

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 9, 72, 73, 74, 75, 77 and 78**

[FRL-5178-5]

RIN 2060-AD43

Opting Into the Acid Rain Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Under title IV of the Clean Air Act, Congress authorized the U.S. Environmental Protection Agency (EPA) to establish the Acid Rain Program. The principal goal of the program is to achieve significant environmental benefits through reductions in sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions, the primary components of acid rain. Acid rain causes surface water acidification, damages trees at high elevations and accelerates the decay of building materials. In addition, air concentrations of SO₂ and NO_x degrade visibility in large parts of the country and acidic aerosols derived from these emissions may pose a risk to public health.

The Acid Rain Program departs from traditional regulatory methods by introducing an SO₂ allowance trading system that lowers the cost of reducing emissions by allowing electric utilities as a group to seek out the least costly methods of control. Utility units affected under title IV are allocated allowances based on their historic emissions and these units may trade allowances, provided that at the end of each year, each unit holds enough allowances to cover its annual SO₂ emissions.

Today's action establishes an additional component to the Acid Rain Program called the Opt-in Program. The Opt-in Program allows sources not required to participate in the Acid Rain Program the opportunity to participate on a voluntary basis. Such sources, known as combustion sources, would include small utility units and industrial boilers. These rules detail how combustion sources participate in the allowance market by "opting in" to the Acid Rain Program, as provided under section 410 of the Act. Congress envisioned the Opt-in Program as a means of generating additional allowances and through which the compliance costs of acid rain control in the utility sector could be reduced, while still meeting overall emissions reductions goals.

EFFECTIVE DATE: These rules become effective on May 4, 1995.

ADDRESSES: *Docket.* Docket No. A-93-15, containing information considered during development of the promulgated rule, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket Section (6102), Waterside Mall, room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Background information document. The background information document containing responses to public comments on the proposed standards may be obtained from the docket. Please refer to "Final Opt-in Rule for Combustion Sources—Comment Response Document."

FOR FURTHER INFORMATION CONTACT: Acid Rain Hotline (202) 233-9620 or Adam Klinger (202) 233-9122, Acid Rain Division; mailing address, U.S. EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

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A. Background and Summary*1. Background*

Acid deposition occurs when emissions of sulfur dioxide and oxides of nitrogen are chemically transformed in the atmosphere into sulfuric and nitric acids and return to earth as wet deposition such as rain, fog, or snow, or dry deposition such as fine particles or gases. Acid deposition damages lakes and harms forests and buildings. SO₂ emissions damage ecosystems and materials, contribute to reduced visibility and, at current levels, are suspected of posing a threat to human health.

Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, directs EPA to establish the Acid Rain Program to reduce the adverse effects of acidic deposition. Title IV targets the electric utility industry, which accounts for over two-thirds of SO₂ emissions and over one-third of NO_x emissions in the United States. Specifically, the Act mandates a national cap of 8.95 million tons per year on electric utility SO₂ emissions by the year 2010 (just over half of the 1980 electric utility SO₂ emissions), to be achieved in two phases. Phase I will begin in 1995 and mainly affects large, high-emitting utility plants; these plants are specifically listed in the statute. Phase II will begin in 2000 and affects virtually all existing utility units with output capacity greater than 25 megawatts and most new utility units.

The centerpiece of the Acid Rain Program is a unique trading system in which allowances are bought and sold at prices determined in the marketplace. Each allowance authorizes the emission of up to one ton of SO₂ during or after a designated year. The majority of utility units—both existing and some new units—are allocated allowances based on their historic fuel use and the emissions limitations specified in the Act. Utility units are required to limit SO₂ emissions to the number of allowances they hold, but since allowances are fully transferrable, utilities may meet their emissions control requirements in the most cost-effective manner possible. For instance, a utility may decide to (1) switch to a lower sulfur fuel, (2) install flue gas desulfurization equipment (scrubbers) and bank unused allowances or sell them to other utilities/individuals, (3) forego emissions reductions and buy additional allowances (if necessary), or (4) implement energy efficiency measures. Other options and combinations of options are possible, providing an unusually high degree of

flexibility for affected units to comply with the law. The procedures for transferring and tracking allowances are codified in 40 CFR part 73.

Each affected unit must have a permit in which the affected unit certifies that it will possess a sufficient number of allowances to cover its SO₂ emissions and specifies the source's compliance options. The permit regulation is codified in 40 CFR part 72.

To ensure that nationally mandated reductions in SO₂ and NO_x emissions are achieved, each affected unit must install a continuous emissions monitoring system and collect, record, and report emissions data. The continuous emissions monitoring rule is codified in 40 CFR part 75.

If an affected unit violates the Act by emitting more emissions than the allowances it holds, the Act requires that the affected unit pay penalties and submit a plan detailing how and when the excess SO₂ emissions will be offset. These requirements act as a strong incentive for compliance with the mandated emissions reductions of the Acid Rain Program. Excess emissions penalty requirements are codified in 40 CFR part 77.

Finally, 40 CFR part 78 contains administrative appeals procedures for resolving disputes over decisions by the Administrator regarding any aspect of the Acid Rain Program.

2. The Opt-in Program

Although the Acid Rain Program is mandated only for utility sources, section 410 provides opportunities for SO₂-emitting sources not otherwise affected by title IV requirements (e.g., industrial sources) to participate in the Acid Rain Program by "opting in."

The Opt-in Program is a voluntary economic incentive provision. Congress developed the Opt-in Program to reduce further the cost of complying with the Acid Rain Program. Combustion or process sources not otherwise required to reduce SO₂ emissions can opt in and make incremental, lower-cost reductions. Congress envisioned section 410 as a means of generating additional allowances to reduce compliance costs for affected utilities and to encourage combustion or process sources to consider cost-effective emission reduction opportunities:

(Section 410) adds flexibility and can enlarge the universe of sources for which there are cost-effective reductions in emissions of SO₂ * * *. This section provides a useful additional source of reductions that can be made voluntarily by sources choosing to be affected by the provisions of this title. (Senate Committee Report, Report No. 101-228, December 20, 1989, p. 335.)

The reductions—in the form of acid rain allowances—can be transferred to meet mandatory reduction requirements in the utility sector and, thus, lower the overall cost of the Acid Rain Program. However, Congress also intended that this shifting of SO₂ emissions between opt-in sources and affected utility units not compromise the overall title IV SO₂ emissions reduction goals. Section 410 "is intended to further the objective of achieving true net reductions of SO₂ * * *." (*Id.* at 336.) The Opt-in Program has been designed to take advantage of lower cost reduction opportunities at non-affected sources consistent with the statutory requirements of section 410 of the Act and emissions reductions goals (i.e., the required 10 million ton reduction of SO₂) of title IV.

3. Summary of Final Rule

The final opt-in regulation for combustion sources details the process through which combustion sources can enter the Opt-in Program and the requirements they face while participating. The rule allows any stationary fossil fuel fired combustion device, i.e., any combustion source, to become an affected unit and receive allowances. This rule focuses on combustion sources. The treatment of process sources and specifically the application and monitoring requirements for process sources will be addressed in a subsequent rulemaking. The permitting process finalized in today's rule does pertain to both combustion and process sources.

Allowance allocations for opt-in sources, as for utility units, are based on operations during 1985, 1986, and 1987. Like utilities in the mandatory program, once a combustion source opts in, it must hold allowances to cover its emissions. Presumably, the opt-in source will reduce its emissions from its baseline level to generate excess allowances to sell to other affected units. Because opting in is voluntary, only combustion sources that would profit by selling excess allowances are expected to participate in the program. In addition, since all affected sources must also comply with the other applicable requirements of the Act, revenue generated by selling excess allowances could help opt-in sources to offset costs of compliance with other programs.

Although EPA has attempted to treat opt-in sources comparably to utility units in the mandatory Acid Rain Program, there are some situations where restrictions on opt-in sources are needed to protect the emission goals of the Act. In section 410(f), Congress

expressly prohibits opt-in sources from transferring allowances that result when they reduce utilization or shut down. Without this prohibition, an individual opt-in source could increase overall emissions by shifting some or all of its production from the opt-in source to new or existing non-affected sources, accumulating the opt-in source's unused allowances, and then selling them to other affected sources.

In order to ensure the surrender of allowances in cases of reduced utilization and shutdown, EPA reserves the right to cancel allowances produced by reduced utilization or shutdown by removing them from any Allowance Tracking System (ATS) accounts into which they had been transferred. To facilitate this prospect of cancellation and to protect buyers of opt-in allowances, EPA is restricting the transfer of future year allowances. In the final rule, EPA continues to allocate allowances, in perpetuity, upon application, but is prohibiting the transfer of future year allowances from opt-in unit accounts in the ATS; only current year or earlier allowances can be transferred. This policy will eliminate the need to cancel future year allowances in cases where a unit shuts down and sells all its future year allowances. Trades involving future year allowances can still be made; however, delivery of future year allowances to the buyer must wait until the year for which those allowances are to be used for compliance.

Title IV contains one exception to the overall restriction on opt-in allowances generated by reduced utilization and shutdown. When a "replacement unit" replaces thermal energy formerly supplied by an opt-in source, then the opt-in source may transfer allowances to the replacement unit to the extent of that replacement, despite the reduction of utilization at the opt-in source. For purposes of this thermal energy exception, EPA defines thermal energy to be steam used in an industrial process, as distinct from steam used to generate electricity, and bases the calculation of transferable allowances on the fuel associated with the thermal energy and the allowable emissions rate at the replacement unit.

Eligible combustion sources may submit applications to EPA, as the permitting authority in the near term, and to a State or local permitting authority, once that permitting authority has an Opt-in Program in place under part 70. Upon receipt of the application, its evaluation proceeds on two parallel paths will commence: (1) The procedure for processing an opt-in permit; and (2) the procedure for evaluating the opt-in

source's monitoring plan and certifying its monitoring systems. After both of these procedures have been successfully completed, the combustion source may enter the Opt-in Program.

B. Major Changes Made to the Proposed Rule

Although considerable changes have been made to the language and structure of the proposed opt-in regulation for combustion sources, the essential elements of the program remain unchanged and the final rule is consistent with the regulatory goals discussed in the proposed rule, which the Agency here reaffirms. The bulk of this preamble details the major changes that have been made:

1. Acceptable Data Sources

EPA continues to believe that there is no single reliable data base that would provide the Agency with quality information on operations and emissions of potential opt-in sources. Therefore, the Agency must rely on information supplied by the combustion source in an application process. In § 74.20(a)(2) of the proposed rule, EPA established a screen for ensuring that reliable data is submitted to the Agency, by requiring all data to have been previously submitted to a government agency.

Today's rule does not require the previous submission of data to a government agency as a precondition for combustion sources to apply to enter the Opt-in Program. Instead, EPA will conduct its own evaluation of the data submitted for the Opt-in Program using its best judgment, although the burden of proof regarding the data's accuracy will remain with the applying combustion source. Regardless of whether a state permitting program is in place and whether the State or EPA is the permitting authority, EPA will retain this data review authority consistent with its responsibility for all allowance-related activities, as discussed in the preamble to the proposed rule.

EPA will lead an evaluation process that brings in the expertise of state officials as well as other technical data experts. EPA will retain the authority, consistent with § 72.4 of part 72, to request any additional documentation, in addition to the formal opt-in permit application, that it believes is necessary to evaluate the combustion source's data. Previous submittals to government agencies that are in existence will be expected to accompany the application. In addition, EPA may request data for years outside the baseline period, both before and after, to verify that submitted baseline data does not represent an

inexplicable spike in the combustion source's operations. EPA may also request additional supporting documentation (e.g., fuel purchasing records, production rates, throughputs, sampling protocols, etc.) that the Agency believes necessary to verify the information contained in the combustion source's opt-in permit application. EPA may, in addition, make inspections and examine records at the combustion source applying to enter the Opt-in Program.

Opt-in permit applications submitted by combustion sources with entries in the National Allowance Data Base (NADB) will still face scrutiny, and the data values within the NADB will not be accepted automatically. Such scrutiny and potential revisions are consistent with previous Agency assertions that the NADB version 2.11 was the final version to be used in the development of allocations for Phase II units (see 57 FR 30034 and 58 FR 15721).

Combustion sources, by definition, cannot be Phase II units and were not automatically allocated allowances under section 405 of the Act. Therefore, the NADB data for these sources have not been reviewed by EPA to the same extent as Phase II unit data, and such review has not been precluded by previous regulatory actions.

The evaluation of data by EPA for the purposes of calculating allowances is not unprecedented. In developing Phase II unit data in the NADB, EPA compiled information from a number of sources that included the Energy Information Administration (EIA), the North American Electric Reliability Council (NERC), the affected sources, and, to a lesser extent, states. EPA expects the states to play a larger role in evaluating industrial operating and emissions data, because the states are often the best repository of such information and are aware of the detailed operations of such sources.

Both the applying combustion source and third parties will have access to and be able to assess the information EPA ultimately accepts in its allowance calculation. Both the combustion source and third parties will be able to scrutinize the baseline data and the number of allocated allowances during the public comment period associated with the draft opt-in permit. Furthermore, the combustion source has the opportunity to decline to opt in at any time prior to the effective date of the opt-in permit. The combustion source can also appeal its allowance allocation consistent with the procedures prescribed in part 78.

While the information for industrial opt-in sources will be less readily

available, EPA sees no other workable alternative than to assume the responsibility of examining submitted data on a case-by-case basis. The Agency recognizes that some incentives will remain for the combustion source to overstate its baseline for the purposes of increasing its allowance allocation, but believes that such risks will be offset by Agency review of the data and supporting documents, the rejection of insufficiently supported data, and the threat of enforcement actions and penalties for falsely submitted data. Toward these ends, EPA will enhance the certification statements that designated representatives sign when submitting an opt-in permit application to assure that such submittals (1) are believed to be true, accurate, and complete; (2) are accompanied by all available documentation that the combustion source and its state regulatory agencies possess that are relevant to the accuracy of such data; and (3) are not adjusted in any way.

2. Allocation of Opt-in Allowances and Transfer Prohibition

In the proposed rule, EPA planned to allocate allowances on a one-time, in perpetuity basis and allowed for the transfer of current and future-year opt-in allowances from opt-in accounts into other accounts in the Allowance Tracking System (ATS). This policy was proposed to promote fungibility of opt-in allowances and provide combustion sources flexibility in their compliance planning. However, in order to uphold the requirements of section 410(f) of the Act, EPA also proposed in § 74.50 of the proposed rule to reserve the right to cancel, under certain circumstances, any allowances that were initially allocated to an opt-in source by removing allowances from any ATS accounts into which they had been transferred.

Under section 410(f), the Act restricts opt-in sources from transferring or banking allowances produced as a result of reduced utilization or shutdown, except as discussed in the proposed rule (58 FR 50103) and later in this preamble under the thermal energy exception. To uphold this restriction, EPA is requiring opt-in sources to surrender allowances generated by reduced utilization or shutdown. In the proposed rule, EPA maintained that in the case where an opt-in source has shut down, reduced its utilization or has excess emissions, *and* fails to supply the equivalent number of allowances owed to EPA (presumably because the opt-in source has sold all of its future-year allowances), EPA must recover and cancel the opt-in source's allowances in

the required number from other ATS accounts into which they were transferred. Canceling opt-in allowances held in other accounts in the ATS was considered the only way to ensure that such allowances did not result in additional emissions and that the SO₂ emissions reduction goals of the Acid Rain Program were preserved. EPA maintained in the proposed rule that the allowance market would account for the risk of cancellation by asking lower prices for opt-in allowances and writing protective clauses into sales contracts.

In the final rule, EPA is choosing to allocate allowances, in perpetuity, at the time the combustion source becomes an affected unit, but, based on the comments received, is prohibiting the transfer of future-year opt-in allowances from opt-in source accounts in the Allowance Tracking System (ATS). Transfers of current-year opt-in allowances will only be recorded by EPA following the completion of the end-of-year reconciliation process for the previous compliance year, as set forth in § 73.34(a) of 40 CFR part 73. If an opt-in source is found to have excess emissions for a given year, that opt-in source will be prohibited from transferring the following year's allowances until an offset plan is approved and allowances have been deducted to offset its excess emissions.

When an opt-in source permanently shuts down, it may no longer retain allocated allowances and must surrender to EPA all of its opt-in allowances starting with the year in which the opt-in source shuts down. In the case of an opt-in source that has shut down, as opposed to an opt-in source that is still operating, EPA cannot draw upon future-year allowances to offset excess emissions because such allowances have already been surrendered. Therefore, EPA reserves the right to cancel opt-in allowances (specifically, allowances for the year for which the opt-in source has excess emissions and the year in which the opt-in source shuts down) from any ATS account into which such allowances have been transferred. Previous year opt-in allowances that had subsequently been transferred to other ATS accounts would not be canceled because such allowances were in excess of the number of allowances needed for compliance in previous years.

EPA retains the option of allowance cancellation to ensure that opt-in sources through their operations cannot increase emissions to the environment. EPA believes that the Opt-in Program must be self-enforcing and should not rely on possible future regulation to

implement the 5.6 million ton cap for industrial sources because of the reasons discussed in the proposed rule: (1) The incomplete coverage of the Opt-in Program relative to the industrial sector; (2) the importance of achieving title IV emission reduction goals by maintaining the emissions neutrality of the Opt-in Program relative to historic emission levels (rather than future emission inventory levels); and (3) the aggregate nature of emission inventories and their lack of specificity to address emissions and allowance allocations of individual opt-in sources.

