

designated as a Phase I unit, unless such deduction is made.

(iv)(A) If there is a change in the ownership interest of the owners or operators of any unit under a substitution plan approved as meeting the requirements of paragraph (c)(5)(i) or (ii) of this section or a change in such owners' or operators' right to direct dispatch of electricity from a substitution unit under such a plan and the demonstration under paragraph (c)(5)(i) or (ii) of this section cannot be made, then the designated representatives of the units governed by this plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made.

(B) Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if there is a change in the agreement under paragraph (c)(5)(iii) of this section and a demonstration that the agreement, as changed, meets the requirements of paragraph (c)(5)(iii) cannot be made, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if the requirements of the first sentence of paragraph (e)(1)(iii)(A) of this section are not met during a calendar year, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of such calendar year.

(C) If the plan is not terminated in accordance with paragraphs (e)(3)(iv)(A) or (B) of this section, the Administrator, on his or her own motion, will terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

(D) Where a substitution unit and the Phase I unit designating the substitution unit in an approved substitution plan have a common owner, operator, or designated representative during a year, the plan shall not be terminated

under paragraphs (e)(3)(iv)(A), (B), or (C) of this section with regard to the substitution unit if the year is as specified in paragraph (e)(3)(iv)(D)(1) or (2) of this section and the unit received from the Administrator for the year, under the Partial Settlement in *Environmental Defense Fund v. Carol M. Browner*, No. 93-1203 (D.C. Cir. 1993) (signed May 4, 1993), a total number of allowances equal to the unit's baseline multiplied by the lesser of the unit's 1985 actual SO₂ emissions rate or 1985 allowable SO₂ emissions rate.

(1) Except as provided in paragraph (e)(3)(iv)(D)(2) of this section, paragraph (e)(3)(iv)(D) of this section shall apply to the first year in Phase I for which the unit is and remains an active substitution unit.

(2) If the unit has a Group 1 boiler under part 76 of this chapter and is and remains an active substitution unit during 1995, paragraph (e)(3)(iv)(D) of this section shall apply to 1995 and to the second year in Phase I for which the unit is and remains an active substitution unit.

(3) If there is a change in the owners, operators, or designated representative of the substitution unit or the Phase I unit during a year under paragraph (e)(3)(iv)(D)(1) or (2) of this section and, with the change, the units do not have a common owner, operator, or designated representative, then the designated representatives for such units shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. If the plan is not terminated in accordance with the prior sentence, the Administrator, on his or her own motion, will terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 40747, July 30, 1993; 59 FR 60230, 60238, Nov. 22, 1994; 62 FR 55481, Oct. 24, 1997]

§ 72.42 Phase I extension plans.

(a) *Applicability.* (1) This section shall apply to any designated representative seeking a 2-year extension of the deadline for meeting Phase I sulfur dioxide emissions reduction requirements at any of the following types of units by

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applying for allowances from the Phase I extension reserve:

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

(ii) A unit designated as a substitution unit in accordance with § 72.41; or

(iii) A unit designated as a compensating unit in accordance with § 72.43, except a compensating unit that is a new unit.

(2) A unit for which a Phase I extension is sought shall be either:

(i) A control unit, which shall be a unit under paragraph (a)(1) of this section and at which qualifying Phase I technology shall commence operation on or after November 15, 1990 but not later than December 31, 1996; or

(ii) A transfer unit, which shall be a unit under paragraph (a)(1)(i) of this section and whose Phase I emissions reduction obligation shall be transferred in whole or in part to one or more control units.

(3) A Phase I extension does not exempt the owner or operator for any unit governed by the Phase I extension plan from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.

(b) To apply for a Phase I extension:

(1) The designated representative for each source with a control unit may submit an early ranking application for a Phase I extension plan in person, beginning on the 40th day after publication of this subpart in the FEDERAL REGISTER, between the hours of 9 a.m. and 5 p.m. Eastern Standard Time at Acid Rain Division, Attn: Early Ranking, U.S. Environmental Protection Agency, 501 3rd Street NW., 4th floor, Washington, DC; or send the application by regular mail, certified mail, or overnight delivery service to Acid Rain Division, Attn: Early Ranking, U.S. Environmental Protection Agency, 6204 J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) By February 15, 1993:

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

(ii) The designated representative for each source with a unit designated as a transfer unit in any plan submitted

under paragraph (b)(2)(i) of this section shall incorporate in the Acid Rain permit application each such plan.

