

$$\text{Unit Proceeds} = \left[\frac{\text{Unit's Special Allowance Deduction under §73.11(b)(5)}}{250000} \right] \times \text{Total Proceeds}$$

(c) *Reallocation of allowances.* (1) Allowances remaining in the Special Allowance Reserve following the annual auctions and sales (under subpart E of this part) for use in calendar years 1995 through 1999 will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

unit allowances = (Column B of Table 1 of section 73.10/150,000) × Allowances remaining

(2) Until June 1, 1998, allowances, for use in calendar years 2000 through 2009, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equations:

$$\text{Unit Allowances} = \left[\frac{\text{Table 2 Column B}}{250000} \right] \times \text{Allowances Remaining}$$

$$\text{Unit Allowances} = \left[\frac{\text{Table 3 Column B}}{250000} \right] \times \text{Allowances Remaining}$$

(3) On or after June 1, 1998, allowances, for use in calendar years 2000 through 2009, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and

sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Special Allowance Deduction under §73.11(a)(5)}}{250000} \right] \times \text{Allowances Remaining}$$

(4) Until June 1, 1998, allowances, for use in calendar years 2010 and thereafter, remaining in the Special Allowance Reserve at the end of each year following that year's auction and sale

(under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equations:

$$\text{Unit Allowances} = \left[\frac{\text{Table 2 Column G}}{250000} \right] \times \text{Allowances Remaining}$$

$$\text{Unit Allowances} = \left[\frac{\text{Table 3 Column G}}{250000} \right] \times \text{Allowances Remaining}$$

(5) On or after June 1, 1998, allowances, for use in calendar years 2010 and thereafter, remaining in the Special Allowance Reserve at the end of each year, following that year's auc-

tion and sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Special Allowance Deduction under § 73.11(b)(5)}}{250000} \right] \times \text{Allowances Remaining}$$

(d) *Calculation rounding.* All proceeds under this section shall be distributed as whole dollars. All calculations for such allowances shall be rounded down for decimals less than .5 and up for decimals of .5 or greater.

(e) *Achieving exact totals.* (1) If the sum of the proceeds to be distributed under paragraph (b) of this section exceeds the total proceeds or the allowances to be reallocated under paragraph (c) of this section exceeds the allowances remaining, then the Administrator will withdraw one dollar or allowance from each unit, beginning with the unit receiving the largest number of dollars or allowances, in descending order, until the distribution balances with the proceeds and the reallocated allowances balance with the remaining allowances.

(2) If the sum of the proceeds to be distributed under paragraph (b) of this section is less than the total proceeds or the allowances to be reallocated under paragraph (c) of this section is less than the allowances remaining,

then EPA will distribute one dollar or allowance for each unit, beginning with the unit receiving the largest number of dollars or allowances, in descending order, until the distribution balances with the proceeds and the reallocated allowances balance with the remaining allowances.

[58 FR 3687, Jan. 11, 1993, as amended at 58 FR 15714, Mar. 23, 1993]

Subpart C—Allowance Tracking System

SOURCE: 58 FR 3691, Jan. 11, 1993, unless otherwise noted.

§ 73.30 Allowance tracking system accounts.

(a) *Nature and function of unit accounts.* The Administrator will establish accounts for all affected units pursuant to § 73.31 (a) and (b). All allocations of allowances pursuant to subparts B, E, and F of this part and part 72 of this chapter, transfers of allowances made pursuant to subparts C and

D, and deductions of allowances made for purposes of offsetting emissions pursuant to § 73.35 (b) and (d) and parts 72, 75, and 77 of this chapter will be recorded in the unit's Allowance Tracking System account.

(b) *Nature and function of general accounts.* Transfers of allowances held for any person other than an affected unit, made pursuant to subparts C, D, E, F, and G of this part will be recorded in that person's Allowance Tracking System account established pursuant to § 73.31(c).

[58 FR 3687, Jan. 11, 1993; 58 FR 40747, July 30, 1993]

§ 73.31 Establishment of accounts.

(a) *Existing affected units.* The Administrator will establish an Allowance Tracking System account and allocate allowances for each unit that is, or will become, an existing affected unit pursuant to sections 404(a) or 405 of the Act and § 72.6 of this chapter.

(b) *New units.* Upon receipt of a complete certificate of representation for the designated representative for a new unit pursuant to part 72, subpart B of this chapter, the Administrator will establish an Allowance Tracking System account for the unit.

(c) *General accounts.* (1) Any person may apply to open an Allowance Tracking System account for the purpose of holding and transferring allowances. Such application shall be submitted to the Administrator in a format to be specified by the Administrator by means of the Allowance Account Information Form, or by providing the following information in a similar format:

(i) Name and title of the authorized account representative and alternate authorized account representative (if any) pursuant to § 73.33;

(ii) Mailing address, telephone number and facsimile transmission number (if any) of the authorized account representative and alternate authorized account representative (if any);

(iii) Organization or company name (if applicable) and type of organization (if applicable);

(iv) A list of all persons subject to a binding agreement for the authorized account representative to represent their ownership interest with respect

to the allowances held in the general account and which shall be amended and resubmitted within 30 days following any transaction giving rise to any change of the list of persons subject to the binding agreement;

(v) A certification statement by the authorized account representative and alternate authorized account representative (if any) that reads "I certify that I was selected under the terms of an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the Allowance Tracking System account. I certify that I have all necessary authority to carry out my duties and responsibilities on behalf of the persons with an ownership interest and that they shall be fully bound by my actions, inactions, or submissions under 40 CFR part 73. I shall abide by any fiduciary responsibilities assigned pursuant to the binding agreement. I am authorized to make this submission on behalf of the persons with an ownership interest for whom this submission is made. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false material information, or omitting material information, including the possibility of fine or imprisonment for violations.";

(vi) The signature of the authorized account representative and the alternate authorized account representative (if any); and

(vii) The date of the signature of the authorized account representative and the alternate authorized account representative (if any).

(2) Upon receipt of such complete application, the Administrator will establish an Allowance Tracking System account for the person or persons identified in the application.

(3) No allowance transfers will be recorded for a general account until the Administrator has established the new account.

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(d) *Account identification.* The Administrator will assign a unique identifying number to each account established pursuant to this section.

[58 FR 3687, Jan. 11, 1993; 58 FR 40747, July 30, 1993]

§ 73.32 Allowance account contents.

Each allowance account will include, at a minimum, the following:

(a) The name, address, telephone number and facsimile transmission number, if any, of the authorized account representative; and

(1) In the case of a unit account, a list of all persons identified as owners of record of the unit in § 72.24(a)(3) of this chapter, or

(2) In the case of a general account, a list of all persons subject to the binding agreement for the authorized account representative to represent their ownership interest with respect to allowances, as identified in accordance with § 73.31(c);

(b) A list of transfers of allowances to, and from, the account, including the identity of the transferrer and transferee accounts;

(c) In the case of a unit account for an existing affected unit, beginning in 1995, a compliance subaccount;

(d) In the case of a unit account for a new unit, a compliance subaccount;

(e) In the case of a general account, a current year subaccount;

(f) Future year subaccounts for each of the 30 calendar years following the later of 1995 or the current calendar year;

(g) In the case of a unit account, the current total of sulfur dioxide emissions in tons for the current calendar year as reported to date pursuant to part 75 of this chapter.

