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(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 with-

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out 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 regu-

latory 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 has resulted in avoided tons of sulfur dioxide emissions by the utility during the period of applicability, pursuant to paragraph (d) of this section.

(b) *Application to the Secretary of Energy.* For purposes of paragraph (a)(9) of this section, the applicant shall fulfill the following requirements:

(1) If a utility applying for allowances from the Reserve has not received certification of net income neutrality from the Secretary of Energy or such certification is no longer applicable, the applicant shall submit to the Secretary of Energy:

(i) A copy of the relevant State utility regulatory authority's final order or decision setting forth the approved ratemaking mechanisms that ensure that a utility's net income will be at least as high upon implementation of energy conservation measures as such net income would have been if the energy conservation measures has not been implemented;

(ii) A description of how the State utility regulatory authority's order or decision meets the definition of net income neutrality as defined in § 72.2; and

(iii) Any additional information necessary for Secretary of Energy to certify that the State regulatory author-

ity has established rates and charges that ensure net income neutrality.

(2) If a utility applying for allowances from the Reserve has already received certification of net income neutrality from the Secretary of Energy in connection with a previous application for allowances, and the ratemaking methods or procedures that ensure net income neutrality have not been altered, the applicant shall certify that the ratemaking methods and procedures that led to the original certification are still in place.

(c) *Verification of energy savings methodology.* For the purposes of paragraph (a)(11) of this section:

(1) Applicants subject to the ratemaking jurisdiction of a State utility regulatory authority shall use the energy conservation verification methodology approved by such authority in support of energy conservation applications under this subpart and part 72 of this chapter, provided that

(i) The authority in question uses this methodology to determine the applicant's entitlement to performance-based rate adjustments, which permit a utility's rates to be adjusted for additional kilowatt hours saved due to the utility's energy conservation programs;

(ii) Such performance based rate adjustments are subject to modification either prospectively or retrospectively to reflect periodic evaluations of energy savings secured by the applicant; and

(iii) The applicant has provided the Administrator with a description of the State utility regulatory authority's verification methodology and documentation that the requirements of this paragraph (e) have been met.

(2) All other applicants, including applicants whose rates are not subject to the ratemaking jurisdiction of a State utility regulatory authority shall demonstrate to the satisfaction of the Administrator through submission of documentation that savings have been achieved and may use the EPA Conservation Verification Protocol.

(3) All records of verification of energy savings shall be kept on file by the applicant for a period of 3 years. The Administrator may extend this period for cause at any time prior to the

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end of 3 years by notifying the applicant in writing.

(4) The Administrator reserves the right to conduct independent reviews, analyses, or audits to ascertain that the verification is valid and correct. If the Administrator determines that the verification is not valid or correct, the Administrator may revise the allocation of allowances to an applicant or require the surrender of allowances from the applicant's Allowance Tracking System account.

(d) *Calculation of allowances to be allocated.* (1) In the case of an application submitted on the basis of qualified energy conservation measures, the sulfur dioxide emissions tonnage deemed avoided for any calendar year shall be equal to the product of:

$$\frac{(A) \times (B)}{2000 \text{ lbs./ton}}$$

(ROUNDED TO THE NEAREST TON)

where:

(A) = the kilowatt hours that were not, but would otherwise have been, supplied by the utility during such year in the absence of such qualified energy conservation measures.

(B) = 0.004 lbs. of sulfur dioxide per kilowatt hour.

(2) In the case of an application submitted on the basis of qualified renewable energy generation, the sulfur dioxide emissions tonnage deemed avoided for any calendar year shall be equal to the product of:

$$\frac{(A) \times (B)}{2000 \text{ lbs./ton}}$$

(ROUNDED TO THE NEAREST TON)

where:

(A) = the actual kilowatt hours of qualified renewable energy generated or purchased by the applicant (based on the qualified renewable energy generation portion for hybrid generation).

(B) = 0.004 lbs. of sulfur dioxide per kilowatt hour.

(e) *Certification by Applicant's Certifying Official.* (1) Certification of all application requirements, including the net income neutrality requirements,

shall be made by a certifying official of the applicant upon such official's verification of all information and documentation submitted.

(2) The applicant shall submit a certification statement signed by the applicant's certifying official that reads "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."