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

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

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

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

(4) For each control and transfer unit:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The parties to the contract;

(iii) The date each party executed the contracts;

(iv) The unit to which the contract applies;

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

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

(vii) The total dollar amount of the contract.

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

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

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

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

(1) Identification of each unit in the plan.

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

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

(iii) All elements required for an early ranking application and a statement that no early ranking application for the plan was submitted.

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

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

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

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

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

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

(iv) Based on the allowances requested under paragraph (c)(9) of this section, as adjusted by the Administrator in approving the early ranking

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

(v) The Administrator's action on an early ranking application shall be conditional on the Administrator's action on a timely and complete Acid Rain permit application that includes a complete Phase I extension plan and, where the plan includes a unit under paragraph (a)(1) (ii) and (iii) of this section, a complete substitution plan or reduced utilization plan, as appropriate.

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

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

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

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

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

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

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

(ii) Based on the allowances requested under paragraph (c)(9) of this section, as adjusted under paragraph (d) of this section and by the Administrator in approving the Phase I extension plan, the Administrator will allocate Phase I extension reserve allowances to the Allowance Tracking System account of each control and transfer unit upon issuance of an Acid Rain permit containing the approved Phase I extension plan. The allowances will be allocated using the procedures set forth in paragraph (e)(3) of this section.

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

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

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

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

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

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

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

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

$$\text{Allowances deducted} = (1 - (\text{percent reduction achieved} \cdot 90\%)) \times \text{Phase I extension reserve allowances received}$$

where:

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

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

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

(B) Notwithstanding paragraph (f)(1)(ii)(A) of this section, a transfer unit shall be subject to the Acid Rain

²In the case of a transfer unit that shares a common stack with a unit not listed in table 1 of § 73.10(a) of this chapter where the units are not monitored separately or apportioned in accordance with part 75 of this chapter, the combined emissions of both units will be deemed to be the transfer unit's emissions for purposes of applying paragraph (f)(1)(i) of this section.

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

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

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

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

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

§ 72.43 Phase I reduced utilization plans.

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

(1) Any Phase I unit, including:

(i) Any unit listed in table 1 of § 73.10(a) of this chapter; and

(ii) Any other unit that becomes a Phase I unit (including any unit designated as a compensating unit under this section or a substitution unit under § 72.41).

(2) Any affected unit that:

(i) Is not otherwise subject to any Acid Rain emissions limitation or emissions reduction requirements during Phase I; and

(ii) Meets the requirement, as set forth in paragraphs (c)(4)(ii) and (d) of this section, that for each year for which the unit is to be covered by the reduced utilization plan, the unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual SO₂ emissions rate or 1985 allowable SO₂ emissions rate does not exceed the sum of

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

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of: The greater of the unit's 1989 or 1990 actual SO₂ emissions rate; or, as of November 15, 1990, the most stringent federally enforceable or State enforceable SO₂ emissions limitation covering the unit for 1995-1999.

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

(i) Reduce utilization of the unit below the unit's baseline to achieve compliance, in whole or in part, with the unit's Phase I Acid Rain emissions limitations for sulfur dioxide; and

(ii) Accomplish such reduced utilization through one or more of the following:

(A) Shifting generation of the unit to a unit under paragraph (a)(2) of this section or to a sulfur-free generator; or

(B) Using one or more energy conservation measures or improved unit efficiency measures.

(2)(i) Energy conservation measures shall be either demand-side measures implemented after December 31, 1987 in the residence or facility of a customer to whom the unit's utility system sells electricity or supply-side measures implemented after December 31, 1987 in facilities of the unit's utility system.

(ii) The utility system shall pay in whole or in part for the energy conservation measures either directly or,