator or the permitting authority.

(b) *Removal from operation to repower.* The designated representative of a unit governed by an approved repowering plan shall notify the Administrator in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

(c) *Commencement of operation.* Not later than 60 days after the unit repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with part 75 of this chapter.

(d) *Decision to terminate.* If at any time before the end of the repowering extension the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the Administrator by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

§ 72.95 Allowance deduction formula.

The following formula shall be used to determine the total number of allowances to be deducted for the calendar year from the allowances held in an affected source's compliance account as of the allowance transfer deadline applicable to that year:

Total allowances deducted = Tons emitted + Allowances surrendered for underutilization + Allowances deducted for Phase I extensions + Allowances deducted for substitution or compensating units

where:

(a) "Tons emitted" is the total tons of sulfur dioxide emitted by the affected units at the source during the calendar year, as reported in accordance with part 75 of this chapter.

(b) "Allowances surrendered for underutilization" is the total number of allowances calculated in accordance with § 72.92 (a) and (c).

(c) "Allowances deducted for Phase I extensions" is the total number of allowances calculated in accordance with § 72.42(f)(1)(i).

(d) "Allowances deducted for substitution or compensating units" is the

total number of allowances calculated in accordance with the surrender requirements specified under § 72.41(d)(3) or (e)(1)(iii)(B) or § 72.43(d)(2).

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55485, Oct. 24, 1997; 70 FR 25334, May 12, 2005]

§ 72.96 Administrator's action on compliance certifications.

(a) The Administrator may review, and conduct independent audits concerning, any compliance certification and any other submission under the Acid Rain Program and make appropriate adjustments of the information in the compliance certifications and other submissions.

(b) The Administrator may deduct allowances from or return allowances to a source's compliance account in accordance with part 73 of this chapter based on the information in the compliance certifications and other submissions, as adjusted.

[58 FR 3650, Jan. 11, 1993, as amended at 70 FR 25334, May 12, 2005]

APPENDIX A TO PART 72—METHODOLOGY FOR ANNUALIZATION OF EMISSIONS LIMITS

For the purposes of the Acid Rain Program, 1985 emissions limits must be expressed in pounds of SO₂ per million British Thermal Unit of heat input (lb/mmBtu) and expressed on an annual basis.

Annualization factors are used to develop annual equivalent SO₂ limits as required by section 402(18) of the CAA. Many emission limits are enforced on a shorter term basis (or averaging period) than annually. Because of the variability of sulfur in coal and, in some cases, scrubber performance, meeting a particular limit with an averaging period of less than a year and at a specified statutory emissions level would require a lower annual average SO₂ emission rate (or annual equivalent SO₂ limit) than would the shorter term statutory limit. EPA has selected a compliance level of one exceedance per 10 years. For example, an SO₂ emission limit of 1.2 lbs/MMBtu, enforced for a scrubbed unit over a 7-day averaging period, would result in an annualized SO₂ emission limit of 1.16 lbs/MMBtu. In general, the shorter the averaging period, the lower the annual equivalent would be. Thus, the annualization of limits is established by multiplying each federally enforceable limit by an annualization

factor that is determined by the averaging period and whether or not it's a scrubbed unit.

TABLE A-1—SO₂EMISSION AVERAGING PERIODS AND ANNUALIZATION FACTORS

Definition	Annualization factor	
	Scrubbed Unscrubbed	
	Unit	Unit
Oil/gas unit	1.00	1.00
≤1 day	0.93	0.89
1 week	0.97	0.92
30 days	1.00	0.96
90 days	1.00	1.00
1 year	1.00	1.00
Not specified	0.93	0.89
At all times	0.93	0.89
Coal unit: No Federal limit or limit unknown	1.00	1.00

APPENDIX B TO PART 72—METHODOLOGY FOR CONVERSION OF EMISSIONS LIMITS

For the purposes of the Acid Rain Program, all emissions limits must be expressed in pounds of SO₂ per million British Thermal Unit of heat input (lb/MMBtu).

The factor for converting pounds of sulfur to pounds of SO₂ is based on the molecular weights of sulfur (32) and SO₂ (64). Limits expressed as percentage of sulfur or parts per million (ppm) depend on the energy content of the fuel and thus may vary, depending on several factors such as fuel heat content and atmospheric conditions. Generic conversions for these limits are based on the assumed average energy contents listed in table A-2. In addition, limits in ppm vary with boiler operation (e.g., load and excess air); generic conversions for these limits assume, conservatively, very low excess air. The remaining factors are based on site-specific heat rates and capacities to develop conversions for Btu per hour. Standard conversion factors for residual oil are 42 gal/bbl and 7.88 lbs/gal.

TABLE B-1—CONVERSION FACTORS
[Emission limits converted to lbs SO₂/MMBtu by multiplying as below]

Unit measurement	Plant fuel type			
	Bituminous coal	Subbituminous coal	Lignite coal	Oil
Lbs sulfur/ MMBtu	2.0	2.0	2.0	2.0
% sulfur in fuel	1.66	2.22	2.86	1.07
Ppm SO ₂	0.00287	0.00384	0.00167
Ppm sulfur in fuel	0.00334
Tons SO ₂ /hour	2,000,000/(HEATRATE*SUMNDCAP*capacity factor) ¹			
Lbs SO ₂ /hour	1,000/(HEATRATE*SUMNDCAP*capacity factor) ¹			

¹ In these cases, if the limit was specified as the "site" limit, the summer net dependable capability for the entire plant is used; otherwise, the summer net dependable capability for the unit is used. For units listed in the NADB, "HEATRATE" shall be that listed in the NADB under that field and "SUMNDCAP" shall be that listed in the NADB under that field. For units not listed in the NADB, "HEATRATE" is the generator net full load heat rate reported on Form EIA-860 and "SUMNDCAP" is the summer net dependable capability of the generator (in MWe) as reported on Form EIA-860.