Furthermore, EPA agrees with commenters who believe that most trades of future-year opt-in allowances will take the form of "option contracts," e.g., the buyer and seller arrange today for the option to buy allowances at a future time at a quantity, price, and date set today. Buyers are more likely to enter into options contracts for future-year opt-in allowances because, if allowances are canceled, the buyer only loses the option to buy allowances and not the allowances themselves, as would be the case with other types of contracts. If these commenters are correct, then EPA's prohibition of the transfer of future-year opt-in allowances should not significantly alter expected market behavior and its treatment of opt-in allowances. In fact, current allowance market behavior in the utility sector suggests that, in many cases, a portion of the full price is paid now for future-year allowances, but the actual transfer of such allowances and payment of the remaining purchase price will not occur until the allowances become usable for compliance. Buyers are reluctant to pay full price now for allowances that cannot be used until a future date.

Although EPA is restricting the transfer of future-year opt-in allowances, it is allowing the transfer of current-year opt-in allowances as soon as the end-of-year reconciliation process for the previous year is completed. (EPA will allow, for the first current year, the transfer of current-year opt-in allowances upon entry into the Opt-in Program). EPA believes that current-year opt-in allowances may play a valuable role in assisting with compliance for the utility sector and must be available for transfer before the end of the current year. However, in order to uphold the requirements of section 410(f) of the Act, EPA reserves the right to cancel current-year opt-in allowances that have been allocated to the opt-in source in the event that an opt-in source has excess emissions and has shut down, been reconstructed, or become affected under § 72.6. EPA believes that

restricting opt-in allowance transfers to current-year allowances will reduce the likelihood of having to cancel purchased opt-in allowances. Buyers of current-year opt-in allowances have a much better chance of accurately assessing the integrity, financial health, and future status of an opt-in source in a short time frame (i.e., within the current year) than they would in making an accurate assessment over a longer time frame (i.e., one extending as long as 31 years into the future). EPA considered not canceling current-year allowances, but instead using enforcement actions to try to recover excess opt-in allowances. EPA rejected this approach because of the concern that if enforcement actions were unsuccessful in the recovery of excess opt-in allowances, the clear direction of section 410(f) of the Act would be violated, and the emission reduction goals of title IV would be compromised.

3. Offering Opt-in Allowances on the Acid Rain Auction

In the proposed rule, EPA prohibited the trading of opt-in allowances in the Acid Rain auction. EPA is allowing, in the final rule, the offering of opt-in allowances in the spot auction, provided the compliance use date of the allowances offered is for a prior year. Prior year allowances are allowances dated a year or more prior to the spot auction year. Prior year opt-in allowances will have cleared the end-of-year compliance process including any possible allowance cancellations for reduced utilization, as discussed above. EPA is still prohibiting the submission of offers of current-year opt-in allowances in the Acid Rain auctions because these allowances have a possibility of being canceled by EPA in the future. Buyers of current-year opt-in allowances sold in the auctions have no protection against cancellation as they would if purchasing opt-in allowances through a private contract. EPA believes that if there is demand for an auction that includes current-year opt-in allowances, the private sector will develop such an outlet.

4. Thermal Energy Exception

Section 410(f) limits the transfer of opt-in allowances when opt-in sources reduce utilization or shutdown except when the reduced utilization or shutdown results from the replacement of thermal energy. EPA received numerous comments on implementing this thermal energy exception. This section discusses the three main issues associated with the thermal energy exception:

- (a) The definition of thermal energy;

(b) The calculation of transferrable allowances; and

(c) The methodology used to calculate the fuel associated with thermal energy.

a. Definition of Thermal Energy

In § 72.2 of the proposed rule, EPA defined thermal energy as the thermal output produced by a combustion source used directly as part of a manufacturing process but not used to produce electricity. EPA received 29 comments on the definition of thermal energy.

Seventeen commenters disagreed with the proposed definition and argued that the thermal energy definition should include electrical output in addition to steam output. Several commenters argued that EPA has no statutory basis in section 410(f) to define thermal energy to include only steam output because the statute does not specifically cite the Public Utility Regulatory Policies Act (PURPA) definition of thermal energy used by the Agency in the proposed rule. Commenters also maintained that the legislative history does not support a limited definition. Lastly, commenters pointed out that because section 410(f) refers to the term "unit" that by definition does not distinguish between facilities that produce steam for generating electrical energy and those that produce steam for direct sale, the definition of thermal energy should not make such a distinction.

One commenter argued that thermal energy means "heat" and that the facilities affected by the Act are combustion units that produce heat, which sometimes is used to drive a turbine to create electricity and sometimes is used to create steam. Several other commenters noted that the proposed definition fails to take into account the integrated nature of many industrial facilities and does not consider how difficult it may be to determine how the thermal energy is allocated between steam and electricity.

In addition, a number of commenters believed that in developing the thermal energy definition, EPA ignored the intent of Congress to allow small electric generating units the opportunity to opt in, retire their older units, and transfer allowances to replacement sources.

Four commenters stated that EPA's proposed opt-in rule is inconsistent with the views stated in the "Dover Letter," sent to SFT, Inc. on March 7, 1991. The commenters contended that a representative from EPA's Office of Atmospheric and Indoor Air Programs stated that the City of Dover would be allowed to opt in its exempt boilers

used to generate electricity under section 410 of title IV and then transfer the allowances received to a new, replacement boiler. The commenters argued that EPA should uphold its original views and allow electric units to opt in. One commenter, however, recognized that this "Dover Letter" was not a legally enforceable, binding statement of law.

Three commenters supported EPA's definition of thermal energy based on the argument that if electricity is included in the definition, the total number of permanent allowances and associated emissions would increase above what is permitted under title IV. These commenters also argue that the Act draws a clear distinction between thermal energy and the energy used for the generation of electric power and thus, small electricity generators should not be considered beneficiaries of the thermal replacement energy exemption.

Response: As stated in the preamble to the proposed rule (58 FR 50087), EPA believes defining thermal energy as the steam output used directly as part of a manufacturing process but not used to produce electricity is consistent with the Congressional intent and goals of title IV and section 410. For the reasons set forth in the preamble to the proposed rule, the final rule retains the definition of thermal energy as proposed and limits thermal energy to the steam output used directly in a manufacturing process but not used to produce electricity.

EPA continues to believe that Congress selected the term thermal energy precisely to distinguish between electric energy and thermal energy used in manufacturing processes. If Congress had intended thermal energy to mean total energy, which includes electricity, then it would have had no need to use the term "thermal" at all. Furthermore, EPA disagrees with those commenters who claimed that because Congress did not specifically cite the PURPA definition of thermal energy in title IV it is inappropriate to use that definition. With no definition specifically provided in the statute, limited legislative history, and no evidence that Congress intended otherwise, EPA believes that using the PURPA definition is appropriate since it provides a long standing, accepted meaning of the term within the federal regulatory framework governing industrial steam production and electrical generation.

Some commenters argued that because section 410(f) uses the term "unit", Congress did not intend to distinguish between sources that produce steam for generating electricity and those that produce steam for direct

sale. However, EPA believes that the term "unit" as used in section 410(f) provides no basis for defining "thermal energy", but rather the term "unit" is used in section 410(f) only to limit the transfer of allowances under the thermal energy exception to affected units (i.e., "any other unit or units subject to the requirements of this title.")

EPA stated in the so called "Dover Letter" that its response to the City of Dover was based on preliminary assessments of the language in title IV and was subject to modification in the final EPA regulations:

Below are EPA's comments based on the language in Title IV of the Act. You should be aware, however, that the views expressed in this letter are based on our preliminary assessments and could be modified in the final EPA regulations. (March 7, 1991 letter from Eileen Claussen to Tom Fitzpatrick).

By its own terms, the March 7, 1991 letter did not provide guidance, much less a statutory interpretation or an applicability determination for the units in question, that could be relied upon. In fact, the March 7, 1991 letter indicated that this was a preliminary views based only on the statutory language itself and did not indicate that any other material relevant to statutory interpretation (such as legislative history) had been considered. Several months thereafter, EPA sent a retraction letter on January 7, 1992 to the City of Dover reiterating that EPA's response in the March 7, 1991 letter was preliminary and that the Agency was reconsidering the legal and analytic basis of the position it had taken in the March 7, 1991 letter.

Lastly, EPA recognizes the integrated nature of some industrial cogeneration facilities but maintains, as confirmed by historic industrial reporting, that steam and electrical outputs are observable and measurable quantities.

b. Emission Rate Used To Calculate Transferable Allowances

To calculate the number of allowances that can be transferred from the opt-in source to a replacement unit under the thermal energy exception, EPA proposed, under § 74.47(b)(4), to use the lesser of the federally enforceable allowable emission rate at the replacement unit or 1.2 lbs/mmBtu. EPA received eighteen comments on this issue with no commenters supporting the 1.2 lbs/mmBtu emission rate cap as proposed, and six commenters supporting the use of the replacement unit's emission rate. Two commenters contended that the proposed 1.2 lbs/mmBtu emission rate is excessively high given that emission

rates at replacement units are likely to be much lower.

Fifteen commenters objected to EPA's proposal of a 1.2 lbs/mmBtu emission rate limit as too restrictive. These commenters argued that the use of the 1.2 lbs/mmBtu emission rate is arbitrary and not supported by the statute where the replacement unit's emission rate is higher. They also pointed out that the proposed restriction does not recognize all possible replacement units (e.g., existing units) and would unjustifiably restrict allowance transfer during Phase I when the emission rate could be 2.5 lbs/mmBtu.

Response: After further consideration, EPA is eliminating the 1.2 lbs/mmBtu emission rate restriction used to calculate the number of allowances that can be transferred to the replacement unit under the thermal energy exception. Today's rule uses the federally enforceable emission rate at the replacement unit to calculate the number of transferable allowances.

The rule was changed because EPA agrees with the comments that the use of the 1.2 lbs/mmBtu does not recognize the different emission rates at potential replacement units, some of which may be existing units. In the preamble to the proposed rule, EPA argued that applying a 1.2 lbs/mmBtu rate is consistent with the requirements for Phase II units. However, since a replacement unit can be any affected unit, the universe of replacement units would include Phase I units with 2.5 lbs/mmBtu rates and other opt-in sources with emission rates that could be even higher. Given that these potential replacement units could have higher rates and that the statute does not set a limit for the emission rate, EPA believes there is no basis for restricting the emission rate to 1.2 lbs/mmBtu.

c. Methodology Revision for Calculating the Fuel Associated with Thermal Energy

In § 74.47(b) of the proposed rule, EPA required that replacement units calculate the fuel associated with thermal energy by dividing the amount of qualifying thermal energy (that is, the replacement thermal energy) by the efficiency associated with the production of thermal energy. EPA received several comments related to this issue.

One commenter suggested that all units of fuel used should be attributable to a unit's steam output because it is not practical to identify a thermal energy fuel increment (used to determine the allowance transfer) and because there is no established method for doing so.

Several commenters offered alternative formulas for calculating the transferable allowances. One suggested that EPA calculate the number of transferable allowances as the product of the "useful thermal energy output" of the replacement unit, as defined under PURPA, and the difference between the opt-in source's emission factor and the replacement unit's emission factor. This commenter contended that this will encourage more efficient cogeneration applications. Another suggested that EPA compute the number of transferable allowances by evaluating the portion of an opt-in source's historic thermal energy that is replaced by a cogeneration facility, rather than the portion of the cogeneration facility's energy output that is thermal energy. Other commenters recommended that EPA include provisions that provide an incentive to undertake energy efficiency gains at the replacement unit. The number of transferable allowances should be based on the replacement unit's emission rate taking into consideration any efficiency differences in steam production at the opt-in source and at the replacement unit.

Response: Based on the comments received, EPA is changing the methodology for calculating the fuel associated with qualifying thermal energy as discussed under § 74.47. In today's rule, EPA allows opt-in sources to use an efficiency constant when calculating fuel input from thermal output to give them an incentive to make their production processes more efficient.

EPA has chosen to make the calculation of transferred allowances based on a constant value rather than having replacement units calculate fuel utilization each year because relying on actual fuel utilization would discourage improvements in efficiency. By using a constant, a replacement unit that increases its efficiency will use less fuel to produce the same amount of thermal output, but will still have transferred to it the same number of allowances as before the efficiency improvement. In contrast, calculating the fuel utilization each year would reduce the incentives for efficiency improvements. This will be true for either boilers or cogenerators.

The efficiency constants selected represent the fuel utilization of the boiler or cogenerator supplying the replacement steam. Fuel utilization represents the quotient of all energy outputs and the energy content of total fuel input. The Agency distinguishes between boilers and cogenerators in establishing these constants to recognize the greater energy requirements necessary to produce electricity as

opposed to producing steam. It would be unfair to compare the efficiency of cogenerators producing electricity and/or steam with the efficiency of boilers producing only steam, because the production of electricity inherently requires more fuel. In today's rule, the Agency sets the efficiency constant for boilers to be 0.85 and the efficiency constant for cogenerators to be 0.80. These constants represent industry averages for modern equipment (see memorandum in the docket entitled, "Evaluation of EPA's Revised Methodology for Calculating the Transferred Allowances under the Thermal Energy Exception").

For boilers serving as replacement units, the attribution of fuel associated with thermal energy is straightforward. However, for cogenerators, it is very difficult to distinguish between the fuel going towards steam or electricity, because the production of the two is tightly linked. Using fuel utilization implies that both the fuel input and the efficiency losses associated with the production of each product is proportional to the amount of each product produced.

EPA specifically defines thermal energy to consist of only steam and this definition does not include electricity (see previous discussion of thermal energy definition). In calculating allowances transferred under the thermal energy exception, EPA must distinguish between the fuel used to produce electricity and the fuel used to produce thermal output. The former does not count toward the thermal energy exception, while the latter does. Therefore, EPA does not believe it is appropriate or consistent with the statutory provisions in section 410(f) to attribute all fuel input to steam production, where, in fact, both steam and electricity are being produced.

EPA believes its revised methodology addresses the concerns of commenters seeking to instill incentives for cogeneration and specifically relying on the amount of thermal energy replaced. The alternative suggestion of basing allowance calculations on energy output is inconsistent with all other allowance calculations found in the Acid Rain Program. Allowances for utility units in the Acid Rain Program are generally calculated as a product of a fuel input baseline, expressed in mmBtu, and an emission rate, expressed in lbs. per mmBtu of fuel input. An allowance calculation where emission rates, reflecting energy input, are multiplied by the thermal energy replaced, reflecting energy output, would be internally inconsistent. The revised methodology, therefore, remains

consistent with allowance calculations in the core utility program.

C. Other Significant Changes Made to the Proposed Rule

1. Ineligibility of Non-operating and Retired Units

EPA continues to require that combustion sources seeking to enter the Opt-in Program be operating at the time of application. Combustion sources opting in under the thermal energy exception are also required to be in operation, although they can shut down upon entry into the program.

EPA seeks to restrict the allocation and use of opt-in allowances to instances in which real emissions reductions will take place, and not to award allowances in situations of reduced utilization and shut down. EPA believes that this requirement to be operating at the time of application is consistent with this principle. The provision establishing such a requirement provides a clear criteria for assessing whether a combustion source has reduced its utilization or shut down (i.e. is not operating) for the purposes of accepting the combustion source into the program and allocating allowances.

In the final rule, EPA establishes a definition of operating strictly for the purposes of the Opt-in Program. Operating is defined to mean the documented consumption of fuel input for more than 876 hours in the 6 months immediately preceding application. This level of operating hours was selected because it serves as the upper bound of a peaking unit, that is, 20 percent capacity factor in any calendar year as defined in § 72.2. The Agency kept the 20 percent operating level, but shortened the period of time from one year to six months so that a combustion source could be idle at most approximately four and one half months, rather than twice that amount of time and still be eligible to opt in. EPA expects that combustion sources operating below the 20 percent level would have little interest in participating in the Opt-in Program because the number of allowances freed up from emission reductions would be small and unlikely to cover the costs of opt-in participation.

Whether or not they were operating at the time of application, combustion sources that operated in the 1985–1987 time period would have the necessary data to determine an allocation of opt-in allowances. However, a combustion source that was not operating at the time of application would have all or virtually all of its allowances deducted under the reduced utilization and

shutdown provisions. EPA does not believe it is reasonable or administratively practical to grant these opt-in sources allowances and then, from the first year on, take virtually all of them away.

If a combustion source is shut down but plans to restart its operations, EPA believes that the combustion source should apply to opt in upon restart, that is where there is proof that the combustion source is now operating consistent with the above definition. Furthermore, the allowance allocation for opt-in sources that restart would be based on any current allowable SO₂ emissions rate in effect at the time of application.

As discussed under the thermal energy exception, non-operating opt-in sources may transfer allowances to replacement units, to the extent that such units can document the replacement of thermal energy. In allowing non-operating sources to participate in the thermal energy exception, but excluding non-operating sources from applying to opt in, the Agency requires that even combustion sources planning to shut down upon entry be operating upon application. The Agency believes a valid distinction exists between replacement arrangements made in response to the Opt-in Program and those that preceded the application to enter the program.

The reason why the combustion source is not operating at the time of application is not relevant to the Agency's determination of whether a retired or non-operating source should be permitted to opt into the Acid Rain Program. Allocating allowances to a retired or non-operating combustion source and allowing the source to trade such allowances would, in effect, allow another source to emit what the retired or non-operating combustion source was emitting before it ceased operations. These allowances would thus result in more pollution being released into the environment. As discussed in the preamble to the proposed rule, Congress expected the SO₂ emissions from non-utility sources to remain at a constant level and to reflect a dynamic balancing of emissions caused by fluctuations in economic activity, shutdowns, facility modernization, fuel switching, and cleanup. By granting sources not operating at the time of application the ability to opt-in and receive allowances, EPA would increase emissions above the presumed constant level of non-utility emissions.