[58 FR 3687, Jan. 11, 1993; 58 FR 40747, July 30, 1993]

§ 73.33 Authorized account representative.

(a) Following the establishment of an Allowance Tracking System account, all matters pertaining to the account, including, but not limited to, the deduction and transfer of allowances in the account, shall be undertaken only by the authorized account representative.

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each authorized account representative or alternate authorized account representative identified pursuant to § 73.31(c).

(c) *Notification of parties subject to the binding agreement.* The authorized account representative for a general account shall notify, in writing, all persons who have an ownership interest with respect to the allowances held in the account of any Acid Rain Program submission required by this part or in a procedure under part 78 of this chapter, by the date of submission. Each person who has an ownership interest with respect to the allowances held in the account may expressly waive his or her right to receive such notification.

(d) *General account alternate authorized account representative.* Any application for opening a general account may designate one alternate authorized account representative to act on behalf of the certifying authorized account representative, in the event the authorized account representative is absent or otherwise not available to perform actions and duties under this part. The alternate shall be a natural person and shall be authorized, provided that the conditions and procedures specified in § 73.31(c)(1) are met.

(1) The alternate authorized account representative may be changed at any time by the authorized account representative upon receipt by the Administrator of a new complete application as required in § 73.31(c);

(2) The alternate authorized account representative shall be subject to the provisions of this part applicable to authorized account representatives;

(3) Whenever the term "authorized account representative" is used in this part it shall be construed to include the alternate authorized account representative, unless such a construction would be illogical from the context; and

(4) Any action, representation or failure to act by the alternate authorized account representative when acting in that capacity shall be deemed to be an action of the authorized account representative, with all the rights, duties, and responsibilities pertaining thereto.

(e) *Changes to the general account authorized account representative.* An authorized account representative for a general account may be succeeded by any person who submits an application pursuant to § 73.31(c). The actions of an authorized account representative for a general account shall be binding on any successor.

(f) *Objections to the authorized account representative.* Except for a certification pursuant to paragraph (e) of this section, no objection or other communication submitted to the Administrator concerning any submission to the Administrator by the authorized account representative shall affect the recordation of transfers submitted by the authorized account representative pursuant to subpart D of this part. Neither the United States, the Administrator, nor any permitting authority will adjudicate any dispute between and among persons concerning any submission to the Administrator by the authorized account representative; any actions of the authorized account representative; or any other matter arising directly or indirectly from the certification, actions or representations of the authorized account representative.

§ 73.34 Recordation in accounts.

(a) *Recordation in compliance subaccounts.* At the beginning of 1995 and, in the case of each year thereafter, after the Administrator has made all deductions from an affected unit's compliance subaccount pursuant to § 73.35(b), the Administrator will record in the compliance subaccount the allowances held in the future year subaccount for the year corresponding to the current calendar year. The future year subaccount for the new 30th year will be established at the same time and include the allowances allocated for the unit for that year pursuant to subpart B of this part.

(b) *Recordation in current year subaccounts.* At the beginning of 1995 and each year thereafter, the Administrator will record in the current year subaccount the allowances held in the future year subaccount for the year corresponding to the current calendar year.

(c) *Recordation in subaccounts.* Allowances in each compliance, current year,

and future year subaccounts will reflect:

(1) All allowances allocated or deducted for the unit for the year pursuant to subpart B of this part;

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

(3) All allowances allocated pursuant to subparts F and G of this part;

(4) All allowances recorded as a result of purchases or returns from the annual auctions or direct sale pursuant to subpart E of this part;

(5) All allowances recorded or deducted as a result of allowance transfers recorded pursuant to subpart D of this part; and

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

(d) *Serial numbers for allocated allowances.* Upon the allocation of allowances to an account, including allowances contained in reserves as provided in subpart B of this part, the Administrator will assign each allowance a unique identification number that will include digits identifying the allowance's compliance use date.

[58 FR 3691, Jan. 11, 1993, as amended at 60 FR 17114, Apr. 4, 1995]

§ 73.35 Compliance.

(a) *Allowance transfer deadline.* No allowance shall be deducted for purposes of compliance with an affected unit's sulfur dioxide Acid Rain emissions limitation requirements pursuant to title IV of the Act and paragraph (b) of this section unless:

(1) The compliance use date of the allowance is no later than the year in which the unit's SO₂ emissions occurred; and

(2) Such allowance is recorded in the compliance subaccount, or its transfer to the unit's compliance subaccount is submitted correctly pursuant to subpart D for recordation in the compliance subaccount for the unit by not later than the allowance transfer deadline of January 30 of the calendar year following the year for which compliance is being established in accordance with the requirements of subpart D of this part.

(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.

(c)(1) *Identification of allowances by serial number.* By no later than sixty days after the end of the calendar year, the authorized account representative for each unit account may identify by serial number the allowances to be deducted from the compliance subaccount for purposes of compliance with the unit's sulfur dioxide emissions limitation requirements. Such identification shall be made pursuant to part 72 of this chapter.

(2) *First-in, first-out.* In the absence of an identification or in the case of a partial identification of allowances by serial number, as provided for in paragraph (b)(1) or (d) of this section, the Administrator will deduct allowances on a first-in, first-out (FIFO) accounting basis beginning with those allowances with the earliest compliance use date originally allocated for the unit and recorded in its compliance subaccount. Following the deduction of all originally allocated allowances from the compliance subaccount, the Administrator will deduct those allowances that were transferred and recorded in the unit's compliance subaccount pursuant to subpart D of this part, beginning with those with the earliest date of recordation.

(d) *Deductions for excess emissions.* Pursuant to § 77.4 of this chapter, and following the process of recordation set forth in § 73.34(a) of this part, the Administrator will deduct allowances for each unit with excess emissions for the preceding calendar year in an amount equal to the unit's excess emissions tonnage.

(e) *Deductions for units sharing a common emission stack.* In the case of units sharing a common emission stack and have emissions that are not individually monitored pursuant to part 75 of this chapter, the authorized account representative may identify the percentage of allowances to be deducted from each unit's compliance subaccount. Such identification shall be made pursuant to part 72, subpart I of this chapter. In the absence of an identification, the Administrator will deduct an equal percentage of allowances from each unit's compliance subaccount.

[58 FR 3691, Jan. 11, 1993, as amended at 60 FR 17114, Apr. 4, 1995]

§ 73.36 Banking.

(a) *Unit accounts.* Any allowance in a compliance subaccount not deducted pursuant to § 73.35 will remain in the compliance subaccount.

(b) *General accounts.* In the case of a general account, any allowances in the current year subaccount at the end of the current calendar year will remain in the current year subaccount.

§ 73.37 Account error and dispute resolution.

