ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–6134–2]

RIN 2060–AH60

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Allowances are traded among utilities and recorded in EPA's Allowance Tracking System for use in determining compliance at the end of each year. The Acid Rain Program's permitting, allowance trading, and emissions monitoring requirements are set forth in the ''core rules'' promulgated on January 11, 1993. This proposal would amend certain provisions in the permitting and Allowance Tracking System rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market, while still preserving the Act's environmental goals.

DATES: *Comments.* Comments on this action must be received on or before September 2, 1998, unless a hearing is requested by August 13, 1998. If a hearing is requested, written comments must be received by September 17, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than August 13, 1998. If a hearing is held it will be held on August 14, 1998, beginning at 8:30 am.

ADDRESSES: *Comments.* Comments should be submitted in duplicate, to: EPA Air Docket, Attention, Docket No. A–98–15, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Public Hearing. If a hearing is held it will take place at the EPA Auditorium at 401 M St., S.W., Washington DC.

Docket. Docket No. A–98–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202–564–9089).

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

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I. Affected Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and § 74.2 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On January 11, 1993, EPA promulgated the ''core'' regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), as amended on November 15, 1990, including the Permits rule (40 CFR part 72) and the Sulfur Dioxide Allowance System rule (40 CFR part 73). Since promulgation, these rules have been applied to three compliance years, 1995, 1996, and 1997 for which affected units were required to meet the annual allowance holding requirements established by the rules. During this time, the Agency has gained experience in implementing these requirements and believes that certain provisions in the rules should be revised to improve the operation of the Allowance Tracking System and the allowance market. This proposal contains changes to the allowance transfer deadline and compliance determinations and clarifies the signature requirements for allowance transfer requests.[1] These revisions and the reasons for their proposal are summarized below.

III. Revisions

A. Allowance Transfer Deadline

The ''allowance transfer deadline'' is the last day on which allowance transfers may be submitted to EPA for recordation in a compliance subaccount for use in meeting a unit's sulfur dioxide (SO_2) emissions limitation requirements for the year. 40 CFR 72.2 (definition of ''allowance transfer deadline''). EPA is proposing to extend the allowance transfer deadline from the current date of January 30 to March 1 (or February 29 in any leap year). As explained below, this proposed change reflects the Agency's experience in operating the Allowance Tracking System, particularly following the 1995, 1996, and 1997 compliance years, and the technological advances that have been made regarding the submission of continuous emissions monitoring system (CEMS) data.

EPA's reasoning for selecting the current date of January 30 for the allowance transfer deadline is laid out in the preamble to the January 11, 1993 core rules. 50 FR 3590, 3617 (1993). As the Agency explained, it was anticipated that this date would provide utilities with ample time to transact and submit allowance transfers at the end of

[1] In addition, § 73.34(c)(4) is revised to eliminate the reference to the direct sales provisions, which were previously removed from part 73. 61 FR 28761, 28762 (1996).

the year, while giving EPA adequate time to complete its administrative duties before the date (60 days after the end of the year) that excess emissions offset plans were due. EPA's administrative duties involve reviewing, recording, and notifying the authorized account representatives of any transfers, and, if the authorized account representatives review the notifications and submit error claims, reviewing and resolving each error claim. The Agency noted that extending the allowance transfer deadline to March 1 would leave no time for these activities and was therefore not a viable option. *Id.*[2]