2. Interpretation of Shutdown, Modification and Reconstruction

In the proposed rule, EPA sought to distinguish the modification of an opt-in source from its outright replacement. EPA recognizes that opt-in sources may need to make changes to their facilities in order to reduce emissions. Here, EPA attempts to address the extreme case in which such changes represent the construction of an essentially "new" facility. EPA proposed to consider an opt-in source "shut down" in the circumstance in which the opt-in source had been modified to such a large extent that the opt-in source no longer existed and a new one had been put in its place (in the extreme, the construction of a new facility within the shell of the old one). EPA chose as its test for replacement the reconstruction standard established in 40 CFR 60.15, as discussed in the preamble to the proposed rule.

EPA maintains that a new facility constructed in the shell of an older one should not retain the allowances allocated to the original opt-in source and should be removed from the Opt-in Program. Such restrictions are consistent with section 410(f) of the Act in implementing both the reduced utilization provisions as well as the thermal energy exception. The Agency believes its use of the regulatory term "reconstruction" and its threshold of 50 percent of what would be required to construct a new comparable facility is entirely appropriate in this context, and therefore the Agency applies this standard for reconstruction from 40 CFR 60.15 to opt-in sources. One commenter correctly acknowledged that the 50 percent criterion would apply to improvements to the facility as a whole; however, EPA disputes the notion that the level of investment would prohibit facility improvements to reduce emissions or would restrict alternatives to strictly end-of-pipe options. EPA believes that this level of expenditure is sufficiently high to allow sources great flexibility in their choice of control options.

EPA modifies in the final rule the regulatory language that would exclude reconstructed units from maintaining their status as opt-in sources. Instead of considering such units as "shutdown", the rule explicitly dismisses such units from the program in cases of reconstruction. The effect on sources undergoing modifications qualifying as reconstruction remains the same.

To exclude from consideration the reconstruction of any equipment with equipment that performs the same or similar function would circumvent the

need to remove allowances from sources that are no longer in operation. As discussed previously, emissions from these sources are assumed to disappear, consistent with the Congressionally assumed constant level of industrial emissions, and opt-in allowances are assumed to be generated from emission reductions at the opt-in source. The Opt-in Program should not perpetuate emissions from old to new sources, or in this case, from old to reconstructed sources.

The increase in productive capacity at opt-in sources is relevant only to the extent that such investments would trigger a determination of reconstruction. Finally, the use of the definition of major modification to distinguish between reconstructed units and existing opt-in sources is also not appropriate. If a modification is a major modification because a source achieves a significant increase in a regulated pollutant, the source's permitting levels may change, but such changes would not affect its opt-in permit or its allowance levels, provided that such modifications do not also exceed the threshold for reconstruction.

In the context of the Opt-in Program, a reconstructed opt-in source will not be permitted to enter or remain in the Opt-in Program at its pre-reconstruction baseline and allowance allocation. Should the reconstructed and former opt-in source wish to enter the Opt-in Program, after modifications have been completed, it may do so, once it establishes a three-year alternative baseline. Other regulatory programs, including the non-attainment and Prevention of Significant Deterioration (PSD) programs, may or may not consider the reconstructed opt-in source as a "new" source; nevertheless, units undergoing reconstruction will have their allowances deducted and their opt-in permits terminated. Units that do not exceed the level of reconstruction and remain in the Opt-in Program may or may not be subject to New Source Review (NSR) or the New Source Performance Standards (NSPS) but applicability under these programs is independent from participation in the Opt-in Program.

3. Incorporation of Efficiency Measures

Under § 74.44 of the proposed regulation, the only efficiency improvements that would be credited toward utilization were improvements that reduced the demand for electricity or that made electricity generation more efficient. Improvements in the efficiency of steam production, measures to reduce steam load (i.e., steam conservation

measures), and sulfur-free generation as defined in § 72.2 were not included.

The final rule allows for efficiency improvements to be incorporated in an opt-in source's annual utilization. Efficiency improvements include any expected reduction in the heat rate at the opt-in source, any expected improvement in the efficiency of steam production at the opt-in source, and any kilowatt hour savings or steam savings from demand side measures.

EPA agrees that improvements in the efficiency of steam generation should be encouraged. EPA believes that some restrictions are necessary, however, because cogeneration facilities could shift their output to steam while decreasing the efficiency of electricity generation. Such shifts from electricity to steam should not result in an adjusted increase in utilization and hence in allowances retained.

In order to prevent such shifts from occurring, today's rule requires that the heat rate at an opt-in source not increase in order to claim an efficiency improvement in steam production. If the heat rate increases, that is, if electricity generation becomes less efficient, no credit for gains in the efficiency of steam production will be given towards utilization. The methodology for quantifying this adjustment to utilization from efficiency increases in steam production will be developed by EPA, working with interested opt-in sources.

EPA also agrees that reductions in steam load created by demand side measures that improve the efficiency of steam consumption should be encouraged. EPA is concerned about the identification of such measures and their verifiable contribution towards using steam more efficiently. The burden for documenting such measures is on the opt-in source, which must be able to demonstrate that the reduction in utilization from a steam conservation measure is different than reductions in utilization not related to conservation improvements.

Finally, EPA also believes that opt-in sources should be encouraged to pursue opportunities to increase their use of sulfur-free technologies at their facilities. However, EPA maintains that such technologies are already included in the provisions providing credit for demand-side measures (see Appendix A, Section 1 of part 73 of this chapter which includes sulfur-free technologies in a list of examples of demand-side measures).

EPA does not include, however, a separate provision for "sulfur-free generation" in the utilization adjustment, because the term, as defined

in § 72.2 of this chapter and used in § 72.91, includes all sulfur-free generators in the utility's system. For opt-in sources, EPA restricts adjustments to utilization for improved efficiency to measures performed at the opt-in source itself or by the "customers" of the opt-in source (i.e., electricity or steam users of the opt-in source). The Agency does not include "sulfur-free generation", because of concerns of replacing the opt-in source's utilization without any thermal energy transfer, as required by section 410(f).

4. Expiration of a Non-Effective Opt-in Permit

The proposed rule created an effective date for an opt-in permit to be the later of the issuance of the opt-in permit by the permitting authority or the completion of the certification of the combustion source's monitoring systems. However, no time period was specified regarding the length of time between the issuance of the opt-in permit and these certifications. One commenter requested clarification about this time period and whether or not the opt-in permit would expire before becoming effective.

Response: EPA establishes, in the final rule, an expiration date associated with a non-effective opt-in permit. An opt-in permit will expire 180 days after issuance, if it has not yet become effective. The length of 180 days was selected because the time period incorporates the duration of EPA's review of monitoring certification for the combustion source's CEM systems and two months for the combustion source to arrange testing, should the combustion source wish to wait to certify its monitors until the end of the permitting process.

EPA believes that an expiration date is important to prevent combustion sources from seeking a permit with no immediate intention to opt into the Acid Rain program. A combustion source might apply early to enter the Opt-in Program, but wait to make its permit effective in order to secure an allowance allocation based on its current emissions rate at the time of application. If the combustion source faced the possibility of an impending emission limit that would lower its allowable emissions rate, the combustion source could apply and then wait to install its monitors and undertake its emission reductions. In effect, the combustion source would be seeking to capitalize on emission reductions it would be required to make based on other regulatory requirements.

EPA sees no reason to allow for an extended period of time during which a

combustion source can secure its allowance allocation and keep its application pending. EPA wants its applicants to be serious about entering the Opt-in Program and is concerned about behavior that would lead combustion sources to seek an opt-in permit and secure an allowance allocation because of the prospect of future, more stringent emission limitations. In addition, EPA does not want to waste administrative resources in reviewing applications and processing permits for combustion sources that are not ready to participate in the program and may not actually opt in. The Agency believes that the time period for the entire permit process plus the 180 days added here, a total of up to 24 months, is sufficiently long for the combustion source to install and certify its monitors considering that the combustion source must submit upon application a monitoring plan, detailing both the monitors' configuration and equipment. EPA may extend this time period of 180 days, if the applying combustion source can show that despite good faith effort towards certifying its monitors, it was unable to complete such certifications within this time frame.

5. Miscellaneous Issues

a. Opt-in Permitting

As discussed in the preamble to the proposed rule (58 FR 50096), the permitting procedures for opt-in sources had been designed to follow the approaches set forth at parts 70 and 72. EPA has found it necessary, however, to modify the permitting procedures in the proposed opt-in regulation to handle inconsistencies between the proposal and parts 70 and 72, some of which were noted by commenters or became evident in permitting Phase I units and establishing part 70 permitting programs. These relatively minor changes in the final rule make the permitting process conform better with the process used to permit utility units affected under the Acid Rain Program.

Of the changes made to improve the regulatory language implementing the opt-in permitting process, a few are worthy of further explanation. First, the roles of the Administrator and the permitting authority have been clarified. Although the Administrator retains an important role in developing an opt-in source's allowance allocation for the combustion source's opt-in permit, the permitting authority has a greater role in the final rule in developing the opt-in permit than was suggested in the proposed regulatory language. Secondly, the time frame under which the State as

permitting authority has to process an opt-in permit has been made consistent with part 70. In the final rule, the State has 18 months from the receipt of a complete opt-in permit application or such lesser time as approved under part 70. The proposed regulatory language could have been interpreted to require a permitting decision within 12 months.

There are several other specific changes that relate to opt-in permitting. One concerns the submission of a compliance plan as provided under § 72.40. The opt-in compliance plan must include an explicit commitment on the part of the designated representative to hold allowances in the opt-in source's compliance subaccount equal to or greater than the amount of sulfur dioxide emissions emitted during that year. Another concerns the term of an opt-in permit. Opt-in permits issued prior to January 1, 2000 will expire on December 31, 1999. Opt-in permits issued after January 1, 2000 will have a term of 5 years. Further, a provision has been added to § 74.40 to facilitate the opening of opt-in unit accounts. The designated representative of an opt-in source shall request the opening of such an account in the Allowance Tracking System once its permit is final and effective. In addition, the rule language is clarified concerning the deduction of allowances in the circumstances of withdrawal, shutdown, reconstruction, or change in source's status as unaffected under the mandatory portion of the Acid Rain Program.

EPA neglected to explicitly discuss the permit revision and renewal procedures in the proposed opt-in regulations and includes such language in the final rule. Permit revision procedures follow procedures set forth in subpart H of part 72. The opt-in regulation, part 74, reserves for the permitting authority the preparation of permit revisions and the implementation of such revisions.

Opt-in sources may renew their opt-in permits through the same process in which the opt-in permits were initially issued, except that the permitting authority shall not alter an opt-in source's allowance allocation when issuing a renewal of an opt-in permit. EPA believes that assurance of a consistent stream of opt-in allowances is essential to a viable Opt-in Program. Without a consistent stream of allowances, opt-in sources are unable to plan for future-year compliance, and purchasers of opt-in allowances will be hesitant to enter into forward or futures contracts because of the risk that the allowances may not be available.

EPA also seeks to clarify the relationship of title V and a combustion

source's ability to enter the Opt-in Program. Specifically, commenters inquired whether a combustion source must hold a title V permit to be an opt-in source. Another commenter explored the possibility for a mobile source, i.e. a locomotive, to be eligible to opt into the Acid Rain Program.

Consistent with title V of the 1990 Clean Air Act Amendments and regulations promulgated in part 70, all affected sources are considered part 70 sources and therefore are required to meet the permitting requirements under title V. The statute, under section 502(a), makes unlawful "the operation of an affected source (as provided in title IV) * * * except in compliance with a permit issued by a permitting authority under (title V)." Opt-in sources are electing to become affected units and, therefore, are included as affected sources under the Acid Rain Program and in title V (see 42 U.S.C. 7651a(1)). Therefore, all opt-in sources must obtain title V permits.

Particularly in light of the obligation for an affected unit to hold a title V permit, nonstationary sources are excluded from entering the Opt-in Program. Title V expressly applies only to stationary sources (see 42 U.S.C. 7402(a)). Consistent with this statutory provision, the Acid Rain regulations define "source" in a way that refers only to stationary sources: "Source means any * * * structure, installation, plant, building or facility * * *." Consequently, affected units, which must be located at affected sources, also must be stationary. Locomotives, therefore, will not be accepted as potential opt-in sources. EPA has modified the definition of the term "combustion source" to include the explicit requirement that combustion sources be stationary sources.

b. Clarification of Eligible Combustion Sources

The EPA will not require an official applicability determination, as discussed under § 72.6(c), for a combustion source applying to opt into the Acid Rain Program, but the Agency will affirm as part of its review of the opt-in permit application that the combustion source is indeed unaffected and therefore eligible to opt in. Combustion sources should be aware, as detailed in the recently published applicability guidance, "Do the Acid Rain SO₂ Regulations Apply to You?" (EPA 430-R-94-002), that units may be required to provide documentation supporting their unaffected status. Furthermore, that status may, in fact, change over time as certain unaffected units become affected under particular

operating or construction conditions. As stated in the final rule under § 74.50(a)(3), should an opt-in source become an affected unit, the Administrator will terminate the opt-in source's opt-in permit and deduct all of the allowances allocated under the Opt-in Program for current and future years.

It is the duty of the combustion source's owner and operator to meet the requirements of the Acid Rain Program if the combustion source becomes affected. For purposes of keeping combustion sources aware of their regulatory status, EPA will add certification statements both to the opt-in permit application and to an opt-in source's annual compliance certification report that will state that the opt-in source is only considered an affected unit under part 74 and not an affected utility unit under § 72.6.

Finally, commenters requested clarification on the eligibility of certain types of sources and sources located outside of the continental U.S. Although the proposed rule was ambiguous regarding the eligibility of unaffected municipal waste combustors, the final rule allows such combustors to be eligible to apply for the Opt-in Program provided that they qualify as a "unit" and burn some amount of fossil fuel. Combustion and process sources that are located outside the continental U.S. (e.g., in Alaska or Hawaii) are not eligible to opt in and the applicability provisions in § 74.2 have been modified to reflect this prohibition.

c. Modification to Utilization Calculation

As discussed in the proposed rule under § 74.44, EPA selected an average utilization to compare against the baseline for making determinations of reduced utilization. This average utilization was calculated as a rolling average of fuel input over three years.

Four commenters agreed with EPA's proposal to use a three-year rolling average for determining reduced utilization because such an approach would smooth out the peaks and valleys that may occur in steam generation from year to year. Two commenters disagreed with EPA's proposal. One suggests that EPA use a five- to eight-year averaging period in order to account for normal economic cycles. The second commenter believed that an average over multiple years would bias the determination of reduced utilization, awarding unnecessary allowances in individual years when emissions could be low or near zero. The commenter suggested that EPA should use annual data because annual SO₂ emissions are proportional to annual fuel use.

Response: EPA will keep its calculation of average utilization overall, but will modify its calculation for the first and second years in which the opt-in source participates in the program and for the first and second years in which the opt-in source is governed by a thermal energy plan. Average utilization for the first year will equal the fuel input of that year. Average utilization for the second year will equal the average of the first two years. Thereafter, average utilization will be as proposed and equal a rolling average of three years.

EPA believes the purpose of using a three-year rolling average to determine whether an opt-in source has reduced its utilization remains the same and remains valid: namely, as the commenters recognize, to smooth out small fluctuations in the operation of opt-in sources. The three-year interval is consistent with the baseline period and provides for a more accurate comparison with the baseline as a measure of utilization than would longer intervals.

EPA modifies its calculation of average utilization for the first two years described above to address possible bias. With regard to the calculation of average utilization outside the context of a thermal energy plan, the Agency notes that in the proposed rule (58 FR 50124), the average for the first two years was based on the baseline level of utilization rather than actual utilization of the opt-in source. With such a methodology, an opt-in source that consistently operates below its baseline level could calculate an artificially high average utilization for its first two years as an opt-in source and thereby avoid allowance surrender. EPA feels that such a windfall would be inappropriate and that the methodology could create the potential for abuse. Therefore, EPA bases average utilization in these first two years on actual utilization for the opt-in source in the first year and then the first two years.

With regard to the calculation of average utilization once an opt-in source becomes governed by a thermal energy plan, EPA believes that the use of a continuing three-year average for the first two years under the plan would distort the number of allowances retained by the opt-in source. The reasoning for modifying the average utilization calculation is similar. Rather than reflecting normal fluctuations in the operation of the opt-in source whose thermal energy has been replaced, the three-year average utilization calculated for the first two years under the plan would award allowances based on the opt-in source's prereduction levels of

utilization and could result in an allowance windfall. Therefore, EPA bases average utilization for the two years immediately after the thermal energy plan takes effect on the actual utilization for the first year and then the average for the first two years.

d. Efficiency Adjustments for an Opt-in Source Governed by a Thermal Energy Plan

EPA clarifies an ambiguity in the proposed rule regarding allowance holdings among an opt-in source and its replacement units if the opt-in source claims efficiency improvements as part of its annual utilization. If the opt-in source has estimated efficiency improvements in its annual utilization and these estimates prove to be incorrect, EPA could be placed in the position of adjusting not only the allowance holdings of the opt-in source, but also the holdings of all replacement units after the reconciliation process has ended (recall that annual compliance reports are submitted in March, while confirmation of energy efficiency estimates are not submitted until July). In order to avoid reassessing the compliance of perhaps multiple replacement units, EPA will consider the number of allowances transferred to replacement units fixed after the reconciliation process has ended and rely on the opt-in source to surrender any additional allowances needed to make the accounting consistent with the confirmed efficiency estimates. EPA maintains that it is reasonable for the opt-in source, which made the initial efficiency estimates, to bear the allowance consequences of correcting those estimates.

e. Definitions

EPA has found it useful to modify certain definitions and to explain certain terms applicable to the Opt-in Program to make its provisions clearer. Consistent with the procedures established in part 72 subpart B and referenced in § 74.4, the owners and operators of a combustion or process source seeking to opt into the Acid Rain Program must select a designated representative. This designated representative is charged with representing the combustion or process source with regards to all matters under the Acid Rain Program. However, during the opt-in permit application process, the combustion or process source is not yet an affected unit nor an affected source, and strictly speaking, may not have a designated representative under the existing definition in § 72.2.