(a) *Claim of error.* The authorized account representative may notify the Administrator of any claim that the Administrator made an error in recording transfer information that was submitted correctly pursuant to subpart D of this part, provided that such claim of error notification is submitted to the Administrator by no later than 15 business days following the date mark of the notification by the Administrator pursuant to actions taken under § 73.37(d) or § 73.53. Such claim of error notification shall be in writing and shall include:

(1) A description of the error alleged to have been made by the Administrator;

(2) A proposed correction of the alleged error;

(3) Any supporting documentation or other information concerning the alleged error and proposed correction; and

(4) Certification by the signature of and the date of the signature of the authorized account representative.

The Administrator will not act on claim of error notifications received after the stated deadlines (except as provided under paragraph (f) of this section, or that do not contend that the Administrator made an error in recordation.

(b) *EPA action.* The Administrator, at the Administrator's sole discretion based on documentation provided, will determine what changes, if any, will be made to the accounts subject to the alleged error. Not later than 20 business days after receipt of a claim of error notification pursuant to paragraph (a) of this section, the Administrator will submit to the authorized account representative a written response stating:

(1) The determination made and any action taken by, the Administrator; and

(2) The reasons for such action.

(c) *Administrative appeals procedure.* Following the Administrator's action pursuant to paragraph (b) of this section, the authorized account representative may appeal the Administrator's action through the administrative appeals procedure pursuant to part 78 of this chapter.

(d) *EPA corrections.* The Administrator may, without prior notice of a claim of error and in the Administrator's sole discretion, correct any errors in any account on his or her own motion. The Administrator will notify the authorized account representative by no later than 20 business days following any such corrections.

(e) *Excess emissions requirements.* The filing of a claim of error notification pursuant to paragraph (a) of this section, or the pendency of the Administrator's action pursuant to paragraph (b) of this section, shall not affect a unit's obligations under part 77 of this chapter.

(f) *Waiver of deadline.* The Administrator may, in his or her discretion, ac-

cept claim of error submissions made following the deadlines imposed in this section upon a demonstration by the authorized account representative of good cause for the delay. The finding of whether good cause exists shall be in the sole discretion of the Administrator. Appeals of a decision by the Administrator under this paragraph will be addressed pursuant to the administrative appeals process in part 78 of this chapter.

§ 73.38 Closing of accounts.

(a) *General account.* The authorized account representative of a general account may instruct the Administrator to close the general account by submitting an allowance transfer, pursuant to § 73.50 and § 73.52, requesting the transfer of all allowances held in the account to one or more other accounts in the Allowance Tracking System, and by submitting in writing, with the signature of the authorized account representative, a request to delete the general account from the Allowance Tracking System.

(b) *Inactive accounts.* If a general account shows no activity for a period of a year or more and does not contain any allowances in its subaccounts, the Administrator will notify the account's authorized account representative that the account will be closed and eliminated from the Allowance Tracking System following 20 business days from the date the notice is sent. The account will be closed following the 20-day period, unless the Administrator receives and records a request for the transfer of allowances into the account pursuant to § 73.52 before the end of the 20-day period, or the authorized account representative submits, in writing, demonstration of good cause as to why the inactive account should not be closed. The finding of whether good cause exists shall be in the sole discretion of the Administrator.

Subpart D—Allowance Transfers

SOURCE: 58 FR 3694, Jan. 11, 1993, unless otherwise noted.

§ 73.50 Scope and submission of transfers.

(a) *Scope of transfers.* Except as provided in § 73.51 and § 73.52, the Administrator will record transfers of an allowance to and from Allowance Tracking System accounts, including, but not limited to, transfers of an allowance to and from contemporaneous future year subaccounts, and transfers of an allowance to and from compliance subaccounts and current year subaccounts, and transfers of all allowances allocated for a unit for each calendar year, in perpetuity.

(b) *Submission of transfers.* (1) Authorized account representatives seeking recordation of an allowance transfer shall request such transfer by submitting to the Administrator, in a format to be specified by the Administrator, an Allowance Transfer Form. To be considered correctly submitted the request for transfer shall include:

- (i) The numbers identifying both the transferrer and transferee accounts;
- (ii) A specification by serial number of each allowance to be transferred, or correct indication on the allowance transfer where a request involves the transfer of the unit's allowances in perpetuity;
- (iii) Signatures of the authorized account representatives of both the transferrer and transferee accounts;
- (iv) The dates of the signatures of the authorized account representatives;
- (v) The numbers identifying the authorized account representatives for both the transferrer and transferee account; and
- (vi) Where the transferee account has not been established, information as required pursuant to § 73.31 (b) or (c).

(2) Transfers of allowances to or from compliance subaccounts submitted for recordation following the allowance transfer deadline will not be recorded until after completion of the process of recordation set forth in § 73.34(a).

§ 73.51 Prohibition.

Except as provided in § 73.34(a), the Administrator will not record a transfer of allowances from a future year subaccount to a subaccount for an earlier year.

§ 73.52 EPA recordation.

(a) *General recordation.* Except as provided in § 73.50, § 73.51, and this paragraph (a), the Administrator will record an allowance transfer by no later than five business days following receipt of an allowance transfer request pursuant to § 73.50, by moving each allowance from the transferrer account to the transferee account as specified by the request pursuant to § 73.50, provided that:

- (1) The information submitted pursuant to § 73.50 is complete;
 - (2) The transferrer account includes each allowance identified by serial number in the allowance transfer request submitted pursuant to § 73.50, except when a request for transfer of the unit's allowances in perpetuity is indicated correctly on the allowance transfer submission;
 - (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
 - (4) The transfer meets all applicable requirements of this subpart.
- (b) Where an allowance transfer submitted for recordation fails to meet the requirements of this subpart, the Administrator will not record such transfer.

[58 FR 3694, Jan. 11, 1993, as amended at 60 FR 17114, Apr. 4, 1995]

§ 73.53 Notification.

(a) *Notification of recordation.* The Administrator will notify each party to an allowance transfer within five business days following the recordation of the transfer. Notice will be given in writing or in a format to be specified by the Administrator, to the authorized account representatives of both the transferrer and transferee accounts.

(b) *Notification of non-recordation.* By no later than five business days following receipt of an allowance transfer request by the Administrator, the Administrator will notify, in writing or in

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a format to be specified by the Administrator, the authorized account representatives of the accounts subject to the allowance transfer request submitted for recordation of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of an allowance transfer request for recordation following notification of non-recordation.

Subpart E—Auctions, Direct Sales, and Independent Power Producers Written Guarantee

SOURCE: 56 FR 65601, Dec. 17, 1991, unless otherwise noted.

§ 73.70 Auctions.

(a) *Allowances to be auctioned.* Every year the Administrator will auction allowances from the Auction Subaccount, established pursuant to subpart B of this part, according to the following schedule:

TABLE I.—ALLOWANCE SCHEDULE FOR AUCTIONS

Year of purchase	Spot auction	Advance auction	Advance auction*
1993	50,000 ^a	100,000 ^b	
1994	50,000 ^a	100,000 ^b	25,000 ^c
1995	50,000 ^a	100,000 ^b	25,000 ^c
1996	150,000	100,000 ^b	25,000 ^c
1997	150,000	125,000 ^b	25,000 ^c
1998	150,000	125,000 ^b	
1999	150,000	125,000 ^b	
2000 and after	125,000	125,000 ^b	

^aNot usable until 1995.