(f) *Certification by State Utility Regulatory Authority.* Applicants subject to the ratemaking jurisdiction of a State utility regulatory authority shall include in their applications a certification by the State utility regulatory authority's certifying official that it has reviewed the application, including supporting documentation, and finds it to be accurate, complete, and consistent with all applicable requirements of this subpart.

(g) *Time period to apply.* (1) Beginning no earlier than July 1, 1993, and no earlier than July 1 of each subsequent year, applicants may apply to the Administrator for allowances from the Reserve for emissions avoided in a previous year or years by use of qualified energy conservation measures or qualified renewable energy generation that became operational during the period of applicability; and

(2) Beginning no earlier than January 1, 1993, any applicant may apply to the Secretary of Energy for the Secretary's certification of net income neutrality where the application is based on the use of one or more qualified energy conservation measures.

(3) Applications will be received by the Administrator and the Secretary of Energy until January 2, 2010, pursuant to § 73.80(c), or until no allowances remain in the Reserve.

(h) *Submittal location.* Applicants shall submit one copy of the completed

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Reserve application, not including the net income neutrality application, via registered mail to the Administrator at an address to be specified in later guidance. Applicants shall submit 10 copies of the net income neutrality application via registered mail to the Department of Energy at the following address: Department of Energy, Office of Conservation and Renewable Energy, Mail Stop CE-10, Room 6c-036, 1000 Independence Avenue, SW., Washington, DC 20585, Attn: Net Income Neutrality Certification.

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

§ 73.83 Secretary of Energy's action on net income neutrality applications.

(a) *First come, first served.* The Secretary of Energy will process and certify net income neutrality applications on a "first-come, first served" basis, according to the order, by date and time, in which they are received from either the applicant or, in the case of an application submitted to the Administrator and then forwarded to the Secretary, from the Administrator.

(b) *Deficient applications.* If the Secretary of Energy determines that the net income neutrality certification application does not meet the requirements of § 73.82 (a)(9) and (b), the Secretary will notify the applicant and the Administrator in writing of the deficiency. The applicant may then supply additional information or a new revised application as necessary for the Secretary to make a determination that the applicant meets the requirements of § 73.28(a)(9) and (b). Additional information or revised applications will be processed according to the date of receipt of such information or revisions.

(c) *Notification of approval.* The Secretary of Energy will review the net income neutrality application to determine whether it meets the requirements of § 73.82 (a)(9) and (b) and will certify this finding in writing to the applicant and to the Administrator within 60 calendar days of receipt of the net income neutrality application or a revised application, except that the Secretary may specify a later date for certification.

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§ 73.84 Administrator's action on applications.

(a) *First come, first served.* The Administrator will process and approve Allowance Reserve applications, in whole or in part, on a "first-come, first-served" basis as established by the order of date of receipt, provided that the Administrator shall not allocate more than a total of 30,000 allowances in connection with applications based on any one of the four categories of qualified renewable energy generation enumerated in § 73.81(c)(2)(i) and appendix A(3.1-3.4).

(b) *Deficient applications.* An application is deficient and will be returned by the Administrator if it fails to meet the requirements set forth in this subpart, including those set forth in § 73.82. A revised application that is submitted after being returned for failure to meet the requirements of this subpart will be processed according to the date of receipt of the revised application.

(c) *Notification of approval.* Applications that the Administrator determines to be complete and correct will be conditionally approved, subject to notification to EPA of a net income neutrality certification from the Department of Energy, within 120 calendar days of receipt. Allowances from the Reserve will be awarded subject to the Department of Energy certification, or, if a DOE certification has already been issued to the applicant, allocated to applicants from such applications depending on the availability of allowances in the Reserve. In the event the initial application approval is conditioned upon the Secretary of Energy's certification, final approval will be granted upon notification of certification by the Secretary of Energy pursuant to § 73.83. The Administrator will notify applicants of final approval in writing.

(d) *Allocation of allowances.* Beginning in 1995, the Administrator will allocate allowances from the Reserve for each approved application into the applicant's account or accounts in the Allowance Tracking System. If the applicant does not have an account in the Allowance Tracking System, or wishes to open a new account for the allowances from the Reserve, an application