The Agency amends the definition of designated representative in § 72.2 to include a responsible person authorized by the owners and operators of a combustion or process source as a designated representative. This individual has the same role and responsibilities as designated representatives for units affected under the other provisions of title IV and must complete a Certification of Representation as specified in § 72.24. The Certification of Representation should be submitted prior to or concurrent with the opt-in permit application. Further, the definitions of owner and operator have been modified to include the appropriate individuals at combustion and process sources.

In addition, the definition of affected unit has been clarified to include units covered under § 72.6 and part 74 of this chapter to be subject to the Acid Rain emissions reduction requirements or the Acid Rain emissions limitations. EPA also has clarified the usage of the terms "combustion source" and "opt-in source" because of confusion expressed by individual commenters on the proposed rule. Prior to entering the Opt-in Program, the entity wishing to opt-in is referred to, in the final rule, as a combustion source or a process source, as appropriate. Once in the Opt-in Program, the combustion source becomes an opt-in source and is referred to as such throughout the remainder of the rule. An opt-in source is an affected unit under the Acid Rain Program.

Finally, in the preamble to the proposed rule, Table 2 was in error regarding the definition of the opt-in source in various circumstances. The revised Table 2 is as follows:

TABLE 2.—OPT-IN SOURCE DEFINITIONS

Type of configuration at a single site	Single discrete entity?	What is the opt-in source?
Individual boiler emitting to single stack.	Yes	Boiler and stack.
Individual boiler as part of multiple boilers sharing single stack.	Yes, to the extent that monitoring is specific to the opt-in source.	Boiler, duct to the stack.
Multiple boilers sharing single stack.	No	Each boiler and its appropriate duct.*

TABLE 2.—OPT-IN SOURCE DEFINITIONS

Type of configuration at a single site	Single discrete entity?	What is the opt-in source?
Individual boiler emitting to multiple stacks.	Yes	Boiler and all stacks.
Multiple boilers sharing multiple stacks.	No	Each boiler and its appropriate ducts.*
Multiple boilers and affected units sharing single/multiple stacks.	No	Each unaffected boiler and its appropriate ducts.*

*—If the combustion sources wish to employ common stack monitoring they may do so according to the provisions of part 75 generally and § 75.16 in particular of the Acid Rain Program.

f. Other Items

Three other miscellaneous changes warrant mention. First, EPA has decided to allow submission of annual data as an alternative to monthly data for baseline calculations. The rule has been altered in several places accordingly. Second, EPA has modified a provision in part 77 to incorporate adjustments to allowance deductions due to differences between estimated and verified reductions in heat input due to conservation, improved electric efficiency, and improved steam production efficiency. Third, Appendix A, containing a draft opt-in permit application form, has been removed from the regulation. Forms will be issued during program implementation and will reflect, where appropriate, comments submitted.

EPA has also made revisions to parts 74 and 75 to better integrate the Opt-in Program with the rest of the Acid Rain Program. The bulk of the regulatory language relating to the monitoring of combustion sources has been moved from Subpart F in part 74 and integrated into part 75 to consolidate all monitoring requirements for all affected units in part 75.

EPA has retained general references to part 76, which is reserved for NO_x regulation, but removed specific references to sections within part 76 in the final rule. This reflects the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating part 76.

Finally, the proposed amendments to part 78 involving the exhaustion of administrative appeals as a necessary prerequisite to judicial review will not be finalized in this rulemaking. Final

provisions concerning the exhaustion of administrative remedies will be addressed in a subsequent rulemaking.

g. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3) to make the amendments effective immediately.

D. Impact Analyses

1. Executive Order 12866 (Regulatory Impact Analysis)

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant

regulatory action” within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Any changes made in response to OMB suggestions or recommendations are to be documented in the public record.

EPA estimated the total cost savings of the opt-in regulations for the time period from 1994 through 2010. Cost savings are expected to accrue to both affected utilities and opt-in sources. The cost savings depend on the number of allowances sold by opt-in sources and the price of allowances. The estimates assume the use of 1985–87 baseline data, the use of the lesser of 1985 actual or allowable rate, or the current rate at the time the combustion source applies to opt in, reduced allowance allocations for reduced utilization, the transfer of allowances as a result of the replacement of thermal energy at the allowable emission rate at the replacement source, the installation and operation of continuous emissions monitoring systems, and opt-in sources are allowed to withdraw from the program. Given these assumptions, an estimated 408 combustion sources would opt in resulting in annual net cost savings of approximately \$10 million. The analysis is contained in the Economic Impact Analysis (EIA) of the Opt-in Regulations, September, 1994, EPA, Office of Atmospheric Programs.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a “significant impact on a substantial number of small entities.” Because the Opt-in Program is a voluntary cost reducing component of the Acid Rain Program, it will not affect small entities adversely. Sources that will not benefit from their participation will choose not to participate. Based on this analysis and pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

3. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned control number 2060–0258.

This collection of information has an estimated reporting burden averaging 80 hours per response and an estimated annual recordkeeping burden averaging

2 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked “Attention: Desk Officer for EPA.”

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 72

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 73

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

40 CFR Part 74

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

40 CFR Part 75

Environmental protection, Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 77

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Penalties, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 20, 1995.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. In part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding a new heading and entries in numerical order to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

	40 CFR citation	OMB control No.
*	*	*
Sulfur Dioxide Opt-ins:		
74.12	2060–0258
74.14	2060–0258
74.16	2060–0258
74.18	2060–0258
74.20	2060–0258
74.22	2060–0258
74.24–74.25	2060–0258
74.41	2060–0258
74.43–74.44	2060–0258
74.46–74.47	2060–0258
74.60–74.64	2060–0258
*	*	*

PART 72—PERMITS REGULATION

2. The authority citation for part 72 is revised to read as follows:

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

3. Section 72.2 is amended as follows:

- a. By revising the introductory text;
- b. By revising the term for “Acid Rain compliance option”;
- c. By revising paragraph (1)(i) of the term “Acid Rain emissions limitation”;
- d. By revising the terms “Acid Rain Program”, “Affected unit”, “Allowable SO₂ emissions rate”, “Allowance deduction”, “Compensating unit”, “Compliance certification”, “Compliance plan; Designated Representative”, “Owner”, “Owner or Operator”, “Phase I unit”, “Phase II unit; and Reduced utilization”; and

e. By adding the following terms in alphabetical order, "Combustion source", "Operating", "Opt-in", "Opt-in permit", "Opt-in source", "Replacement unit", and "Thermal energy".

§ 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:

* * * * *

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 the purposes of sulfur dioxide emissions:

(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1) and (a)(3) of the Act, 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;

* * * * *

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 part, and parts 73, 74, 75, 76, 77, and 78 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.

* * * * *

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 deduction, or deduct when referring to allowances, means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance subaccount, or future year subaccount, to account for the number of tons of SO₂ emissions from an affected unit 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.

* * * * *

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.

* * * * *

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 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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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 limitations beginning in Phase I.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

4. Section 72.4 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 72.4 Federal authority.

(a) * * *

(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.

* * * * *

5. Section 72.9 is amended by revising paragraphs (g)(6) and (g)(7) to read as follows:

§ 72.9 Standard requirements.

* * * * *

(g) * * *

(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. Except as provided under § 72.41 (substitution plans), § 72.42 (Phase I extension plans), § 72.43 (reduced utilization plans), § 72.44 (Phase II repowering extension plans), § 74.47 of this chapter (thermal energy plans), and part 76 of this chapter (NO_x averaging plans), and except with regard to the requirements applicable to units with a common stack under part 75 of this chapter (including §§ 75.16, 75.17 and 75.18 of this chapter), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(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.

* * * * *

6. Section 72.21 is amended by revising paragraph (e) to read as follows:

§ 72.21 Submissions.

* * * * *

(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 unit account.

7. Section 72.30 is amended by revising paragraph (c) to read as follows:

§ 72.30 Requirement to apply.

* * * * *

(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 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.

8. Section 72.40 is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 72.40 General.

* * * * *

(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 an NO_x averaging plan contained in part 76 of this chapter, that includes units at more than one affected source shall be complete only if:

* * * * *

9. Section 72.72 is amended by revising paragraph (b)(1) introductory text; and paragraphs (b)(1)(i) (A) and (B); (b)(1)(ii) (A) and (C), (b)(1)(v), (b)(1)(xiv); the first sentence of (b)(5)(i), and paragraph (b)(5)(vi) to read as follows:

§ 72.72 State permit program approval criteria.

* * * * *

(b) * * *

(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 or, for a combustion or process source, subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

* * * * *

(C) 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.

* * * * *

(v) *Proposed Permit.* Following the public notice and comment period on a draft Acid Rain permit, the permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part or, for combustion or process sources, in accordance with subpart B of part 74 of this chapter or deny a proposed Acid Rain permit.

* * * * *

(xiv) 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.

* * * * *

(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, parts 73, 74, 75, 76, 77 and 78 of this chapter, shall be conducted according to procedures established by

the State under § 70.4(b)(3)(x) of this chapter. * * *

* * * * *

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1)(i) or, with regard to combustion or process sources, § 74.14(c)(6) of this chapter shall be ground for filing an appeal.

* * * * *

10. Section 72.81 is amended by removing the word "and" from the end of paragraph (b)(3); by replacing the period with "; and" at the end of paragraph (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 72.81 Permit modifications.

* * * * *

(b) * * *

(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 allowances transferred for the replacement of thermal energy.

* * * * *

11. Section 72.83 is amended by revising paragraph (a)(6), (a)(11), and by adding paragraph (a)(12) to read as follows:

§ 72.83 Administrative permit amendment.

(a) * * *

(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.

* * * * *

(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) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(1) through (11) of this section.

* * * * *

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

12. The authority citation for part 73 is revised to read as follows:

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

13. Section 73.34 is amended by revising paragraphs (c)(2) and (c)(6) to read as follows:

§ 73.34 Recordation in accounts.

* * * * *

(c) * * *

(2) All allowances allocated or deducted pursuant to §§ 72.41, 72.42, 72.43, and 72.44 and part 74 of this chapter;

* * * * *

(6) All allowances deducted or returned pursuant to §§ 73.35(d), 72.91 and 72.92, part 74, and part 77 of this chapter.

* * * * *

14. Section 73.35 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 73.35 Compliance.

* * * * *

(b) *Deductions for compliance.* (1) Except as provided in paragraph (d) of this section, following the recordation of transfers submitted correctly for recordation in the compliance subaccount pursuant to paragraph (a) of this section and subpart D of this part, the Administrator will deduct allowances from each affected unit's compliance subaccount in accordance with the allowance deduction formula in § 72.95 of this chapter, or, for opt-in sources, the allowance deduction formula in § 74.49 of this chapter, and any correction made under § 72.96 of this chapter. (2) The Administrator will make deductions until either the number of allowances deducted is equal to the amount calculated in accordance with § 72.95 of this chapter, or, for opt-in sources, in accordance with § 74.49 of this chapter, as modified under § 72.96 of this chapter or until no more allowances remain in the compliance subaccount.

* * * * *

15. Section 73.52 is amended by revising paragraphs (a)(3) to read as follows:

§ 73.52 EPA recordation.

* * * * *

(a) * * *

(3) If the allowances identified by serial number specified pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, § 74.42 of this chapter, or § 74.47(c) of this chapter, the transfer is in accordance with such limitation; and

* * * * *

16. Title 40 is amended by adding part 74 to read as follows:

PART 74—SULFUR DIOXIDE OPT-INS**Subpart A—Background and Summary**

Sec.

- 74.1 Purpose and scope.
- 74.2 Applicability.
- 74.3 Relationship to the Acid Rain program requirements.
- 74.4 Designated representative.

Subpart B—Permitting Procedures

- 74.10 Roles—EPA and permitting authority.
- 74.12 Opt-in permit contents.
- 74.14 Opt-in permit process.
- 74.16 Application requirements for combustion sources.
- 74.17 Application requirements for process sources [Reserved]
- 74.18 Withdrawal.
- 74.19 Revision and renewal of opt-in permit.

Subpart C—Allowance Calculation for Combustion Sources

- 74.20 Data for baseline and alternative baseline.
- 74.22 Actual SO₂ emissions rate.
- 74.23 1985 Allowable SO₂ emissions rate.
- 74.24 Current allowable SO₂ emissions rate.
- 74.25 Current promulgated SO₂ emissions limit.
- 74.26 Allocation formula.
- 74.28 Allowance Allocation for combustion sources becoming opt-in sources on a date other than January 1.

Subpart D—Allowance Calculation for Process Sources [Reserved]**Subpart E—Allowance Tracking and Transfer and End of Year Compliance**

- 74.40 Establishment of opt-in source allowance accounts.
- 74.41 Identifying allowances.
- 74.42 Prohibition of future year transfers.
- 74.43 Annual compliance certification report.
- 74.44 Reduced utilization for combustion sources.
- 74.45 Reduced utilization for process sources [Reserved].
- 74.46 Opt-in source shutdown, reconstruction or change in affected status.
- 74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.
- 74.48 Transfer of allowances from the replacement of thermal energy—process sources [Reserved].
- 74.49 Calculation of deducting allowances.
- 74.50 Deducting opt-in source allowances from ATS accounts.

Subpart F—Monitoring Emissions: Combustion Sources

- 74.60 Monitoring requirements.
- 74.61 Monitoring plan.

Subpart G—Monitoring Emissions: Process Sources [Reserved]

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

Subpart A—Background and Summary**§ 74.1 Purpose and scope.**

The purpose of this part is to establish the requirements and procedures for:

(a) The election of a combustion or process source that emits sulfur dioxide to become an affected unit under the Acid Rain Program, pursuant to section 410 of title IV of the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Public Law 101-549 (November 15, 1990); and

(b) Issuing and modifying operating permits; certifying monitors; and allocating, tracking, transferring, surrendering and deducting allowances for combustion or process sources electing to become affected units.

§ 74.2 Applicability.

Combustion or process sources that are not affected units under § 72.6 of this chapter and that are operating and are located in the 48 contiguous States or the District of Columbia may submit an opt-in permit application to become opt-in sources upon issuance of an opt-in permit. Units for which a written exemption under § 72.7 or § 72.8 of this chapter is in effect and combustion or process sources that are not operating are not eligible to submit an opt-in permit application to become opt-in sources.

§ 74.3 Relationship to the Acid Rain program requirements.

(a) *General.* (1) For purposes of applying parts 72, 73, 75, 77 and 78, each opt-in source shall be treated as an affected unit.

(2) Subpart A, B, G, and H of part 72 of this chapter, including §§ 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), and 72.11 (computation of time), shall apply to this part.

(b) *Permits.* The permitting authority shall act in accordance with this part and parts 70 and 72 of this chapter in issuing or denying an opt-in permit and incorporating it into a combustion or process source's operating permit. To the extent that any requirements of this part, part 72, and part 78 of this chapter are inconsistent with the requirements of part 70 of this chapter, the requirements of this part, part 72, and part 78 of this chapter shall take precedence and shall govern the issuance, denials, revision, reopening, renewal, and appeal of the opt-in permit.

(c) *Appeals.* The procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

(d) *Allowances.* A combustion or process source that becomes an affected unit under this part shall be subject to all the requirements of subparts C and D of part 73 of this chapter.

(e) *Excess emissions.* A combustion or process source that becomes an affected unit under this part shall be subject to the requirements of part 77 of this chapter applicable to excess emissions of sulfur dioxide and shall not be subject to the requirements of part 77 of this chapter applicable to excess emissions of nitrogen oxides.

(f) *Monitoring.* A combustion or process source that becomes an affected unit under this part shall be subject to all the requirements of part 75, consistent with subparts F and G of this part.

§ 74.4 Designated representative.

(a) The provisions of subpart B of part 72 of this chapter shall apply to the designated representative of an opt-in source.

(b) If a combustion or process source is located at the same source as one or more affected units, the combustion or process source shall have the same designated representative as the other affected units at the source.

Subpart B—Permitting Procedures**§ 74.10 Roles—EPA and permitting authority.**

(a) *Administrator responsibilities.* The Administrator shall be responsible for the following activities under the opt-in provisions of the Acid Rain Program:

(1) *Calculating* the baseline or alternative baseline and allowance allocation, and allocating allowances for combustion or process sources that become affected units under this part;

(2) *Certifying or recertifying* monitoring systems for combustion or process sources as provided under § 74.62;

(3) *Establishing* allowance accounts, tracking allowances, assessing end-of-year compliance, determining reduced utilization, approving thermal energy transfer and accounting for the replacement of thermal energy, closing accounts for opt-in sources that shut down, are reconstructed, become affected under § 72.6 of this chapter, or fail to renew their opt-in permit, and deducting allowances as provided under subpart E of this part; and

(4) *Ensuring* that the opt-in source meets all withdrawal conditions prior to withdrawal from the Acid Rain Program as provided under § 74.18; and

(5) Approving and disapproving the request to withdraw from the Acid Rain Program.