^bNot usable until 7 years after purchase.

^cNot usable until 6 years after purchase.

*These are unsold advance allowances from the direct sale program for 1993, 1994, 1995, and 1996 respectively.

In addition to the allowances listed above, the Administrator will auction allowances pursuant to paragraph (c) of this section and § 73.72(q) in the amounts and at the times provided for therein.

(b) *Timing of the auctions.* The spot auction and the advance auction, and, if required pursuant to § 73.72(q), an additional advance auction will be held on the same day, selected each year by the Administrator, but no later than March 31 of each year. The Administrator will conduct one spot auction and one advance auction, and, if re-

quired to § 73.72(q), one additional advance auction in each calendar year.

(c) *Submittal for other allowances for auction.* Authorized account representatives may offer allowances for sale at auction, provided that allowances are dated for the year in which they are offered or for any previous year or for seven years following the year in which they are offered. Such authorized account representatives may specify a minimum price for the allowances offered at the auctions. The authorized account representative must notify the Administrator fifteen business days prior to the auctions, using the SO₂ Allowance Offer Form published by the Administrator, or by means of electronic communication if the Administrator, following public notice, so requires or permits at some future time. The notification shall include:

(1) The compliance use date of the allowances offered;

(2) The number of allowances to be sold and any other information identifying the allowances offered that may be required by subpart C of this part;

(3) Any minimum price in whole dollars; and

(4) Whether the authorized account representative is willing to sell fewer allowances than the number stated in paragraph (c)(2) of this section, if the full amount cannot be sold. After notification, the Administrator will deduct allowances from the appropriate Allowance Tracking System account from which allowances are being offered and place them in a separate subaccount for such allowances.

(d) *Conduct of the auctions.* (1) The Administrator will rank all bids in descending order of bid price starting with the highest. Allowances will be sold from the Auction Subaccount in this order at the amounts specified in the bids until there are no allowances in the subaccount. If all allowances are sold from the Auction Subaccount, including unsold allowances transferred from the preceding year's direct sale, and if bids still remain, the Administrator will sell allowances offered by the authorized account representatives, beginning with those offered at the lowest minimum price. Allowances offered at the lowest minimum price will be matched with the highest bid

remaining after the Auction Subaccount is exhausted. Sales of offered allowances, including, but not limited to, allowances offered by more than one offeror at the same minimum bid price, will continue in ascending order of minimum price, starting with the lowest, and descending order of remaining bids, starting with the highest, until:

- (i) All allowances are sold,
- (ii) No bids remain, or
- (iii) Prices of remaining bids do not meet minimum prices required in remaining offers.

(2) In the event that there is more than one bid submitting the same price and the total number of allowances requested in all such bids exceeds the number of allowances remaining, the Administrator will award the remaining allowances by lottery to such bidders.

(3) In the event that there are more offers of sale at the minimum price than there are bids meeting that price, allowances from all such offers will be sold to cover the bids, according to each such offeror's pro rata share of all allowances so offered.

(4) In the event that fewer allowances remain than are requested in a bid, the Administrator will sell such remaining allowances to the bidder provided that, pursuant to §73.71(b)(4), the bid states the bidder's willingness to purchase fewer allowances than requested in the bid.

(5) In the event that fewer than all allowances included in an offer for sale would be sold to remaining bids based on price, the Administrator will sell such allowances to the bidder(s), provided that, pursuant to §73.70(c)(4), the offer states the offeror's willingness to sell fewer allowances than were offered for sale.

(e) *Announcement of results.* Following each auction, the Administrator will publish the names of winning bidders and their bids, the amounts of losing bids, and the lowest price at which allowances are sold. The Administrator will announce the results of each auction through the Allowance Tracking System. The results will also be published in the FEDERAL REGISTER and in the Commerce Business Daily.

(f) *Transfer of allowances.* Allowances will be transferred from the Auction Subaccount and from the subaccount for allowances offered by authorized account representatives to the Allowance Tracking System accounts of successful bidders as soon as payment is collected by the Administrator.

(g) *Return of unsuccessful bids.* The Administrator will return payment to unsuccessful bidders and to bidders unwilling to purchase fewer allowances than requested following the conclusion of each auction.

(h) *Transfer of proceeds.* The Administrator will return all proceeds from the auction as follows:

(1) Allowances auctioned from the Auction Subaccount. Not later than 90 days following each auction, the Administrator will pay a pro rata share of the proceeds of each auction to the authorized account representative of each unit from whose annual allowance allocation allowances were withheld for the purposes of establishing the Auction Subaccount. Each unit's pro rata share will be calculated pursuant to regulations to be promulgated under subpart B.

(2) Allowances contributed from others. Not later than 90 days following each auction, the Administrator will transfer the full amount of the proceeds of each sale of allowances offered by authorized account representatives to such representatives. Proceeds from the sale of allowances that were offered with the same specified minimum price will be distributed according to each such offeror's pro rata share of the sale of such allowances.

(3) The Administrator will pay no interest on any payment made pursuant to paragraphs (h) (1) and (2) of this section.

(i) *Return of unsold allowances.* The Administrator will return all unsold allowances from the auction as follows:

(1) Allowances in the Auction Subaccount. At the conclusion of each auction, the Administrator will transfer to the Allowance Tracking System account of each unit specified in paragraph (h)(1) of this section its pro rata share of any allowances remaining in the Auction Subaccount. Each unit's

pro rata share will be calculated pursuant to regulations to be promulgated under subpart B.

(2) Allowances contributed from others. At the conclusion of each auction, the Administrator will return unsold allowances to the appropriate offerors' Allowance Tracking System accounts. Any unsold allowances that were offered with the same specified minimum price will be distributed according to each such offeror's pro rata share of all such allowances offered.

[56 FR 65601, Dec. 17, 1991, as amended at 61 FR 28763, June 6, 1996]

EFFECTIVE DATE NOTE: At 61 FR 28763, June 6, 1996, §73.70 was amended by revising table I in paragraph (a), effective August 5, 1996. For the convenience of the user, the superseded text is set forth as follows:

§ 73.70 Auctions.

(a) * * *

TABLE 1—ALLOWANCE SCHEDULE FOR AUCTIONS

Year of purchase	Spot auction	Advance auction
1993	^b 50,000	^a 100,000
1994	^b 50,000	^a 100,000
1995	50,000	^a 100,000
1996	150,000	^a 100,000
1997	150,000	^a 100,000
1998	150,000	^a 100,000
1999	150,000	^a 100,000
2000 and after	100,000	^a 100,000

^a Not useable until 7 years after purchase.
^b Not useable until 1995.

* * * * *

§ 73.71 Bidding.

(a) *Who may participate in the auctions.* Any person may participate in the auctions by submitting a bid or bids pursuant to this section.

(b) *Bidding.* Sealed bids shall be sent to the Administrator using the Bid Form for SO₂ Allowance Auctions, or some method of electronic transfer if the Administrator, following public notice, so requires or permits at some future time. The bid form shall state:

- (1) The number of allowances sought and the price;
- (2) Whether spot or advance allowances are sought;
- (3) Allowance Tracking System account number;

(4) Whether the bidder is willing to purchase fewer allowances than the number of allowances stated in (b)(1) of this section if the full amount is not available. Where the bidder holds no Allowance Tracking System account, a New Account/New Authorized Account Representative Form must accompany the bid. New account information shall include at a minimum: Name, address, telephone number, facsimile number, organization or company name (if applicable), type of organization, and the authorized account representative for purposes of the account.