TABLE B-2—ASSUMED AVERAGE ENERGY CONTENTS

Fuel type	Average heat content
Bituminous Coal	24 MMBtu/ton.
Subbituminous Coal	18 MMBtu/ton.
Lignite Coal	14 MMBtu/ton.
Residual Oil	6.2 MMBtu/bbl.

fuel SO₂ emissions (in tons) = (yrly wtd. av. fuel sulfur %) × (AP-42 fact.) × (1-scrb. effic. %/100) × (units conver. fact.) × (yearly fuel burned)

For coal, the yearly fuel burned is in tons/yr and the AP-42 factor (which accounts for the ash retention of sulfur in coal), in lbs SO₂ ton coal, is by coal type:

Coal type	AP-42 factor
Bituminous, anthracite	39 lbs/ton
Subbituminous	35
Lignite	30

For oil, the yearly fuel burned is in gal/yr. If it is in bbl/yr, convert using 42 gal/bbl oil. The AP-42 factor (which accounts for the oil density), in lbs SO₂/thousand gal oil, is by oil type:

APPENDIX C TO PART 72—ACTUAL 1985 YEARLY SO₂ EMISSIONS CALCULATION

The equation used to calculate the yearly SO₂ emissions (SO₂) is as follows:

$$SO_2 = (\text{coal } SO_2 \text{ emissions}) + (\text{oil } SO_2 \text{ emissions}) \text{ (in tons)}$$

If gas is the only fuel, gas emissions are defaulted to 0.

Each fuel type SO₂ emissions is calculated on a yearly basis, using the equation:

Environmental Protection Agency

Pt. 73

Oil type	AP-42 factor
Distillate (light)	142 lbs/1,000 gal
Residual (heavy)	157

For all fuel, the units conversion factor is 1 ton/2000 lbs.

APPENDIX D TO PART 72—CALCULATION OF POTENTIAL ELECTRIC OUTPUT CAPACITY

The potential electrical output capacity is calculated from the maximum design heat input from the boiler by the following equation:

$$\frac{\text{max. design heat input}}{3} \times \frac{\times 1 \text{ kw-hr}}{3413 \text{ Btu}} \times \frac{\times 1 \text{ MWe}}{1000 \text{ Kw}}$$

For example:

(1) Assume a boiler with a maximum design heat input capacity of 340 million Btu/hr.

(2) One-third of the maximum design heat input capacity is 113.3 mmBtu/hr. The one-third factor relates to the thermodynamic efficiency of the boiler.

(3) To express this in MWe, the standards conversion of 3413 Btu to 1 kw-hr is used: $113.3 \times 10^6 \text{ Btu/hr} \times 1 \text{ kw-hr} / 3413 \text{ Btu} \times 1 \text{ MWe} / 1000 \text{ kw} = 33.2 \text{ MWe}$

[58 FR 15649, Mar. 23, 1993]

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

Subpart A—Background and Summary

Sec.

73.1 Purpose and scope.

73.2 Applicability.

73.3 General.

Subpart B—Allowance Allocations

73.10 Initial allocations for phase I and phase II.

73.11 [Reserved]

73.12 Rounding procedures.

73.13 Procedures for submittals.

73.14-73.17 [Reserved]

73.18 Submittal procedures for units commencing commercial operation during the period from January 1, 1993, through December 31, 1995.

73.19 Certain units with declining SO₂ rates.

73.20 Phase II early reduction credits.

73.21 Phase II repowering allowances.

73.22-73.24 [Reserved]

73.25 Phase I extension reserve.

73.26 Conservation and renewable energy reserve.

73.27 Special allowance reserve.

Subpart C—Allowance Tracking System

73.30 Allowance tracking system accounts.

73.31 Establishment of accounts.

73.32 [Reserved]

73.33 Authorized account representative.

73.34 Recordation in accounts.

73.35 Compliance.

73.36 Banking.

73.37 Account error.

73.38 Closing of accounts.

Subpart D—Allowance Transfers

73.50 Scope and submission of transfers.

73.51 [Reserved]

73.52 EPA recordation.

73.53 Notification.

Subpart E—Auctions, Direct Sales, and Independent Power Producers Written Guarantee

73.70 Auctions.

73.71 Bidding.

73.72 Direct sales.

73.73 Delegation of auctions and sales and termination of auctions and sales.

Subpart F—Energy Conservation and Renewable Energy Reserve

73.80 Operation of allowance reserve program for conservation and renewable energy.

73.81 Qualified conservation measures and renewable energy generation.

73.82 Application for allowances from reserve program.

73.83 Secretary of Energy's action on net income neutrality applications.

73.84 Administrator's action on applications.

73.85 Administrator review of the reserve program.

73.86 State regulatory autonomy.

APPENDIX A TO SUBPART F OF PART 73—LIST OF QUALIFIED ENERGY CONSERVATION MEASURES, QUALIFIED RENEWABLE GENERATION, AND MEASURES APPLICABLE FOR REDUCED UTILIZATION

Subpart G—Small Diesel Refineries

73.90 Allowance allocations for small diesel refineries.