(b) *Permitting authority responsibilities.* The permitting authority shall be responsible for the following activities:

(1) Issuing the draft and final opt-in permit;

(2) Revising and renewing the opt-in permit; and

(3) Terminating the opt-in permit for an opt-in source as provided in § 74.18 (withdrawal), § 74.46 (shutdown, reconstruction or change in affected status) and § 74.50 (deducting allowances).

§ 74.12 Opt-in permit contents.

(a) The opt-in permit shall be included in the Acid Rain permit.

(b) *Scope.* The opt-in permit provisions shall apply only to the opt-in source and not to any other affected units.

(c) *Contents.* Each opt-in permit, including any draft or proposed opt-in permit, shall contain the following elements in a format specified by the Administrator:

(1) All elements required for a complete opt-in permit application as provided under § 74.16 for combustion sources or under § 74.17 for process sources or, if applicable, all elements required for a complete opt-in permit renewal application as provided in § 74.19 for combustion sources or under § 74.17 for process sources;

(2) The allowance allocation for the opt-in source as determined by the Administrator under subpart C of this part for combustion sources or subpart D of this part for process sources;

(3) The standard permit requirements as provided under § 72.9 of this chapter, except that the provisions in § 72.9(d) of this chapter shall not be included in the opt-in permit; and

(4) *Termination.* The provision that participation of a combustion or process source in the Acid Rain Program may be terminated only in accordance with § 74.18 (withdrawal), § 74.46 (shutdown, reconstruction, or change in affected status), and § 74.50 (deducting allowances).

(d) Each opt-in permit is deemed to incorporate the definitions of terms under § 72.2 of this chapter.

(e) *Permit shield.* Each opt-in source operated in accordance with the opt-in permit that governs the opt-in source and that was issued in compliance with title IV of the Act, as provided in this part and parts 72, 73, 75, 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) of this chapter.

(f) *Term of opt-in permit.* An opt-in permit shall be issued for a period of 5 years and may be renewed in accordance with § 74.19; provided

(1) If an opt-in permit is issued prior to January 1, 2000, then the opt-in permit may, at the option of the permitting authority, expire on December 31, 1999; and

(2) If an affected unit with an Acid Rain permit is located at the same source as the combustion source, the combustion source's opt-in permit may, at the option of the permitting authority, expire on the same date as the affected unit's Acid Rain permit expires.

§ 74.14 Opt-in permit process.

(a) *Submission.* The designated representative of a combustion or process source may submit an opt-in permit application and a monitoring plan to the Administrator at any time for any combustion or process source that is operating.

(b) *Issuance or denial of opt-in permits.* The permitting authority shall issue or deny opt-in permits or revisions of opt-in permits in accordance with the procedures in part 70 of this chapter and subparts F and G of part 72 of this chapter, except as provided in this section.

(1) *Supplemental information.* Regardless of whether the opt-in permit application is complete, the Administrator or the permitting authority may request submission of any additional information that the Administrator or the permitting authority determines to be necessary in order to review the opt-in permit application or to issue an opt-in permit.

(2) *Interim review of monitoring plan.* The Administrator will determine, on an interim basis, the sufficiency of the monitoring plan, accompanying the opt-in permit application. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that all SO₂ emissions, NO_x emissions, CO₂ emissions, and opacity of the combustion or process source are monitored and reported in accordance with part 75 of this chapter. This interim review of sufficiency shall not be construed as the approval or disapproval of the combustion or process source's monitoring system.

(3) *Issuance of draft opt-in permit.* After the Administrator determines whether the combustion or process source's monitoring plan is sufficient under paragraph (b)(2) of this section, the permitting authority shall serve the draft opt-in permit or the denial of a draft permit or the draft opt-in permit revisions or the denial of draft opt-in

permit revisions on the designated representative of the combustion or process source submitting an opt-in permit application. A draft permit or draft opt-in permit revision shall not be served or issued if the monitoring plan is determined not to be sufficient.

(4) *Confirmation by source of intention to opt-in.* Within 21 calendar days from the date of service of the draft opt-in permit or the denial of the draft opt-in permit, the designated representative of a combustion or process source submitting an opt-in permit application must submit to the Administrator, in writing, a confirmation or recision of the source's intention to become an opt-in source under this part. The Administrator shall treat the failure to make a timely submission as a recision of the source's intention to become an opt-in source and as a withdrawal of the opt-in permit application.

(5) *Issuance of draft opt-in permit.* If the designated representative confirms the combustion or process source's intention to opt in under paragraph (b)(4) of this section, the permitting authority will give notice of the draft opt-in permit or denial of the draft opt-in permit and an opportunity for public comment, as provided under § 72.65 of this chapter with regard to a draft permit or denial of a draft permit if the Administrator is the permitting authority or as provided in accordance with part 70 of this chapter with regard to a draft permit or the denial of a draft permit if the State is the permitting authority.

(6) *Permit decision deadlines.* (i) If the Administrator is the permitting authority, an opt-in permit will be issued or denied within 12 months of receipt of a complete opt-in permit application.

(ii) If the State is the permitting authority, an opt-in permit will be issued or denied within 18 months of receipt of a complete opt-in permit application or such lesser time approved under part 70 of this chapter.

(7) *Withdrawal of opt-in permit application.* A combustion or process source may withdraw its opt-in permit application at any time prior to the issuance of the final opt-in permit. Once a combustion or process source withdraws its application, in order to re-apply, it must submit a new opt-in permit application in accordance with § 74.16 for combustion sources or § 74.17 for process sources.

(d) *Entry into Acid Rain Program.*—(1) *Effective date.* The effective date of the opt-in permit shall be the January 1, April 1, July 1, or October 1 for a combustion or process source providing

monthly data under § 74.20, or January 1 for a combustion or process source providing annual data under § 74.20, following the later of the issuance of the opt-in permit by the permitting authority or the completion of monitoring system certification, as provided in subpart F of this part for combustion sources or subpart G of this part for process sources. The combustion or process source shall become an opt-in source and an affected unit as of the effective date of the opt-in permit.

(2) *Allowance allocation.* After the opt-in permit becomes effective, the Administrator will allocate allowances to the opt-in source as provided in § 74.40. If the effective date of the opt-in permit is not January 1, allowances for the first year shall be pro-rated as provided in § 74.28.

(e) *Expiration of opt-in permit.* An opt-in permit that is issued before the completion of monitoring system certification under subpart F of this part for combustion sources or under subpart G of this part for process sources shall expire 180 days after the permitting authority serves the opt-in permit on the designated representative of the combustion or process source governed by the opt-in permit, unless such monitoring system certification is complete. The designated representative may petition the Administrator to extend this time period in which an opt-in permit expires and must explain in the petition why such an extension should be granted. The designated representative of a combustion source governed by an expired opt-in permit and that seeks to become an opt-in source must submit a new opt-in permit application.

§ 74.16 Application requirements for combustion sources.

(a) *Opt-in permit application.* Each complete opt-in permit application for a combustion source shall contain the following elements in a format prescribed by the Administrator:

(1) Identification of the combustion source, including company name, plant name, plant site address, mailing address, description of the combustion source, and information and diagrams on the combustion source's configuration;

(2) Identification of the designated representative, including name, address, telephone number, and facsimile number;

(3) The year and month the combustion source commenced operation;

(4) The number of hours the combustion source operated in the six

months preceding the opt-in permit application and supporting documentation;

(5) The baseline or alternative baseline data under § 74.20;

(6) The actual SO₂ emissions rate under § 74.22;

(7) The allowable 1985 SO₂ emissions rate under § 74.23;

(8) The current allowable SO₂ emissions rate under § 74.24;

(9) The current promulgated SO₂ emissions rate under § 74.25;

(10) If the combustion source seeks to qualify for a transfer of allowances from the replacement of thermal energy, a thermal energy plan as provided in § 74.47 for combustion sources; and

(11) A statement whether the combustion source was previously an affected unit under this part;

(12) A statement that the combustion source is not an affected unit under § 72.6 of this chapter;

(13) A complete compliance plan for SO₂ under § 72.40 of this chapter; and

(14) The following statement signed by the designated representative of the combustion source: "I certify that the data submitted under subpart C of part 74 reflects actual operations of the combustion source and has not been adjusted in any way."

(b) *Accompanying documents.* The designated representative of the combustion source shall submit a monitoring plan in accordance with § 74.61.

§ 74.17 Application requirements for process sources [Reserved].

§ 74.18 Withdrawal.

(a) *Withdrawal through administrative amendment.* An opt-in source may request to withdraw from the Acid Rain Program by submitting an administrative amendment under § 72.83 of this chapter; provided that the amendment will be treated as received by the permitting authority upon issuance of the notification of the acceptance of the request to withdraw under paragraph (f)(1) of this section.

(b) *Requesting withdrawal.* To withdraw from the Acid Rain Program, the designated representative of an opt-in source shall submit to the Administrator and the permitting authority a request to withdraw effective January 1 of the year after the year in which the submission is made. The submission shall be made no later than December 1 of the calendar year preceding the effective date of withdrawal.

(c) *Conditions for withdrawal.* In order for an opt-in source to withdraw, the following conditions must be met:

(1) By no later than January 30 of the first calendar year in which the withdrawal is to be effective, the designated representative must submit to the Administrator an annual compliance certification report pursuant to § 74.43.

(2) If the opt-in source has excess emissions in the calendar year before the year for which the withdrawal is to be in effect, the designated representative must submit an offset plan for excess emissions, pursuant to part 77 of this chapter, that provides for immediate deduction of allowances.

(d) *Administrator's action on withdrawal.* After the opt-in source meets the requirements for withdrawal under paragraphs (b) and (c) of this section, the Administrator will deduct allowances required to be deducted under § 73.35 of this chapter and part 77 of this chapter and allowances equal in number to and with the same or earlier compliance use date as those allocated under § 74.40 for the first year for which the withdrawal is to be effective and all subsequent years. The Administrator will close the opt-in source's unit account and transfer any remaining allowances to a new general account as specified under § 74.46(c).

(e) *Opt-in source's prior violations.* An opt-in source that withdraws from the Acid Rain Program shall comply with all requirements under the Acid Rain Program concerning all years for which the opt-in source was an affected unit, even if such requirements arise, or must be complied with after the withdrawal takes effect. The withdrawal shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the withdrawal takes effect.

(f) *Notification.* (1) After the requirements for withdrawal under paragraphs (b) and (c) of this section are met and after the Administrator's action on withdrawal under paragraph (d) of this section is complete, the Administrator will issue a notification to the permitting authority and the designated representative of the opt-in source of the acceptance of the opt-in source's request to withdraw.

(2) If the requirements for withdrawal under paragraphs (b) and (c) of this section are not met or the Administrator's action under paragraph (d) of this section cannot be completed, the Administrator will issue a notification to the permitting authority and the designated representative of the opt-in source that the opt-in source's request to withdraw is denied. If the opt-in source's request to withdraw is denied, the opt-in source shall remain

in the Opt-in Program and shall remain subject to the requirements for opt-in sources contained in this part.

(g) *Permit amendment.* (1) After the Administrator issues a notification under paragraph (f)(1) of this section that the requirements for withdrawal have been met (including the deduction of the full amount of allowances as required under paragraph (d) of this section), the permitting authority shall amend, in accordance with §§ 72.80 and 72.83 (administrative amendment) of this chapter, the opt-in source's Acid Rain permit to terminate the opt-in permit, not later than 60 days from the issuance of the notification under paragraph (f) of this section.

(2) The termination of the opt-in permit under paragraph (g)(1) of this section will be effective on January 1 of the year for which the withdrawal is requested. An opt-in source shall continue to be an affected unit until the effective date of the termination.

(h) *Reapplication upon failure to meet conditions of withdrawal.* If the Administrator denies the opt-in source's request to withdraw, the designated representative may submit another request to withdraw in accordance with paragraphs (b) and (c) of this section.

(i) *Ability to return to the Acid Rain Program.* Once a combustion or process source withdraws from the Acid Rain Program and its opt-in permit is terminated, a new opt-in permit application for the combustion or process source may not be submitted prior to the date that is four years after the date on which the opt-in permit became effective.

§ 74.19 Revision and renewal of opt-in permit.

(a) The designated representative of an opt-in source may submit revisions to its opt-in permit in accordance with subpart H of part 72 of this chapter.

(b) The designated representative of an opt-in source may renew its opt-in permit by meeting the following requirements:

(1)(i) In order to renew an opt-in permit if the Administrator is the

permitting authority for the renewed permit, the designated representative of an opt-in source must submit to the Administrator an opt-in permit application at least 6 months prior to the expiration of an existing opt-in permit.

(ii) In order to renew an opt-in permit if the State is the permitting authority for the renewed permit, the designated representative of an opt-in source must submit to the permitting authority an opt-in permit application at least 18 months prior to the expiration of an existing opt-in permit or such shorter time as may be approved for operating permits under part 70 of this chapter.

(2) Each complete opt-in permit application submitted to renew an opt-in permit shall contain the following elements in a format prescribed by the Administrator:

(i) Elements contained in the opt-in source's initial opt-in permit application as specified under § 74.16(a)(1), (2), (10), (11), (12), and (13).

(ii) An updated monitoring plan, if applicable under § 75.53(b) of this chapter.

(c)(1) Upon receipt of an opt-in permit application submitted to renew an opt-in permit, the permitting authority shall issue or deny an opt-in permit in accordance with the requirements under subpart B of this part, except as provided in paragraph (c)(2) of this section.

(2) When issuing a renewed opt-in permit, the permitting authority shall not alter an opt-in source's allowance allocation as established, under subpart B and subpart C of this part for combustion sources and under subpart B and subpart D of this part for process sources, in the opt-in permit that is being renewed.

Subpart C—Allowance Calculations for Combustion Sources

§ 74.20 Data for baseline and alternative baseline.

(a) *Acceptable data.* (1) The designated representative of a combustion source shall submit either

the data specified in this paragraph or alternative data under paragraph (c) of this section. The designated representative shall also submit the calculations under this section based on such data.

(2) The following data shall be submitted for the combustion source for the calendar year(s) under paragraph (a)(3) of this section:

(i) Monthly or annual quantity of each type of fuel consumed, expressed in thousands of tons for coal, thousands of barrels for oil, and million standard cubic feet (scf) for natural gas. If other fuels are used, the combustion source must specify units of measure.

(ii) Monthly or annual heat content of fuel consumed for each type of fuel consumed, expressed in British thermal units (Btu) per pound for coal, Btu per barrel for oil, and Btu per standard cubic foot (scf) for natural gas. If other fuels are used, the combustion source must specify units of measure.

(iii) Monthly or annual sulfur content of fuel consumed for each type of fuel consumed, expressed as a percentage by weight.

(3) *Calendar Years.* (i) For combustion sources that commenced operating prior to January 1, 1985, data under this section shall be submitted for 1985, 1986, and 1987.

(ii) For combustion sources that commenced operation after January 1, 1985, the data under this section shall be submitted for the first three consecutive calendar years during which the combustion source operated after December 31, 1985.

(b) *Calculation of baseline and alternative baseline.*

(1) For combustion sources that commenced operation prior to January 1, 1985, the baseline is the average annual quantity of fuel consumed during 1985, 1986, and 1987, expressed in mmBtu. The baseline shall be calculated as follows:

$$\text{baseline} = \frac{\sum_{\text{Year}=1985}^{1987} \text{annual fuel consumption}}{3}$$

where,

(i) for a combustion source submitting monthly data,

$$\text{annual fuel consumption} = \sum_{\text{months=Jan}}^{\text{Dec}} \sum_{\text{Fuel Types}} \left[\begin{array}{l} \text{quantity of fuel consumed} \\ \times \text{heat content} \times \text{unit conversion} \end{array} \right]$$

and unit conversion
 = 2 for coal
 = 0.001 for oil

= 1 for gas
 For other fuels, the combustion source must specify unit conversion; or

(ii) for a combustion source submitting annual data,

$$\text{annual fuel consumption} = \sum_{\text{Fuel Types}} \left[\begin{array}{l} \text{quantity of fuel consumed} \\ \times \text{heat content} \times \text{unit conversion} \end{array} \right]$$

and unit conversion
 = 2 for coal
 = 0.001 for oil
 = 1 for gas

For other fuels, the combustion source must specify unit conversion.

(2) For combustion sources that commenced operation after January 1, 1985, the alternative baseline is the average annual quantity of fuel consumed in the first three consecutive calendar years during which the

combustion source operated after December 31, 1985, expressed in mmBtu. The alternative baseline shall be calculated as follows:

$$\text{alternative baseline} = \frac{\sum_{\text{First 3 consecutive years}} \text{annual fuel consumption}}{3}$$

where, "annual fuel consumption" is as defined under paragraph (b)(1)(i) or (ii) of this section.

(c) *Alternative data.*

(1) For combustion sources for which any of the data under paragraph (b) of this section is not available due solely to a natural catastrophe, data as set forth in paragraph (a)(2) of this section for the first three consecutive calendar years for which data is available after December 31, 1985, may be submitted. The alternative baseline for these combustion sources shall be calculated using the equation for alternative baseline in paragraph (b)(2) of this section and the definition of annual fuel consumption in paragraphs (b)(1)(i) or (ii) of this section.

(2) Except as provided in paragraph (c)(1) of this section, no alternative data may be submitted. A combustion source that cannot submit all required data, in accordance with this section, shall not be eligible to submit an opt-in permit application.