(c) *Payment.* Each bid must include a certified check or letter of credit for the total bid price, or may specify a method of electronic transfer or other method of payment, if the Administrator, following public notice, so requires or permits at some future time. The certified check should be made payable to the U.S. EPA. To meet the requirements of this paragraph bidders must submit a completed SO₂ Allowance Auction Letter of Credit Form. If such Form is used, the Administrator must receive full payment for allowances awarded at the auctions, either by wire transfer or certified check, no later than 2 business days after the results of the auction are announced in the Allowance Tracking System.

(d) *Bid amount and number of bids.* Bidders may request any number of allowances up to the amount of allowances available for auction. Any person may submit more than one bid in each auction, provided that each bid meets the requirements of this section.

(e) *Submission of bids.* The Administrator will publish in the FEDERAL REGISTER and in the Commerce Business Daily the address of where to submit bids and payment not later than 60 calendar days before each auction.

(f) *Deadline for bids.* All bids must be revised by the Administrator no later than 3 business days prior to the date of the auctions.

§ 73.72 Direct sales.

Allowances that were formerly part of the direct sale program, which has been terminated under §73.73(b), will be

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included in the annual allowance auctions in accordance with § 73.70(a).

[61 FR 28763, June 6, 1996]

EFFECTIVE DATE NOTE: At 61 FR 28763, June 6, 1996, § 73.72 was revised, effective Aug. 5, 1996. For the convenience of the user, the superseded text is set forth as follows:

§ 73.72 Direct sales.

(a) *Allowances to be sold.* The Administrator will sell allowances every year according to the following schedule:

TABLE 1—ALLOWANCE SCHEDULE FOR THE DIRECT SALE

Year of purchase	Spot sale	Advance sale
1993		^a 25,000
1994		^a 25,000
1995		^a 25,000
1996		^a 25,000
1997		^a 25,000
1998		^a 25,000
1999		^a 25,000
2000 and after	25,000	^a 25,000

^aNot useable until 7 years after purchase.

(b) *Adjustment of the direct sale schedule.* The schedule listed in paragraph (a) of this section will be adjusted to reflect allowances subject to IPP written guarantees pursuant to § 73.74.

(c) *Price.* Allowances in the direct sale will be sold at \$1,500 per allowance, adjusted by the Consumer Price Index (CPI). The following formula will be used each year to calculate the price:

$$\$1,500 \times \left(1 + \frac{\text{CPI (year)} - \text{CPI (1990)}}{\text{CPI (1990)}} \right)$$

(d) *Form and timing of the direct sale.* The Administrator will begin accepting applications for the direct sale on June 1st of each calendar year and will continue to accept applications up to 10 calendar days prior to the allowance transfer deadline.

(e) *Who may purchase from the direct sale.* Any person may apply to purchase allowances from the direct sale.

(f) *Amount allowed to purchase.* Applicants may request to purchase any number of allowances up to the amount available for sale in the Direct Sale Subaccount.

(g) *Request to purchase allowances.* Applicants shall submit the Direct Sale Application Form to request to purchase allowances from the Administrator, or shall make such request by some method of electronic transfer if the Administrator, following public notice, so requires or permits at some future

time. The Direct Sale Application Form shall state:

(1) The number of allowances sought;
 (2) Whether spot or advance allowances are sought;

(3) The Allowance Tracking System account number; and

(4) Whether the applicant is willing to purchase fewer allowances than the number of allowances stated in (g)(1) of this section, if the full amount is not available. Where the applicant holds no Allowance Tracking System account, a New Account/New Authorized Account Representative Form must accompany the application. New account information shall include at a minimum: Name, address, telephone number, facsimile number, organization or company name (if applicable), type of organization, and the authorized account representative for purposes of the account.

(h) *Submission of direct sale applications.* The Administrator will publish in the FEDERAL REGISTER and in the Commerce Business Daily the address of where to submit Direct Sale Application Forms no later than 60 calendar days before each direct sale.

(i) *First come, first served.* Applications will be approved in order of receipt, indicated by the date and time stamped on the applications upon arrival at the destination indicated pursuant to paragraph (h) of this section.

(j) *Partial fulfillment of requests.* In the event the number of allowances requested for a purchase exceeds the number of allowances remaining in the Direct Sale Subaccount, the Administrator will approve the request for the number of allowances remaining, provided that, pursuant to paragraph (g)(4) of this section, the application states the applicant's willingness to purchase fewer allowances than the number stated in its application. In all other cases, the Administrator will place applicants on the waiting list pursuant to paragraph (n) of this section.

(k) *Notification of approval.* After approving an application, the Administrator will notify the applicant of the amount and type of allowances that may be purchased, the date on which the approval was made, the exact price of allowances for purchase from the direct sale, and instructions for making payment.

(l) *Payment.* Applicants shall submit 50% of the total purchase price by six months after the date of approval of their request to purchase. Pursuant to paragraph (m) of this section, the remaining 50% must be paid on or before the allowance transfer deadline. In the event that approval is granted less than six months prior to the allowance transfer deadline, payment shall be made on or before the allowance transfer deadline, pursuant to paragraph (m) of this section. The Administrator will terminate the approval of any request to purchase upon failure to pay the

50% deposit within six months. Upon failure to submit timely payment for the remaining balance, the Administrator will terminate the sale and the deposit will be forfeited. The 50% deposit and the final payment shall be made by certified check or by some method of electronic transfer or other instrument if the Administrator, following public notice, so requires or permits at some future time. The certified check should be made payable to the U.S. EPA.

(m) *Oversubscription payment deadline.* The Administrator will assess the status of the allowance reservations to the Direct Sale Subaccount on December 1 of each year the direct sale is held. In the event that the direct sale is oversubscribed by December 1, the Administrator will require full payment for reserved allowances no later than the oversubscription payment deadline for those applicants whose applications were previously approved and for whom allowances were reserved. Allowances will be transferred immediately upon such payment.

(n) *Oversubscription to the direct sales program.* Applications received after all allowances in the Direct Sale Subaccount are subject to approved applications shall be included on a waiting list and ranked in order of receipt, as indicated by the time and date stamped on the application upon arrival at the destination indicated pursuant to paragraph (h) of this section. In the event that an approved application is terminated pursuant to paragraph (l) of this section, applications on the waiting list will be approved according to the order in which they are ranked, subject to paragraph (i) of this section. Approved applicants will be notified pursuant to paragraph (k) of this section. If applicants without reserved allowances wish to contact those wait-listed applicants for whom allowances have been reserved, in case such applicants choose not to purchase their reserved allowances, the Administrator will make such information available upon request. Full payment for allowances must be collected by the Administrator on or before the allowance transfer deadline.

(o) *Transfer of allowances.* Allowances will be transferred to purchasers' Allowance Tracking System accounts from the Direct Sale Subaccount as soon as full payment is collected.