(d) *Administrator's action.* The Administrator may accept in whole or in part or with changes as appropriate, request additional information, or reject

data or alternative data submitted for a combustion source's baseline or alternative baseline.

§ 74.22 Actual SO₂ emissions rate.

(a) *Data requirements.* The designated representative of a combustion source shall submit the calculations under this section based on data submitted under § 74.20 for the following calendar year:

(1) For combustion sources that commenced operation prior to January 1, 1985, the calendar year for calculating the actual SO₂ emissions rate shall be 1985.

(2) For combustion sources that commenced operation after January 1, 1985, the calendar year for calculating the actual SO₂ emissions rate shall be the first year of the three consecutive calendar years of the alternative baseline under § 74.20(b)(2).

(3) For combustion sources meeting the requirements of § 74.20(c), the calendar year for calculating the actual SO₂ emissions rate shall be the first year of the three consecutive calendar years to be used as alternative data under § 74.20(c).

(b) *SO₂ emissions factor calculation.* The SO₂ emissions factor for each type

of fuel consumed during the specified year, expressed in pounds per thousand tons for coal, pounds per thousand barrels for oil and pounds per million cubic feet (scf) for gas, shall be calculated as follows:

$$\text{SO}_2 \text{ Emissions Factor} = (\text{average percent of sulfur by weight}) \times (k),$$

where,

- average percent of sulfur by weight = annual average, for a combustion source submitting annual data
- = monthly average, for a combustion source submitting monthly data
- k = 39,000 for bituminous coal or anthracite
- = 35,000 for subbituminous coal
- = 30,000 for lignite
- = 5,964 for distillate (light) oil
- = 6,594 for residual (heavy) oil
- = 0.6 for natural gas

For other fuels, the combustion source must specify the SO₂ emissions factor.

(c) *Annual SO₂ emissions calculation.* Annual SO₂ Emissions for the specified calendar year, expressed in pounds, shall be calculated as follows:

(1) For a combustion source submitting monthly data,

$$\text{Annual SO}_2 \text{ Emissions} = \sum_{\text{months=Jan}}^{\text{Dec}} \sum_{\text{Fuel Types}} \left[\begin{array}{l} \text{quantity of fuel consumed} \\ \times \text{SO}_2 \text{ emissions factor} \\ \times (1 - \text{control system efficiency}) \\ \times (1 - \text{fuel pre-treatment efficiency}) \end{array} \right]$$

(2) For a combustion source submitting annual data:

$$\text{Annual SO}_2 \text{ Emissions} = \sum_{\text{Fuel Types}} \left[\begin{array}{l} \text{quantity of fuel consumed} \\ \times \text{SO}_2 \text{ emissions factor} \\ \times (1 - \text{control system efficiency}) \\ \times (1 - \text{fuel pre-treatment efficiency}) \end{array} \right]$$

where, "quantity of fuel consumed" is as defined under § 74.20(a)(2)(A); "SO₂ emissions factor" is as defined under paragraph (b) of this section; "control system efficiency" is as defined under § 60.48(a) and part 60, Appendix A, Method 19 of this chapter, if applicable; and "fuel pre-treatment efficiency" is as defined under § 60.48(a) and part 60, Appendix A, Method 19 of this chapter, if applicable. (d) *Annual fuel consumption calculation.* Annual fuel consumption for the specified calendar year, expressed in mmBtu, shall be calculated as defined under § 74.20(b)(1) (i) or (ii). (e) *Actual SO₂ emissions rate calculation.* The actual SO₂ emissions rate for the specified calendar year, expressed in lbs/mmBtu, shall be calculated as follows:

$$\text{Actual SO}_2 \text{ Emissions Rate} = \frac{\text{Annual SO}_2 \text{ Emissions}}{\text{Annual Fuel Consumption}}$$

§ 74.23 1985 Allowable SO₂ emissions rate. (a) *Data requirements.* (1) The designated representative of the combustion source shall submit the following data and the calculations under paragraph (b) of this section based on the submitted data: (i) Allowable SO₂ emissions rate of the combustion source expressed in lbs/mmBtu as defined under § 72.2 of this chapter for the calendar year specified in paragraph (a)(2) of this section. If the allowable SO₂ emissions rate is not expressed in lbs/mmBtu, the allowable emissions rate shall be converted to lbs/mmBtu by multiplying the emissions rate by the appropriate factor as specified in Table 1 of this section.

TABLE 1.—FACTORS TO CONVERT EMISSION LIMITS TO POUNDS OF SO₂/mmBtu

Unit measurement	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	2×8760/(annual fuel consumption for specified year ¹ ×10 ³)			
lbs SO ₂ /hour	8760/(annual fuel consumption for specified year ¹ ×10 ⁶)			

¹ Annual fuel consumption as defined under § 74.20(b)(1) (i) or (ii); specified calendar year as defined under § 74.23(a)(2).

(ii) Citation of statute, regulations, and any other authority under which the allowable emissions rate under paragraph (a)(1) of this section is established as applicable to the combustion source; (iii) Averaging time associated with the allowable emissions rate under paragraph (a)(1) of this section. (iv) The annualization factor for the combustion source, based on the type of combustion source and the associated averaging time of the allowable emissions rate of the combustion source, as set forth in the Table 2 of this section:

TABLE 2.—ANNUALIZATION FACTORS FOR SO₂ Emission Rates

Type of combustion source	Annualization factor for scrubbed unit	Annualization factor for unscrubbed unit
Unit Combusting Oil, Gas, or some combination	1.00	1.00
Coal Unit with Averaging Time ≤ 1 day	0.93	0.89
Coal Unit with Averaging Time = 1 week	0.97	0.92
Coal Unit with Averaging Time = 30 days	1.00	0.96
Coal Unit with Averaging Time = 90 days	1.00	1.00
Coal Unit with Averaging Time = 1 year	1.00	1.00
Coal Unit with Federal Limit, but Averaging Time Not Specified	0.93	0.89

(2) *Calendar Year.*

(i) For combustion sources that commenced operation prior to January 1, 1985, the calendar year for the allowable SO₂ emissions rate shall be 1985.

(ii) For combustion sources that commenced operation after January 1, 1985, the calendar year for the allowable SO₂ emissions rate shall be the first year of the three consecutive calendar years of the alternative baseline under § 74.20(b)(2).

(iii) For combustion sources meeting the requirements of § 74.20(c), the calendar year for calculating the allowable SO₂ emissions rate shall be the first year of the three consecutive calendar years to be used as alternative data under § 74.20(c).

(b) *1985 Allowable SO₂ emissions rate calculation.* The allowable SO₂ emissions rate for the specified calendar year shall be calculated as follows:

$$1985 \text{ Allowable SO}_2 \text{ Emissions Rate} = (\text{Allowable SO}_2 \text{ Emissions Rate}) \times (\text{Annualization Factor})$$

§ 74.24 Current allowable SO₂ emissions rate.

The designated representative shall submit the following data:

(a) Current allowable SO₂ emissions rate of the combustion source, expressed in lbs/mmBtu, which shall be the most stringent federally enforceable emissions limit in effect as of the date of submission of the opt-in application. If the allowable SO₂ emissions rate is not expressed in lbs/mmBtu, the allowable emissions rate shall be converted to lbs/mmBtu by multiplying the allowable rate by the appropriate factor as specified in Table 1 in § 74.23(a)(1)(i).

(b) Citations of statute, regulation, and any other authority under which the allowable emissions rate under paragraph (a) of this section is established as applicable to the combustion source;

(c) Averaging time associated with the allowable emissions rate under paragraph (a) of this section.

§ 74.25 Current promulgated SO₂ emissions limit.

The designated representative shall submit the following data:

(a) Current promulgated SO₂ emissions limit of the combustion source, expressed in lbs/mmBtu, which shall be the most stringent federally enforceable emissions limit that has been promulgated as of the date of

submission of the opt-in permit application and that either is in effect on that date or will take effect after that date. If the promulgated SO₂ emissions limit is not expressed in lbs/mmBtu, the limit shall be converted to lbs/mmBtu by multiplying the limit by the appropriate factor as specified in Table 1 of § 74.23(a)(1)(i).

(b) Citations of statute, regulation and any other authority under which the emissions limit under paragraph (a) of this section is established as applicable to the combustion source;

(c) Averaging time associated with the emissions limit under paragraph (a) of this section.

(d) Effective date of the emissions limit under paragraph (a) of this section.

§ 74.26 Allocation formula.

(a) The Administrator will calculate the annual allowance allocation for a combustion source based on the data, corrected as necessary, under § 74.20 through § 74.25 as follows:

(1) For combustion sources for which the current promulgated SO₂ emissions limit under § 74.25 is greater than or equal to the current allowable SO₂ emissions rate under § 74.24, the number of allowances allocated for each year equals:

$$\text{Allowances} = \frac{\left[\begin{array}{c} \text{baseline} \\ \text{or} \\ \text{alternative baseline} \end{array} \right] \times \text{the lesser of} \left[\begin{array}{c} \text{the actual SO}_2 \text{ emissions rate} \\ \text{or} \\ \text{the 1985 allowable SO}_2 \text{ emissions rate} \\ \text{or} \\ \text{the current allowable SO}_2 \text{ emissions rate} \end{array} \right]}{2000}$$

(2) For combustion sources in which the current promulgated SO₂ emissions limit under § 74.25 is less than the

current allowable SO₂ emissions rate under § 74.24.

(i) The number of allowances for each year ending prior to the effective date of the promulgated SO₂ emissions limit equals:

$$\text{Allowances} = \frac{\left[\begin{array}{c} \text{baseline} \\ \text{or} \\ \text{alternative baseline} \end{array} \right] \times \text{the lesser of} \left[\begin{array}{c} \text{the actual SO}_2 \text{ emissions rate} \\ \text{or} \\ \text{the 1985 allowable SO}_2 \text{ emissions rate} \\ \text{or} \\ \text{the current allowable SO}_2 \text{ emissions rate} \end{array} \right]}{2000}$$

(ii) The number of allowances for the year that includes the effective date of

the promulgated SO₂ emissions limit and for each year thereafter equals:

$$\text{Allowances} = \frac{\left[\begin{array}{c} \text{baseline} \\ \text{or} \\ \text{alternative baseline} \end{array} \right] \times \text{the lesser of} \left[\begin{array}{c} \text{the actual SO}_2 \text{ emissions rate} \\ \text{or} \\ \text{the 1985 allowable SO}_2 \text{ emissions rate} \\ \text{or} \\ \text{the current promulgated SO}_2 \text{ emissions rate} \end{array} \right]}{2000}$$

§ 74.28 Allowance allocation for combustion sources becoming opt-in sources on a date other than January 1.

(a) *Dates of entry.* (1) If an opt-in source provided monthly data under § 74.20, the opt-in source's opt-in permit may become effective at the beginning

of a calendar quarter as of January 1, April 1, July 1, or October 1.

(2) If an opt-in source provided annual data under § 74.20, the opt-in source's opt-in permit must become effective on January 1.

(b) *Prorating by Calendar Quarter.* Where a combustion source's opt-in

permit becomes effective on April 1, July 1, or October 1 of a given year, the Administrator will prorate the allowance allocation for that first year by the calendar quarters remaining in the year as follows:

Allowances for the first year

$$= \left(\frac{\text{first year partial baseline}}{\text{baseline or alternative baseline}} \right) \times \text{annual allocation of allowances for the first year}$$

(1) For combustion sources that commenced operations before January 1, 1985,

$$\text{first year partial baseline} = \frac{\sum_{\text{Year}=1985}^{1987} \text{fuel consumption for remaining calendar quarters}}{3}$$

(2) For combustion sources that commenced operations after January 1, 1985,

$$\text{first year partial baseline} = \frac{\sum_{\text{First 3 consecutive years}} \text{fuel consumption for the remaining calendar quarters}}{3}$$

(3) Under paragraphs (b) (1) and (2) of this section,

(i) "Remaining calendar quarters" shall be the calendar quarters in the first

year for which the opt-in permit will be effective.

(ii) Fuel consumption for remaining calendar quarters =

$$\sum_{\text{months}=\text{Apr., Jul., or Oct.}}^{\text{Dec}} \cdot \sum_{\text{Fuel Types}} \text{quantity of fuel consumed} \times \text{heat content} \times \text{unit conversion}$$

where unit conversion

- = 2 for coal
- = 0.001 for oil
- = 1 for gas

For other fuels, the combustion source must specify unit conversion;

and where starting month

- = April, if effective date is April 1;
- = July, if effective date is July 1; and
- = October, if effective date is October 1.

Subpart D—Allowance Calculations for Process Sources—[Reserved]

Subpart E—Allowance Tracking and Transfer and End of Year Compliance

§ 74.40 Establishment of opt-in source allowance accounts.

(a) *Establishing accounts.* Not earlier than the date on which a combustion or process source becomes an affected unit under this part and upon receipt of a request for an opt-in account under paragraph (b) of this section, the

Administrator will establish an account and allocate allowances in accordance with subpart C of this part for combustion sources or subpart D of this part for process sources. A separate unit account will be established for each opt-in source.

(b) *Request for opt-in account.* The designated representative of the opt-in source shall, on or after the effective date of the opt-in permit as specified in § 74.14(d), submit a letter requesting the opening of an allowance account in the

Allowance Tracking System to the Administrator.

§ 74.41 Identifying allowances.

(a) *Identifying allowances.*

Allowances allocated to an opt-in source will be assigned a serial number that identifies them as being allocated under an opt-in permit.

(b) *Submittal of opt-in allowances for auction.* (1) An authorized account representative may offer for sale in the spot auction under § 73.70 of this chapter allowances that are allocated to opt-in sources, if the allowances have a compliance use date earlier than the year in which the spot auction is to be held and if the Administrator has completed the deductions for compliance under § 73.35(b) for the compliance year corresponding to the compliance use date of the offered allowances.

(2) Authorized account representatives may not offer for sale in the advance auctions under § 73.70 of this chapter allowances allocated to opt-in sources.

§ 74.42 Prohibition on future year transfers.

(a) The Administrator will not record a transfer of opt-in allowances allocated to opt-in sources from a future year subaccount into any other future year subaccount in the Allowance Tracking System.

§ 74.43 Annual compliance certification report.

(a) *Applicability and deadline.* For each calendar year in which an opt-in source is subject to the Acid Rain emissions limitations, the designated representative of the opt-in source shall submit to the Administrator, no later than 60 days after the end of the calendar year, an annual compliance certification report for the opt-in source in lieu of any annual compliance certification report required under subpart I of part 72 of this chapter.

(b) *Contents of report.* The designated representative shall include in the annual compliance certification report the following elements, in a format prescribed by the Administrator, concerning the opt-in source and the calendar year covered by the report:

- (1) Identification of the opt-in source;
- (2) An opt-in utilization report in accordance with § 74.44 for combustion sources and § 74.45 for process sources;
- (3) A thermal energy compliance report in accordance with § 74.47 for combustion sources and § 74.48 for process sources, if applicable;
- (4) Shutdown or reconstruction information in accordance with § 74.46, if applicable;

(5) A statement that the opt-in source has not become an affected unit under § 72.6 of this chapter;

(6) At the designated representative's option, the total number of allowances to be deducted for the year, using the formula in § 74.49, and the serial numbers of the allowances that are to be deducted; and

(7) At the designated representative's option, for opt-in sources 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)(6) of this section for all such affected units that is to be deducted from each affected unit's compliance subaccount; and

(8) 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 shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the opt-in source in compliance with the Acid Rain Program, whether the opt-in source was operated during the calendar year covered by the report in compliance with the requirements of the Acid Rain Program applicable to the opt-in source, including:

(1) Whether the opt-in source was operated in compliance with applicable Acid Rain emissions limitations, including whether the opt-in source held allowances, as of the allowance transfer deadline, in its compliance subaccount (after accounting for any allowance deductions or other adjustments under § 73.34(c) of this chapter) not less than the opt-in source's total sulfur dioxide emissions during the calendar year covered by the annual report;

(2) Whether the monitoring plan that governs the opt-in source has been maintained to reflect the actual operation and monitoring of the opt-in source and contains all information necessary to attribute monitored emissions to the opt-in source;

(3) Whether all the emissions from the opt-in source or group of affected units (including the opt-in source) using a common stack were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports in accordance with part 75 of this chapter;

(4) Whether the facts that form the basis for certification of each monitor at the opt-in source or group of affected units (including the opt-in source) using a common stack or of an opt-in source's

qualifications for using an Acid Rain Program excepted monitoring method or approved alternative monitoring method, if any, have changed;

(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, including what method was used to determine emissions when a change mandated the need for monitoring recertification; and

(6) When applicable, whether the opt-in source was operating in compliance with its thermal energy plan as provided in § 74.47 for combustion sources and § 74.48 for process sources.

§ 74.44 Reduced utilization for combustion sources.

(a) *Calculation of Utilization.*

(1) *Annual utilization.* (i) Except as provided in paragraph (a)(1)(ii) of this section, annual utilization for the calendar year shall be calculated as follows:

$$\text{Annual Utilization} = \text{Actual heat input} + \text{Reduction from improved efficiency}$$

where,

(A) "Actual heat input" shall be the actual annual heat input (in mmBtu) of the opt-in source for the calendar year determined in accordance with Appendix F of part 75 of this chapter.

(B) "Reduction from improved efficiency" shall be the sum of the following four elements: Reduction from demand side measures that improve the efficiency of electricity consumption; reduction from demand side measures that improve the efficiency of steam consumption; reduction from improvements in the heat rate at the opt-in source; and reduction from improvement in the efficiency of steam production at the opt-in source. Qualified demand side measures applicable to the calculation of utilization for opt-in sources are listed in Appendix A, Section 1 of part 73 of this chapter.

(C) "Reduction from demand side measures that improve the efficiency of electricity consumption" shall be a good faith estimate of the expected kilowatt hour savings during the calendar year for such measures and the corresponding reduction in heat input (in mmBtu) resulting from those measures. The demand side measures shall be implemented at the opt-in source, in the residence or facility to which the opt-in source delivers electricity for consumption or in the residence or facility of a customer to whom the opt-in source's utility system

sells electricity. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(D) "Reduction from demand side measures that improve the efficiency of steam consumption" shall be a good faith estimate of the expected steam savings (in mmBtu) from such measures during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of those measures. The demand side measures shall be implemented at the opt-in source or in the facility to which the opt-in source delivers steam for consumption. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(E) "Reduction from improvements in heat rate" shall be a good faith estimate of the expected reduction in heat rate during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of all improved unit efficiency measures at the opt-in source and may

include supply-side measures listed in Appendix A, section 2.1 of part 73 of this chapter. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(F) "Reduction from improvement in the efficiency of steam production at the opt-in source" shall be a good faith estimate of the expected improvement in the efficiency of steam production at the opt-in source during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of all improved steam production efficiency measures. In order to claim improvements in the efficiency of steam production, the designated representative of the opt-in source must demonstrate to the satisfaction of the Administrator that the heat rate of the opt-in source has not increased. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(G) Notwithstanding paragraph (a)(1)(i)(B) of this section, where two or more opt-in sources, or two or more opt-

in sources and Phase I units, include in their annual compliance certification reports their good faith estimate of kilowatt hour savings or steam savings from the same demand side measures that improve the efficiency of electricity or steam consumption:

(1) The designated representatives of all such opt-in sources and Phase I units shall submit with their annual compliance certification reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or steam savings among such opt-in sources and Phase I units.

(2) Each designated representative shall include in its annual compliance certification report only its share of kilowatt hour savings or steam savings.

(ii) For an opt-in source whose opt-in permit becomes effective on a date other than January 1, annual utilization for the first year shall be calculated as follows:

$$\text{Annual Utilization} = \frac{\text{Actual heat input for the remaining calendar quarters}}{\text{for the remaining calendar quarters}} + \frac{\text{Reduction from improved efficiency}}{\text{for the remaining calendar quarters}}$$

where "actual heat input" and "reduction from improved efficiency" are defined as set forth in paragraph (a)(1)(i) of this section but are restricted to data or estimates for the "remaining calendar quarters", which are the calendar quarters that begin on or after the date the opt-in permit becomes effective.

(2) *Average utilization.* Average utilization for the calendar year shall be defined as the average of the annual utilization calculated as follows:

(i) For the first two calendar years after the effective date of an opt-in permit taking effect on January 1 or for the first two calendar years after the effective date of a thermal energy plan governing an opt-in source in

accordance with § 74.47 of this chapter, average utilization will be calculated as follows:

(A) Average utilization for the first year = annual utilization_{year 1}

where "annual utilization_{year 1}" is as calculated under paragraph (a)(1)(i) of this section.

(B) Average utilization for the second year

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{annual utilization}_{\text{year 2}}}{2} \right)$$

where, "revised annual utilization_{year 1}" is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; "annual utilization_{year 2}" is as calculated under paragraph (a)(1)(i) of this section.

(ii) For the first three calendar years after the effective date of the opt-in permit taking effect on a date other than January 1, average utilization will be calculated as follows:

(A) Average utilization for the first year after opt-in = annual utilization_{year}

where "annual utilization_{year 1}" is as calculated under paragraph (a)(1)(ii) of this section.

(B) Average utilization for the second year after opt-in

where,

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{annual utilization}_{\text{year 2}}}{\left(\begin{array}{c} \text{Number of months} \\ \text{in year 1 and year 2 for which} \\ \text{the opt-in permit is effective} \end{array} \right)} \right) \times 12$$

“revised annual utilization_{year 1}” is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted

under paragraph (c)(2)(iii) of this section; and

“annual utilization_{year 2}” is as calculated under paragraph (a)(1)(ii) of this section. (C) Average utilization for the third year after opt-in

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{revised annual utilization}_{\text{year 2}} + \text{annual utilization}_{\text{year 3}}}{\left(\begin{array}{c} \text{Number of months} \\ \text{in year 1, year 2, and year 3} \\ \text{for which the opt-in permit is effective} \end{array} \right)} \right) \times 12$$

where,

“revised annual utilization_{year 1}” is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

“revised annual utilization_{year 2}” is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

“annual utilization_{year 3}” is as calculated under paragraph (a)(1)(ii) of this section.

(iii) Except as provided in paragraphs (a)(2)(i) and (a)(2)(ii), average utilization shall be the sum of annual utilization

for the calendar year and the revised annual utilization, submitted under paragraph (c)(2)(i)(B) of this section and adjusted by the Administrator under paragraph (c)(2)(iii) of this section, for the two immediately preceding calendar years divided by 3.

(b) *Determination of reduced utilization and calculation of allowances.*—

(1) *Determination of reduced utilization.* For a year during which its opt-in permit is effective, an opt-in source has reduced utilization if the opt-in source’s average utilization for the calendar year, as calculated under

paragraph (a) of this section, is less than its baseline.

(2) *Calculation of allowances deducted for reduced utilization.* If the Administrator determines that an opt-in source has reduced utilization for a calendar year during which the opt-in source’s opt-in permit is in effect, the Administrator will deduct allowances, as calculated under paragraph (b)(2)(i) of this section, from the compliance subaccount of the opt-in source’s Allowance Tracking System account.

(i) Allowances deducted for reduced utilization =

$$\text{Number of allowances allocated for the calendar year} \times \left(1 - \left(\frac{\text{average utilization}_{\text{calendar year}}}{\text{baseline}} \right) \right)$$

(ii) The allowances deducted shall have the same or an earlier compliance use date as those allocated under subpart C of this part for the calendar year for which the opt-in source has reduced utilization.

(c) *Compliance.*—(1) *Opt-in Utilization Report.* The designated representative for each opt-in source shall submit an opt-in utilization report for the calendar year, as part of its annual compliance certification report under § 74.43, that shall include the following elements in a format prescribed by the Administrator:

(i) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(ii) The opt-in source’s account identification number in the Allowance Tracking System;

(iii) The opt-in source’s annual utilization for the calendar year, as defined under paragraph (a)(1) of this section, and the revised annual utilization, submitted under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section, for the two immediately preceding calendar years;

(iv) The opt-in source’s average utilization for the calendar year, as defined under paragraph (a)(2) of this section;

(v) The difference between the opt-in source’s average utilization and its baseline;

(vi) The number of allowances that shall be deducted, if any, using the formula in paragraph (b)(2)(i) of this section and the supporting calculations;

(2) *Confirmation report.* (i) If the annual compliance certification report for an opt-in source includes estimates of any reduction in heat input resulting from improved efficiency as defined under paragraph (a)(1)(i) of this section, the designated representative shall submit, by July 1 of the year in which the annual compliance certification report was submitted, a confirmation report, concerning the calendar year covered by the annual compliance certification 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:

(A) *Verified reduction in heat input.* Any verified kwh savings or any verified steam savings from demand side measures that improve the efficiency of electricity or steam consumption, any verified reduction in the heat rate at the opt-in source, or any verified improvement in the efficiency of steam production at the opt-in source achieved and the verified corresponding reduction in heat input for the calendar year that resulted.

(B) *Revised annual utilization.* The opt-in source's annual utilization for the calendar year as provided under paragraph (c)(1)(iii) of this section, recalculated using the verified reduction in heat input for the calendar year under paragraph (c)(2)(i)(A) of this section.

(C) *Revised average utilization.* The opt-in source's average utilization as provided under paragraph (c)(1)(iv) of this section, recalculated using the verified reduction in heat input for the calendar year under paragraph (c)(2)(i)(A) of this section.

(D) *Recalculation of reduced utilization.* The difference between the opt-in source's recalculated average utilization and its baseline.

(E) *Allowance adjustment.* The number of allowances that should be credited or deducted using the formulas in paragraphs (c)(2)(iii)(C) and (D) of this section and the supporting calculations; and the number of adjusted allowances remaining using the formula in paragraph (c)(2)(iii)(E) of

this section and the supporting calculations.

(ii) *Documentation.* (A) For all figures under paragraphs (c)(2)(i)(A) of this section, the opt-in source must provide as part of the confirmation report, documentation (which may follow the EPA Conservation Verification Protocol) verifying the figures to the satisfaction of the Administrator.

(B) Notwithstanding paragraph (c)(2)(i)(A) of this section, where two or more opt-in sources, or two or more opt-in sources and Phase I units include in the confirmation report under paragraph (c)(2) of this section or § 72.91(b) of this chapter the verified kilowatt hour savings or steam savings defined under paragraph (c)(2)(i)(A) of this section, for the calendar year, from the same specific measures:

(1) The designated representatives of all such opt-in sources and Phase I 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 steam savings as defined under paragraph (c)(2)(i)(A) of this section for the calendar year among such opt-in sources.

(2) Each designated representative shall include in the opt-in source's confirmation report only its share of the verified reduction in heat input as defined under paragraph (c)(2)(i)(A) of this section for the calendar year under the certification under paragraph (c)(2)(ii)(B)(1) of this section.

(iii) *Determination of reduced utilization based on confirmation*

report. (A) If an opt-in source must submit a confirmation report as specified under paragraph (c)(2) of this section, the Administrator, upon such submittal, will adjust his or her determination of reduced utilization for the calendar year for the opt-in source. Such adjustment will include the recalculation of both annual utilization and average utilization, using verified reduction in heat input as defined under paragraph (c)(2)(i)(A) of this section for the calendar year instead of the previously estimated values.

(B) *Estimates confirmed.* If the total, included in the confirmation report, of the amounts of verified reduction in the opt-in source's heat input equals the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report a statement indicating that is true.

(C) *Underestimate.* If the total, included in the confirmation report, of the amounts of verified reduction in the opt-in source's heat input is greater than the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be credited to the opt-in source's compliance subaccount calculated using the following formula:

Allowances credited for the calendar year in which the reduced utilization occurred=

$$\text{Number of allowances allocated for the calendar year} \times \left[\frac{\text{Average utilization}_{\text{verified}} - \text{Average utilization}_{\text{estimate}}}{\text{baseline}} \right]$$

where,

Average Utilization_{estimate}=

the average utilization of the opt-in source as defined under paragraph (a)(2) of this section, calculated using the estimated reduction in the opt-in source's heat input under (a)(1) of this section, and submitted in the annual compliance certification report for the calendar year.

Average Utilization_{verified}=

the average utilization of the opt-in source as defined under paragraph (a)(2) of this section, calculated using the verified reduction in the opt-in source's heat input as submitted under

paragraph (c)(2)(i)(A) of this section by the designated representative in the confirmation report.

(D) *Overestimate.* If the total of the amounts of verified reduction in the opt-in source's heat input included in the confirmation report is less than the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the opt-in source's compliance subaccount, which equals the absolute value of the result of the formula for allowances

credited under paragraph (c)(2)(iii)(C) of this section.

(E) *Adjusted allowances remaining.* Unless paragraph (c)(2)(iii)(B) of this section applies, the designated representative shall include in the confirmation report the adjusted amount of allowances that would have been held in the opt-in source's compliance subaccount if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the opt-in source's heat input, calculated as follows:

$$\text{Adjusted amount of allowances} = \begin{aligned} &\text{Allowances held after deduction} - \text{Excess emissions} \\ &+ \text{Allowances credited} - \text{Allowances deducted} \end{aligned}$$

where:

“Allowances held after deduction” shall be the amount of allowances held in the opt-in source’s compliance subaccount after deduction of allowances was made under § 73.35(b) of this chapter based on the annual compliance certification report.

“Excess emissions” shall be the amount (if any) of excess emissions determined under § 73.35(d) for the calendar year based on the annual compliance certification report.

“Allowances credited” shall be the amount of allowances calculated under paragraph (c)(2)(iii)(C) of this section.

“Allowances deducted” shall be the amount of allowances calculated under paragraph (c)(2)(iii)(D) of this section.

(1) If the result of the formula for “adjusted amount of allowances” is negative, the absolute value of the result constitutes excess emissions of sulfur dioxide. If the result is positive, there are no excess emissions of sulfur dioxide.

(2) If the amount of excess emissions of sulfur dioxide calculated under “adjusted amount of allowances” differs from the amount of excess emissions of sulfur dioxide determined under § 73.35 of this chapter based on the annual compliance certification report, then the

designated representative shall include in the confirmation report a demonstration of:

(i) The number of allowances that should be deducted to offset any increase in excess emissions or returned to the account for any decrease in excess emissions; and

(ii) The amount of the excess emissions penalty (excluding interest) that should be paid or returned to the account for the change in excess emissions.

(3) The Administrator will deduct immediately from the opt-in source’s compliance subaccount the amount of allowances necessary to offset any increase in excess emissions or will return immediately to the opt-in source’s compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions.

(4) 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(c)(2) of this chapter and the identification of allowances returned will be at the Administrator’s discretion.

(5) If the designated representative of an opt-in source fails to submit on a timely basis a confirmation report, in accordance with paragraph (c)(2) of this section, with regard to the estimate of reductions in heat input as defined under paragraph (c)(2)(i)(A) of this section, then the Administrator will reject such estimate and correct it to equal zero in the opt-in source’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 any increase in excess emissions of sulfur dioxide that results from the correction and will require the owners and operators of the opt-in source to pay an excess emission penalty in accordance with part 77 of this chapter.

(F) If the opt-in source is governed by an approved thermal energy plan under § 74.47 and if the opt-in source must submit a confirmation report as specified under paragraph (c)(2) of this section, the adjusted amount of allowances that should remain in the opt-in source’s compliance subaccount shall be calculated as follows:

Adjusted amount of allowances =

$$= \text{allowances allocated} - \text{tons emitted} - \text{the larger of} \left(\begin{array}{l} \text{allowances transferred} \\ \text{to all replacement units} \\ \text{or} \\ \text{allowances deducted} \\ \text{for reduced utilization} \end{array} \right)$$

where,

“Allowances allocated” shall be the original number of allowances allocated under section § 74.40 for the calendar year.

“Tons emitted” shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar year, as reported in accordance with subpart F of this part for combustion sources.

“Allowances transferred to all replacement units” shall be the sum of allowances transferred to all replacement units under an approved thermal energy plan in accordance with § 74.47 and adjusted by the Administrator in accordance with § 74.47(d)(2).

“Allowances deducted for reduced utilization” shall be the total number of allowances deducted for reduced utilization as calculated in accordance with this section including any adjustments required under paragraph (c)(iii)(E) of this section.

§ 74.45 Reduced utilization for process sources. [Reserved]

§ 74.46 Opt-in source permanent shutdown, reconstruction, or change in affected status.

(a) *Notification.* (1) When an opt-in source has permanently shutdown during the calendar year, the designated representative shall notify the Administrator of the date of shutdown, within 30 days of such shutdown.

(2) When an opt-in source has undergone a modification that qualifies as a reconstruction as defined in § 60.15 of this chapter, the designated representative shall notify the Administrator of the date of completion of the reconstruction, within 30 days of such completion.

(3) When an opt-in source becomes an affected unit under § 72.6 of this chapter, the designated representative shall notify the Administrator of such change in the opt-in source’s affected status within 30 days of such change.

(b) *Administrator’s action.* (1) The Administrator will terminate the opt-in source’s opt-in permit and deduct allowances as provided below in the following circumstances:

(i) When an opt-in source has permanently shutdown. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the shut down occurs and for all future years following the year in which the shut down occurs; or

(ii) When an opt-in source has undergone a modification that qualifies as a reconstruction as defined in § 60.15 of this chapter. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the reconstruction is completed and all future years following

the year in which the reconstruction is completed; or

(iii) When an opt-in source becomes an affected unit under § 72.6 of this chapter. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the opt-in source becomes affected under § 72.6 of this chapter and all future years following the calendar year in which the opt-in source becomes affected under § 72.6; or

(iv) When an opt-in source does not renew its opt-in permit. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the opt-in source's opt-in permit expires and all future years following the year in which the opt-in source's opt-in permit expires.

(2) After the allowance deductions under paragraph (b)(1) of this section are made, the Administrator will close the opt-in source's unit account in the Allowance Tracking System. If any allowances remain in the opt-in source's unit account after allowance deductions are made under paragraph (b)(1) of this section, and any deductions made under part 77 of this chapter, the Administrator will establish a general account for the opt-in source, and transfer any remaining allowances into this general account. The designated representative for the opt-in source shall become the authorized account representative for the general account.

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

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

(2) *Applicability.* This section shall apply to any designated representative of an opt-in source and any designated representative of each replacement unit seeking to transfer allowances based on the replacement of thermal energy.