(p) *Transfer of proceeds.* Not later than 90 days after the conclusion of the direct sale, the Administrator will pay a pro rata share of the total proceeds of the direct sale (including forfeited deposits) to the authorized account representatives of each unit from whose annual allocation allowances are withheld for the purposes of establishing the Direct Sale Subaccount. The Administrator will pay no interest on such payment. Each unit's pro rata share will be calculated pursuant to regulations to be promulgated under subpart B of this part.

(q) *Unsold allowances in the Direct Sale Subaccount.* If allowances remain in the Direct Sale Subaccount after the allowance transfer deadline, the Administrator will transfer those allowances to the Auction Subaccount. All allowances remaining from the spot sale will be sold in the spot auction in the following year. Advance allowances transferred from the direct sale will be sold in an additional advance auction the following year, in which allowances usable for compliance in six years will be sold. This additional auction will be conducted before allowances offered by authorized account representatives are auctioned.

[56 FR 65601, Dec. 17, 1991, as amended at 58 FR 3695, Jan. 11, 1993; 58 FR 15650, Mar. 23, 1993]

§ 73.73 Delegation of auctions and sales and termination of auctions and sales.

(a) *Delegation.* The Administrator may, in the Administrator's discretion, by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by non-governmental agencies, groups, or organizations.

(b) *Termination of sales.* If the Administrator determines that, during any period of 2 consecutive calendar years, fewer than 20 percent of the allowances available in the subaccount for direct sales have been purchased, the Administrator shall terminate the Direct Sale Subaccount and transfer such allowances to the Auction Subaccount.

(c) *Termination of auctions.* The Administrator may, in the Administrator's discretion, terminate the withholding of allowances and the auctions if the Administrator determines, that, during any period of 3 consecutive years after 2002, fewer than 20 percent of the allowances available in the Auction Subaccount have been purchased.

§ 73.74 Independent power producers written guarantee.

(a) *Nature of guarantee.* The written guarantee is a right to purchase allowances from the Direct Sale Subaccount for \$1,500 (CPI adjusted) prior to the time in each calendar year that such allowances are offered for sale to others.

(b) *Issuance of a guarantee.* IPP written guarantees will be issued for a unit

and not to the unit's owners and may only be transferred with the unit itself. Each guarantee application pertains to one specific unit.

(c) *Yearly total number guaranteed.* The number of allowances which may be subject to such written guarantees each year will be equal to the total number of allowances in the Direct Sales Subaccount for that year (50,000).

(d) *Duration of the guarantee.* Applicants may request a guarantee for the useful life of the unit, up to 30 years, beginning in the year 2000.

(e) *Termination of the guarantee.* The Administrator will terminate a written guarantee if the unit for which a guarantee is issued has not commenced commercial operation by January 1, 2000 or within two years of the planned start-up date of the unit, whichever is later, or if the holder of the guarantee fails to make a continuing good faith effort to obtain allowances, including participation in the annual auctions, as required under section 416(c)(4) of the Act. The Administrator will also terminate a guarantee if the holder of the guarantee fails to notify the Administrator of the continued need for the guarantee pursuant to § 73.76(e).

EFFECTIVE DATE NOTE: At 61 FR 28763, June 6, 1996, § 73.74 was removed, effective Aug. 5, 1996.

§ 73.75 Application for an IPP written guarantee.

(a) *Application requirements.* Applicants shall demonstrate the following by filling out the Application for an IPP Written Guarantee for SO₂ Allowances:

(1) *Certification of Qualifications.* Each applicant shall certify that it is the owner or operator of a new independent power production facility and that it meets the criteria set forth in the definition of new independent power production facility, and, where applicable, submit a certified statement from a senior manager (who shall meet the requirements of "certifying official" set forth in § 73.3) of its affiliate that it cannot supply all or any of the required allowances.

(2) *Proof of "propose to construct"* a new unit. Each applicant shall demonstrate any *one* of the following:

(i) That it has been selected as a winning bidder in a utility competitive bid solicitation;

(ii) That it has entered into a legally binding power sales agreement or such agreement has been entered into on its behalf;

(iii) That it has entered into a legally binding fuel supply agreement or such agreement has been entered into on its behalf;

(iv) That it has received a site lease or proof of land acquisition;

(v) That it has entered into a legally binding steam sales agreement or such agreement has been entered into on its behalf; or

(vi) That it has submitted a complete environmental permit application or has received such a permit.

Each applicant shall submit the relevant document in support of the demonstration. If the document is longer than 10 pages, only the signature page(s) and the first 10 pages of the document shall be submitted.

(3) *Pledge to apply for financing.* The applicant shall certify that it will apply for, or has applied for, financing for the unit after January 1, 1990 and before the date of the 1993 auction.

(4) *Submission of written offers at \$750.* The applicant shall certify that it has made offers to purchase some or all of the required allowances at \$750 each from all phase I utilities, but that it received no unconditional acceptances within 180 days from the date on which each offer was made.

(5) *Other information required.* The applicant shall submit the following information for the unit:

(i) The proposed location (complete address);

(ii) The proposed production capacity and fuel source;

(iii) Sulfur dioxide emissions limitations under which the unit will be required to operate;

(iv) Projected annual emissions of sulfur dioxide;

(v) Annual allowances requested;

(vi) The proposed date on which the unit will commence commercial operation; and

(vii) The unit's expected operating lifetime.

(b) *Application submitted after the 1993 auction.* An application may be submitted after the date of the 1993 auctions provided that it meets all the requirements of paragraph (a) of this section and includes Supplement A of the Application For An IPP Written Guarantee For SO₂ Allowances which requests the name of the financial entity(ies) to whom application for financing was made.

(c) *Submittal location.* Completed applications shall be submitted to: U.S. Environmental Protection Agency, Acid Rain Division (ANR-445), 401 M Street, SW., Washington, DC 20460, attn.: IPP Written Guarantee.

(d) *Certification.* Certification of all requirements shall be made by a certifying official upon his/her verification of all information and documentation submitted. Changes by an applicant in the name of the certifying official must be made in writing to the Administrator.

(e) *Recordkeeping requirements.* Applicants shall maintain and make available to the Administrator, at the Administrator's request, copies of the \$750 written offers to Phase I utilities, any responses to such offers, and copies of documents showing the project milestones set forth in paragraph (a)(2) of this section that have been attained. Holders of written guarantees shall retain copies of their bids in the annual auctions and any written offers made to other allowance holders and shall make such documents available to the Administrator at the Administrator's request.

EFFECTIVE DATE NOTE: At 61 FR 28763, June 6, 1996, § 73.75 was removed, effective Aug. 5, 1996.

§ 73.76 Approval and exercise of the IPP written guarantee.

(a) *First come, first served.* The Administrator will process and approve or disapprove, in whole or in part, applications received on or after the effective date of the regulations. The Administrator will issue guarantees pursuant to approved applications according to the order in which applications are received, as indicated by the date and time stamped on the applications upon arrival at the destination indicated in § 73.75(c).