(3) *Contents.* Each thermal energy plan shall contain the following elements in a format prescribed by the Administrator:

(i) The calendar year that the thermal energy plan takes effect, which shall be the first year the replacement unit(s) will replace thermal energy of the opt-in source;

(ii) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(iii) The name, authorized account representative identification number, and telephone number of the designated representative of each replacement unit;

(iv) The opt-in source's account identification number in the Allowance Tracking System;

(v) Each replacement unit's account identification number in the Allowance Tracking System (ATS);

(vi) The type of fuel used by each replacement unit;

(vii) The allowable SO₂ emissions rate, expressed in lbs/mmBtu, of each replacement unit for the calendar year for which the plan will take effect. When a thermal energy plan is renewed in accordance with paragraph (a)(9) of this section, the allowable SO₂ emission rate at each replacement unit will be the most stringent federally enforceable allowable SO₂ emissions rate applicable at the time of renewal for the calendar year for which the renewal will take effect. This rate will not be annualized;

(viii) The estimated amount of total thermal energy to be reduced at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(ix) The estimated total thermal energy at each replacement unit for the year prior to the year for which the plan is to take effect, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(x) The estimated amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(xi) The estimated amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing the thermal energy at the opt-in source;

(xii) Estimated total annual fuel input at each replacement unit after replacing thermal energy at the opt-in source;

(xiii) The number of allowances calculated under paragraph (b) of this section that the opt-in source will transfer to each replacement unit represented in the thermal energy plan.

(xiv) The estimated number of allowances to be deducted for reduced utilization under § 74.44;

(xv) Certification that each replacement unit has entered into a legally binding steam sales agreement to provide the thermal energy, as calculated under paragraph (a)(3)(xi) of this section, that it is replacing for the opt-in source. The designated representative of each replacement unit shall maintain and make available to the Administrator, at the Administrator's request, copies of documents demonstrating that the replacement unit is replacing the thermal energy at the opt-in source.

(4) *Submission.* The designated representative of the opt-in source seeking to qualify for the transfer of allowances based on the replacement of thermal energy shall submit a thermal energy plan to the permitting authority by no later than July 1 of the calendar year prior to the first calendar year for which the plan is to be in effect. The thermal energy plan shall be signed and certified by the designated representative of the opt-in source and each replacement unit covered by the plan.

(5) *Retirement of opt-in source upon enactment of plan.* (i) If the opt-in source will be permanently retired as of the effective date of the thermal energy plan, the opt-in source shall not be required to monitor its emissions upon retirement, consistent with § 75.67 of this chapter, provided that the following requirements are met:

(A) The designated representative of the opt-in source shall include in the plan a request for an exemption from the requirements of part 75 in accordance with § 75.67 of this chapter and shall submit the following statement: "I certify that the opt-in source ("is" or "will be", as applicable) permanently retired on the date specified in this plan and will not emit any sulfur dioxide or nitrogen oxides after such date."

(B) The opt-in source shall not emit any sulfur dioxide or nitrogen oxides after the date specified in the plan.

(ii) Notwithstanding the monitoring exemption discussed in paragraph (a)(5)(i) of this section, the designated representative for the opt-in source shall submit the annual compliance certification report provided under paragraph (d) of this section.

(6) *Administrator's action.* If the permitting authority approves a thermal

energy plan, the Administrator will annually transfer allowances to the Allowance Tracking System account of each replacement unit, as provided in the approved plan.

(7) *Incorporation, modification and renewal of a thermal energy plan.* (i) An approved thermal energy plan, including any revised or renewed plan that is approved, shall be incorporated into both the opt-in permit for the opt-in source and the Acid Rain permit for each replacement unit governed by the plan. Upon approval, the thermal energy plan shall be incorporated into the Acid Rain permit for each replacement unit pursuant to the requirements for administrative permit amendments under § 72.83 of this chapter.

(ii) In order to revise an opt-in permit to add an approved thermal energy plan or to change an approved thermal energy plan, the designated representative of the opt-in source shall submit a plan or a revised plan under

paragraph (a)(4) of this section and meet the requirements for permit revisions under § 72.80 and either § 72.81 or § 72.82 of this chapter.

(8) *Termination of plan.* (i) A thermal energy plan shall be in effect until the earlier of the expiration of the opt-in permit for the opt-in source or the year for which a termination of the plan takes effect under paragraph (a)(8)(ii) of this section.

(ii) *Termination of plan by opt-in source and replacement units.* A notification to terminate a thermal energy plan in accordance with § 72.40(d) of this chapter shall be submitted no later than December 1 of the calendar year for which the termination is to take effect.

(iii) If the requirements of paragraph (a)(8)(ii) of this section are met and upon revision of the opt-in permit of the opt-in source and the Acid Rain permit of each replacement unit governed by the thermal energy plan to terminate the

plan pursuant to § 72.83 of this chapter, the Administrator will adjust the allowances for the opt-in source and the replacement units to reflect the transfer back to the opt-in source of the allowances transferred from the opt-in source under the plan for the year for which the termination of the plan takes effect.

(9) *Renewal of thermal energy plan.* The designated representative of an opt-in source may renew the thermal energy plan as part of its opt-in permit renewal in accordance with § 74.19.

(b) *Calculation of transferable allowances—(1) Qualifying thermal energy.* The amount of thermal energy credited towards the transfer of allowances based on the replacement of thermal energy shall equal the qualifying thermal energy and shall be calculated for each replacement unit as follows:

$$\text{Qualifying thermal energy} = \frac{\text{the estimated thermal energy at the replacement unit under paragraph (a)(3)(xi) of this section}}{\text{the estimated thermal energy at the replacement unit under paragraph (a)(3)(xi) of this section}}$$

(2) *Fuel associated with qualifying thermal energy.* The fuel associated with the qualifying thermal energy at each

replacement unit shall be calculated as follows:

$$\text{Fuel associated with qualifying thermal energy} = \frac{\text{Qualifying thermal energy}}{\text{Efficiency constant}}$$

where,

“Qualifying thermal energy” for the replacement unit is as defined in paragraph (b)(1) of this section;

“Efficiency constant” for the replacement unit

= 0.85, where the replacement unit is a boiler
 = 0.80, where the replacement unit is a cogenerator

(3) *Allowances transferable from the opt-in source to each replacement unit.*

The number of allowances transferable from the opt-in source to each replacement unit for the replacement of thermal energy is calculated as follows:

$$\text{transferable allowances for the replacement unit} = \frac{\text{Fuel Associated with Qualifying thermal energy} \times \text{allowable SO}_2 \text{ emission rate}_{\text{replacement unit}} \text{ (in lb/mmBtu)}}{2000}$$

where,

“Allowable SO₂ emission rate” for the replacement unit is as defined in paragraph (a)(3)(vii) of this section;

“Fuel associated with qualifying thermal energy” is as defined in paragraph (b)(2) of this section;

(c) *Transfer prohibition.* The allowances transferred from the opt-in source to each replacement unit shall not be transferred from the unit account of the replacement unit to any other

account in the Allowance Tracking System.

(d) *Compliance—(1) Annual compliance certification report.* (i) As required for all opt-in sources, the designated representative of the opt-in source covered by a thermal energy plan must submit an opt-in utilization report for the calendar year as part of its annual compliance certification report under § 74.44(c)(1).

(ii) The designated representative of an opt-in source must submit a thermal

energy compliance report for the calendar year as part of the annual compliance certification report, which must include the following elements in a format prescribed by the Administrator:

(A) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(B) The name, authorized account representative identification number,

and telephone number of the designated representative of each replacement unit;

(C) The opt-in source's account identification number in the Allowance Tracking System (ATS);

(D) The account identification number in the Allowance Tracking System (ATS) for each replacement unit;

(E) The actual amount of total thermal energy reduced at the opt-in source during the calendar year, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(F) The actual amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing the thermal energy at the opt-in source;

(G) The actual amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(H) Actual total fuel input at each replacement unit as determined in accordance with part 75 of this chapter;

(I) Calculations of allowance adjustments to be performed by the Administrator in accordance with paragraph (d)(2) of this section.

(2) *Allowance adjustments by Administrator.* (i) The Administrator will adjust the number of allowances in the Allowance Tracking System accounts for the opt-in source and for each replacement unit to reflect any changes between the estimated values submitted in the thermal energy plan pursuant to paragraph (a) of this section and the actual values submitted in the thermal energy compliance report pursuant to paragraph (d) of this section. The values to be considered for this adjustment include:

(A) The number of allowances transferable by the opt-in source to each replacement unit, calculated in paragraph (b) of this section using the actual, rather than estimated, thermal energy at the replacement unit replacing thermal energy at the opt-in source.

(B) The number of allowances deducted from the Allowance Tracking System account of the opt-in source, calculated under § 74.44(b)(2).

(ii) If the opt-in source includes in the opt-in utilization report under § 74.44 estimates for reductions in heat input, then the Administrator will adjust the number of allowances in the Allowance Tracking System accounts for the opt-in source and for each replacement unit to reflect any differences between the estimated values submitted in the opt-

in utilization report and the actual values submitted in the confirmation report pursuant to § 74.44(c)(2).

(3) *Liability.* The owners and operators of an opt-in source or a replacement unit governed by an approved thermal energy plan shall be liable for any violation of the plan or this section at that opt-in source or replacement unit that is governed by the thermal energy plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

§ 74.48 Transfer of allowances from the replacement of thermal energy—process sources [Reserved]

§ 74.49 Calculation for deducting allowances.

(a) *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 opt-in source's compliance subaccount as of the allowance transfer deadline applicable to that year:

Total allowances deducted = Tons emitted + Allowances deducted for reduced utilization where:

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, "Tons emitted" shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar year, as reported in accordance with subpart F of this part for combustion sources or subpart G of this part for process sources.

(ii) If the effective date of the opt-in source's permit took effect on a date other than January 1, "Tons emitted" for the first calendar year shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar quarters for which the opt-in source's opt-in permit is effective, as reported in accordance with subpart F of this part for combustion sources or subpart G of this part for process sources.

(2) "Allowances deducted for reduced utilization" shall be the total number of allowances deducted for reduced utilization as calculated in accordance with § 74.44 for combustion sources or § 74.45 for process sources.

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

(a) *Deduction of allowances.* The Administrator may deduct any allowances that were allocated to an opt-in source under § 74.40 by removing, from any Allowance Tracking System accounts in which they are held, the allowances in an amount specified in paragraph (d) of this section, under the following circumstances:

(1) When the opt-in source has permanently shut down; or

(2) When the opt-in source has been reconstructed; or

(3) When the opt-in source becomes an affected unit under § 72.6 of this chapter; or

(4) When the opt-in source fails to renew its opt-in permit.

(b) *Method of deduction.* The Administrator will deduct allowances beginning with those allowances with the latest recorded date of transfer out of the opt-in source's unit account.

(c) *Notification of deduction.* When allowances are deducted, the Administrator will send a written notification to the authorized account representative of each Allowance Tracking System account from which allowances were deducted. The notification will state:

(1) The serial numbers of all allowances deducted from the account,

(2) The reason for deducting the allowances, and

(3) The date of deduction of the allowances.

(d) *Amount of deduction.* The Administrator may deduct allowances in accordance with paragraph (a) of this section in an amount required to offset any excess emissions in accordance with part 77 of this chapter and when an opt-in source does not hold allowances equal in number to and with the same or earlier compliance use date for the calendar years specified under § 74.46(b)(1) (i) through (iv) in an amount required to be deducted under § 74.46(b)(1) (i) through (iv).

Subpart F—Monitoring Emissions: Combustion Sources

§ 74.60 Monitoring requirements.

(a) *Monitoring requirements for combustion sources.* The owner or operator of each combustion source shall meet all of the requirements specified in part 75 of this chapter for the owners and operators of an affected unit to install, certify, operate, and maintain a continuous emission monitoring system, an excepted monitoring system, or an approved alternative monitoring system in accordance with part 75 of this chapter.

(b) *Monitoring requirements for opt-in sources.* The owner or operator of each opt-in source shall install, certify, operate, and maintain a continuous emission monitoring system, an excepted monitoring system, an approved alternative monitoring system in accordance with part 75 of this chapter.

§ 74.61 Monitoring plan.

(a) *Monitoring plan.* The designated representative of a combustion source shall meet all of the requirements specified under part 75 of this chapter for a designated representative of an affected unit to submit to the Administrator a monitoring plan that includes the information required in a monitoring plan under § 75.53 of this chapter. This monitoring plan shall be submitted as part of the combustion source's opt-in permit application under § 74.14 of this part.

(b) [Reserved].

Subpart G—Monitoring Emissions: Process Sources—[Reserved]

PART 75—CONTINUOUS EMISSION MONITORING

17. The authority citation for part 75 continues to read as follows:

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

18. Section 75.4 is amended by revising paragraph (a) introductory text, and by adding paragraph (a)(5) to read as follows:

§ 75.4 Compliance dates.

(a) The provisions of this part apply to each existing Phase I and Phase II unit on February 10, 1993. For substitution or compensating units that are so designated under the acid rain permit which governs the unit and contains the approved substitution or reduced utilization plan, pursuant to § 72.41 or § 72.43 of this chapter, the provisions of this part become applicable upon the issuance date of the acid rain permit. For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the provisions of this part become applicable upon the submission of an opt-in permit application in accordance with § 74.14 of this chapter. In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all certification tests for the required continuous emission monitoring systems and continuous opacity monitoring systems are completed not later than the following dates (except as provided in paragraphs (d) and (e) of this section):

* * * * *

(5) For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the expiration date of a combustion source's opt-in permit under § 74.14(e) of this chapter.

* * * * *

19. Section 75.16 is amended by revising paragraph (a)(2)(ii)(A) and (b)(2)(ii)(A) to read as follows:

§ 75.16 Special provisions for monitoring emissions from common by-pass, and multiple stacks for SO₂ emissions and heat input determinations.

- (a) * * *
- (2) * * *
- (ii) * * *

(A) Designate the Phase II units as substitution units according to the procedure in part 72 of this chapter and the non-affected units as opt-in sources in accordance with part 74 of this chapter and combine emissions for compliance purposes; or

* * * * *

- (b) * * *
- (2) * * *
- (ii) * * *

(A) Designate the non-affected units as opt-in sources in accordance with part 74 of this chapter and combine emissions for compliance purposes; or

* * * * *

20. Section 75.20 is amended by revising the first sentence after the heading in paragraph (a)(3) to read as follows:

§ 75.20 Certification and recertification procedures.

- (a) * * *

(3) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures for each continuous emission or opacity monitoring system or component thereof and subsequent submittal of a complete certification application in accordance with § 75.63, each continuous emission or opacity monitoring system or component thereof shall be deemed provisionally certified for use under the Acid Rain Program for a period not to exceed 120 days following receipt by the Administrator of the complete certification application; provided that no continuous emission or opacity monitoring systems for a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall be deemed provisionally certified for use under the Acid Rain Program. * * *

* * * * *

21. Section 75.63 is amended by revising paragraph (a) and (b)(1) to read as follows:

§ 75.63 Certification or recertification application.

(a) *Submission.* The designated representative for an affected unit or a combustion source seeking to enter the

Opt-in Program in accordance with part 74 of this chapter shall submit the request to the Administrator within 30 days after completing the certification test.

- (b) * * *

(1) A copy of the monitoring plan (or any modifications to the monitoring plan) for the unit, or units, or combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter, if not previously submitted.

* * * * *

22. Section 75.67 is revised to read as follows:

§ 75.67 Retired units petitions.

(a) For units that will be permanently retired prior to January 1, 1995, an exemption from the requirements of this part, including the requirement to install and certify a continuous emissions monitoring system, may be obtained from the Administrator if the designated representative submits a complete petition, as required in § 72.8 of this chapter, to the Administrator prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests.

(b) For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter that will be permanently retired and governed upon entry into the Opt-in Program by a thermal energy plan in accordance with § 74.47 of this chapter, an exemption from the requirements of this part, including the requirement to install and certify a continuous emissions monitoring system, may be obtained from the Administrator if the designated representative submits to the Administrator a petition for such an exemption prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests.

PART 77—EXCESS EMISSIONS

23. The authority citation for part 77 revised to read as follows:

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

24. Section 77.6 is amended by revising paragraph (a) to read as follows:

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

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

Such payment shall be submitted to the Administrator no later than 60 days after the end of any year during which excess emissions occurred at an affected unit or, for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter, or § 74.44(c)(2) of this chapter, by July 31 of the year in which the adjustments are made.

* * * * *

PART 78—APPEALS PROCEDURES FOR ACID RAIN PROGRAM

25. The authority citation for part 78 continues to read as follows:

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

26. Section 78.1 is amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 78.1 Purpose and scope.

(b) * * *

(3) Under part 74 of this chapter,

(i) The determination of incompleteness of an opt-in permit application;

(ii) The issuance or denial of an opt-in permit and approval or disapproval

of the transfer of allowances for the replacement of thermal energy;

(iii) The approval or disapproval of a permit revision to an opt-in permit;

(iv) The decision on the deduction or return of allowances under subpart E of part 74 of this chapter;

(4) Under part 75 of this chapter,

(i) The decision on a petition for approval of an alternative monitoring system;

(ii) The approval or disapproval of a monitoring system certification or recertification;

(iii) The finalization of annual emissions data, including retroactive adjustment based on audit;

(iv) The determination of the percentage of emissions reduction achieved by qualifying Phase I technology; and

(v) The determination on the acceptability of parametric missing data procedures for a unit equipped with add-on controls for sulfur dioxide and nitrogen oxides in accordance with part 75 of this chapter.

(5) Under part 77 of this chapter, the determination of incompleteness of an offset plan and the approval or disapproval of an offset plan under

§ 77.4 of this chapter and the deduction of allowances under § 77.5(c) of this chapter.

* * * * *

27. Section 78.3 is amended by revising paragraph (a)(1) introductory text, and paragraph (d)(2) to read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of this chapter and that is appealable under § 78.1(a) of this part:

* * * * *

(d) * * *

(2) Any provision or requirement of parts 72, 73, 74, 75, 76, or 77 of this chapter, including any standard requirement under § 72.9 of this chapter and any emissions monitoring or reporting requirements under part 75 of this chapter;

* * * * *

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