(b) *Oversubscription to the IPP written guarantee program.* Applications received after all allowances in the Direct Sale Subaccount have become subject to written guarantees or when there is an insufficient number of allowances available to satisfy the amount requested for any year covered by the guarantee will be included on a waiting list and ranked in order of time and date of receipt. In the event that an IPP guarantee is terminated pursuant to § 73.74(e), the Administrator will process applications on the waiting list by rank order and will issue guarantees pursuant to any approved application.

(c) *Deficient applications.* The Administrator may, in his or her discretion, return applications that fail to meet the requirements set forth in §§ 73.75 (a) and (b) if applicable. Revised applications will be processed according to the date and time of receipt of such revised applications.

(d) *Notification of approval.* The Administrator will issue a written guarantee pursuant to each approved application within 30 calendar days of receipt, provided that there is a sufficient number of allowances available to satisfy the guarantee for each year covered by the guarantee at the time the application is processed.

(e) *Certification of continued need for the guarantee.* (1) By no later than June 30 and December 31 of 1992 and no later than December 31 of each year thereafter, the certifying official for a unit for which a guarantee has been issued shall certify, through written notification, to the Administrator that the unit continues to require allowances subject to the guarantee pursuant to § 73.75.

(2) As soon as a unit for which a guarantee has been issued is no longer in need of any or all of the allowances subject to the guarantee, the certifying official shall notify the Administrator, in writing, of the number of allowances that are no longer needed. Pursuant to the terms of the notification, the Administrator will reduce the number of allowances subject to the guarantee or terminate the guarantee.

(f) *Exercise of guarantee.* Allowances may be purchased in each year for those years for which the guarantee

has been issued provided that they are purchased for the unit for which the guarantee has been issued. In any year, the certifying official of a unit for which a guarantee is issued may purchase any number of allowances up to the maximum number specified in the guarantee for such year. Allowances purchased through guarantees will be fully transferable.

(1) Notification and response. To exercise a written guarantee, the certifying official shall notify the Administrator of the number of allowances to be purchased. Such notification shall be in writing and signed by the certifying official pursuant to § 73.75(d). The Administrator, following public notice, may require or permit a method or methods of electronic transfer of this information. The Administrator will respond to the written notification within 5 business days after receipt by sending the certifying official a statement of the exact price for the allowances and where to send payment. If the certifying official does not have an account in the Allowance Tracking System, the New Account/New Authorized Account Representative Form shall be completed and mailed with payment.

(2) Payment. Certifying officials shall purchase allowances by certified check for the total amount or by some method of electronic transfer or other instrument, if the Administrator, following public notice, so requires or permits at some future time. The certified check shall be made payable to U.S. EPA.

(3) Time period to exercise. Notification to exercise a guarantee shall be received by the Administrator no later than April 15th of the calendar year in which allowances are to be purchased. Payment for allowances shall be collected by the Administrator no later than May 15th of that same year. If the direct sales program has been terminated pursuant to § 73.73(b), notification and payment may occur at any time prior to the allowance transfer deadline for each year in which allowances are to be purchased.

(g) *Transfer of allowances.* Allowances will be transferred into the unit's allowance system account as soon as full payment is collected.

(h) *Transfer of proceeds.* The Administrator will pay all proceeds from the exercise of written guarantees pursuant to § 73.72(p).

EFFECTIVE DATE NOTE: At 61 FR 28763, June 6, 1996, § 73.76 was removed, effective Aug. 5, 1996.

§ 73.77 Relationship of the independent power producers written guarantee to the direct sale subaccount.

(a) *Reserving allowances in the Direct Sale Subaccount.* The Administrator will make available up to 50,000 yearly allowances in the direct sales subaccount for written guarantees. The Administrator will first reserve for IPP guarantees the 25,000 yearly allowances in the advance sale category. If more than 25,000 yearly allowances are subject to guarantees, the excess allowances needed will be reserved from the spot allowance category, up to 25,000 each year.

(b) *Adjustment of the direct sale schedule.* If fewer than 25,000 advance allowances are subject to written guarantees for any year from 2000 through 2006, any remaining advance allowances will be sold in the advance sale seven years preceding that year. If all 25,000 advance allowances are reserved for written guarantees for 2000 through 2006, the direct sale will begin in the year 2000 and will consist only of spot sales of allowances not sold pursuant to written guarantees.

(c) *Continuation of the guarantee.* Termination of the direct sale will not affect IPP written guarantees which will continue in effect for the operating life of the unit or 30 years, whichever is shorter, unless terminated pursuant to § 73.74(e).

(d) *Guaranteed allowances not sold.* If a certifying official of a unit for which a guarantee is issued chooses not to exercise the guarantee for a year in which allowances are reserved, the allowances will be offered for sale in the direct sale beginning on June 1 of that year. In the event the direct sale is terminated, any unsold allowances will be transferred to the Auction Subaccount pursuant to § 73.72(q).

EFFECTIVE DATE NOTE: At 61 FR 28763, June 6, 1996, § 73.77 was removed, effective Aug. 5, 1996.

Subpart F—Energy Conservation and Renewable Energy Reserve

SOURCE: 58 FR 3695, Jan. 11, 1993, unless otherwise noted.

§ 73.80 Operation of allowance reserve program for conservation and renewable energy.

(a) *General.* The Administrator will allocate allowances from the Conservation and Renewable Energy Reserve (the "Reserve") established under subpart B based on verified kilowatt hours saved through the use of one or more qualified energy conservation measures or based on kilowatt hours generated by qualified renewable energy generation. Allowances will be allocated to applicants that meet the requirements of this subpart according to the formulas specified in § 73.82(d), and in the order in which applications are received, except where provided for in § 73.84 and § 73.85, until a total of 300,000 allowances have been allocated.

(b) *Period of applicability.* Allowances will be allocated under this subpart for qualified energy conservation measures or renewable energy generation sources that are operational on or after January 1, 1992, and before the date on which any unit owned or operated by the applicant becomes a Phase I unit or a Phase II unit.

(c) *Termination of the Reserve.* The Administrator will reallocate any allowances remaining in the Reserve after January 2, 2010 to the affected units from whom allowances were withheld by the Administrator, in accordance with section 404(g), for purposes of establishing the Reserve. Each unit's allocation under this paragraph will be calculated as follows:

$$\frac{\text{Remaining allowances in the Reserve} \times \text{Unit's allowances withheld}}{\text{Total amount in Reserve}}$$

(Allowances will be rounded to the nearest allowance)

[58 FR 3695, Jan. 11, 1993; 58 FR 40747, July 30, 1993]

§ 73.81 Qualified conservation measures and renewable energy generation.

(a) *Qualified energy conservation measures.* A qualified energy conservation measure is a demand-side measure not operational until the period of applicability, implemented in the residence or facility of a customer to whom the utility sells electricity, that:

(1) Is specified in appendix A(1) of this subpart; or

(2) In the case of a device or material that is not included in appendix A(1) of this subpart,

(i) Is a cost-effective demand-side measure consistent with an applicable least-cost plan or least-cost planning process that increases the efficiency of the customer's use of electricity (as measured in accordance with § 73.82(c)) without increasing the use by the customer of any fuel other than qualified renewable energy, industrial waste heat, or, pursuant to paragraph (b)(5) of this section, industrial waste gases;

(ii) Is implemented pursuant to a conservation program approved by the utility regulatory authority, which certifies that it meets the requirements of paragraph (a)(2)(i) of this section and is not excluded by paragraph (b) of this section; and

(iii) Is reported by the applicant in its application to the Reserve.

(b) *Non-qualified energy conservation measures.* The following energy conservation measures shall not qualify for Allowance Reserve allocations:

(1) Demand-side measures that were operational before January 1, 1992;

(2) Supply-side measures;

(3) Conservation programs that are exclusively informational or educational in nature;

(4) Load management measures that lead to economic reduction of electric energy demand during a utility's peak generating periods, unless kilowatt hour savings can be verified by the utility pursuant to § 73.82(c); or

(5) Utilization of industrial waste gases, unless the applicant has certified that there is no net increase in sulfur dioxide emissions from such utilization.

(c) *Qualified renewable energy generation.* Qualified renewable energy generation is electrical energy generation, not operational until the period of applicability, that:

(1) Is specified in appendix A(3) of this subpart; or

(2) In the case of renewable energy generation that is not included in appendix A(3) of this subpart is#:

(i) Consistent with a least cost plan or a least cost planning process and derived from biomass (*i.e.*, combustible energy-producing materials from biological sources which include wood, plant residues, biological wastes, landfill gas, energy crops, and eligible components of municipal solid waste), solar, geothermal, or wind resources;

(ii) Implemented pursuant to approval by the utility regulatory authority, which certifies that it meets the requirements of paragraphs (c)(2)(i) and (c)(2)(ii) of this section and is not excluded by paragraph (d) of this section; and

(iii) Is reported by the applicant in its application to the Reserve.

(d) *Non-qualified renewable energy generation.* The following renewable energy generation shall not qualify for Allowance Reserve allocations:

(1) Renewable energy generation that was operational before January 1, 1992;

(2) Measures that reduce electricity demand for a utility's customers without providing electric generation directly for sale to customers; and

(3) Measures that appear on the list of qualified energy conservation measures in Appendix A(1) of this subpart.

[58 FR 3695, Jan. 11, 1993; 58 FR 40747, July 30, 1993]

§ 73.82 Application for allowances from reserve program.

(a) *Application Requirements.* Each application for Conservation and Renewable Energy Reserve allowances, shall:

(1) Certify that the applicant is a utility;

(2) Demonstrate that the applicant, any subsidiary of the applicant, or any subsidiary of the applicant's holding company, is an owner or operator, in whole or in part, of at least one Phase I or Phase II unit by including in the application the name and Allowance Tracking System account number of a

Phase I or Phase II unit which it owns or operates and for which it is listed as an owner or operator on the certificate of representation submitted by the designated representative for the unit pursuant to § 72.20 of this chapter;

(3) Through certification, demonstrate that the applicant is paying in whole or in part for one or more qualified energy conservation measures or qualified renewable energy generation (that became operational during the period of applicability) either directly or through payment to another person that purchases the qualified energy conservation measure or qualified renewable energy generation;

(4) Demonstrate that the applicant is subject to a least cost plan or a least cost planning process that:

(i) provides an opportunity for public notice and comment or other public participation processes;

(ii) evaluates the full range of existing and incremental resources in order to meet expected future demand at lowest system cost;

(iii) treats demand-side resources and supply-side resources on a consistent and integrated basis;

(iv) takes into account necessary features for system operation such as diversity, reliability, dispatchability, and other factors of risk;

(v) may take into account other factors, including the social and environmental costs and benefits of resource investments; and

(vi) is being implemented by the applicant to the maximum extent practicable.

(5) Demonstrate that the qualified energy conservation measure adopted or qualified renewable energy generated, or both, are consistent with the least cost plan or least cost planning process;

(6) If the applicant is subject to the rate-making jurisdiction of a State or local utility regulatory authority, its least cost plan or least cost planning process has been approved or accepted by the utility regulatory authority in the State or locality in which the qualified conservation measure(s) are adopted or in which the qualified renewable energy generation is utilized, and such State or local utility regulatory authority certifies that the

least-cost plan or least-cost planning process meets the requirements of paragraph (a)(4) of this section;

(7) If the applicant is not subject to the rate-making jurisdiction of a State or local regulatory authority, its least cost plan or least cost planning process has been approved or has been accepted by the utility regulatory authority with rate-making jurisdiction over the applicant, and such utility regulatory authority certifies that the least cost plan or least cost planning process meets the requirements of paragraph (a)(4) of this section;

(8) If the applicant is an independent power production facility that sells qualified renewable energy generation to another utility, the applicant has enclosed documentation that such qualified renewable energy generation was purchased pursuant to the purchasing utility's least cost plan or least cost planning process, which has been approved or accepted by the purchasing utility's utility regulatory authority.

(9)(i) If the applicant is an investor-owner utility subject to the rate-making jurisdiction of a State utility regulatory authority and is submitting an application on the basis of one or more qualified energy conservation measures, such State utility regulatory authority has established a procedure for determining rates and charges ensuring net income neutrality, as defined in §72.2 of this chapter, including a provision that the utility's net income is compensated in full (considering factors such as risk) for lost sales attributable to the utility's conservation programs, which may include:

(A) General ratemaking for formulas that decouple utility profits from actual utility sales;

(B) Specific rate adjustment formulas that allow a utility to recover in its retail rates the full costs of conservation measures plus any associated net revenues lost as a result of reduced sales resulting from conservation initiatives; or

(C) Conservation incentive mechanisms designed to provide positive financial rewards to a utility to encourage implementation of cost-effective measures;

(ii) Provided that the existence of any one of the categories of rate-making or rate adjustment formulas or conservation incentive mechanisms specified in paragraph (a)(9)(i) of this section shall not necessarily constitute fulfillment of the net income neutrality requirement unless, pursuant to §73.83, the Secretary of Energy has certified the establishment of such net income neutrality;

(10) Demonstrate that the applicant has implemented the qualified energy conservation measures or used the qualified renewable energy generation specified in the application during the period of applicability;

(11) Demonstrate the extent to which installation of the qualified conservation measure(s) has achieved actual energy savings, by stating, on the basis of the performance of the measure(s) following installation:

(i) The amount of kilowatt hour savings resulting from the measure(s) in the given year(s);

(ii) Pursuant to paragraph (c) of this section, the methodology used to calculate the kilowatt hour savings; and

(iii) The name, address, and phone number of the person who performed the calculation of kilowatt hour savings;

(12) Report the type and amount of yearly qualified renewable energy generation, by stating (and submitting documentation, including copies of plant operation records, supporting such statements) the kilowatt hours of qualified renewable energy generated during a previous calendar year or years; and

(13) Report the extent to which qualified renewable energy generation was produced in combination with other energy sources (hereafter "hybrid generation") by stating (and submitting documentation, including copies of plant operation records, supporting such statements) the heat input and heat rate of the non-qualified renewable generation, the total annual kilowatt hours generated, and the kilowatt hours that can be attributed to qualified renewable energy generation;

(14) Demonstrate the extent to which the implementation of qualified energy conservation measures or the use of qualified renewable energy generation