Now, based on nearly four years of experience with the Allowance Tracking System, EPA believes that changing the allowance transfer deadline to March 1 is a viable option. The allowance transfer processing activities cited in the January 11, 1993 preamble as an obstacle to changing the deadline have turned out to have little or no impact on the designated representative's ability to submit or the Agency's ability to review excess emissions offset plans or compliance certifications, which are also due on March 1 (or February 29 in any leap year).[3] The primary reason EPA sends out transfer notifications to authorized account representatives is so they can check whether EPA made an error in processing transfer requests. EPA notes that although it has processed over 2500 private transfers of allowances since the Allowance Tracking System first opened for business, only one claim of error by EPA has been submitted. Moreover, if EPA makes an error, EPA is obligated to correct the error and make the change effective as of the date the authorized account representative originally submitted the transfer form. This makes it unnecessary for the notification and error claim process to take place prior to the excess emissions offset plan and compliance certification deadline. Once authorized account representatives have sent to EPA their final allowance transfer requests, they have all the information they need to determine whether their units are in compliance and whether an excess emissions offset plan is needed. Of course, a transfer notification from EPA could be used as a check on those determinations; however, that is not the only way authorized account representatives can ensure their determinations are correct. For example, they can set up internal procedures in their companies to ensure accurate allowance accounting and can access the Agency web site via the internet for current allowance account balances in the Allowance Tracking System. Moreover, authorized account representatives that find the transfer notification useful for cross-checking allowance balances can still submit their last transfer requests ahead of March 1 so they can use the notifications to make this check.

EPA considered extending the allowance transfer deadline by two weeks, rather than a month. However, EPA believes that making the deadline coincide with the deadline for other acid rain submissions (i.e., the compliance certification report and any excess emissions offset plan) would reduce potential confusion because persons responsible for complying with the requirements could focus on one deadline for all of their end-of-year allowance-related submissions.

The 1 month extension also provides companies with additional time to make last minute adjustments to allowance holdings in order to reflect the actual level of emissions during the prior calendar year. Under the current rule, the allowance transfer deadline coincides with the fourth-quarter monitoring report deadline, leaving little or no time for such adjustments. This makes it difficult for utilities to cross-check what they believe to be the final emissions results with feedback from EPA on the fourth-quarter report and then make allowance adjustments, as necessary. The additional time will be particularly useful because designated representatives who submit their emissions reports electronically now receive immediate electronic feedback on the substantive portion of their submissions. (In the past, designated representatives did not receive this feedback, on fourth quarter reports submitted around the report deadline, until April because the Agency performed this review manually.) This feedback will identify problems with submitted data, which could affect how the utility should allocate its allowances among its units' accounts. The extension will help to ensure utilities have the time they need to resolve any emissions data problems and transfer allowances among their units' accounts as needed.

The extension also helps utilities that are contemplating changes to their monitoring systems that could temporarily affect their reported emissions rate. For example, while correcting a problem (e.g., with monitor data availability), a utility or its software vendor may take corrective actions that cause a different problem (e.g., actions that fail to account for missing data in the hourly record data base) and result in the unit's emissions being under-reported. Under the current rule, such an oversight could have a significant effect on reported emissions, especially if a company takes corrective actions in the last quarter of the year. The fourth-quarter monitoring report is due January 30 and any feedback from a report submitted on that date would provide the company with little or no time to make the necessary adjustments among its accounts for the reporting year. With the proposed extension of the allowance transfer deadline, companies that take corrective actions at the end of the year would have an opportunity to make any necessary allowance adjustments after receiving EPA feedback on their monitoring reports, and companies that might normally delay making such changes until after the end of the year would no longer need to do so. In addition, the extension would provide some additional time for correcting any inadvertent errors (whether or not associated with corrective monitoring actions) concerning allowance holdings, e.g., in how allowances were distributed by a utility among its units' accounts.

In sum, EPA believes the allowance transfer deadline should be extended to March 1 because this would: reduce potential confusion over end-of-year submission deadlines; allow authorized account representatives to make final transfer decisions after receiving feedback on their fourth-quarter monitoring reports; and give utilities additional time to avoid inadvertent errors. Moreover, EPA believes that it can successfully administer the Allowance Tracking System and carry out its other end-of-year administrative duties without any delay between the allowance transfer deadline and the March 1 deadline for utilities' submissions of compliance certifications. EPA requests comment on the proposed allowance transfer deadline and, specifically, whether the allowance transfer deadline should be extended from January 30 to March 1 (or February 29 in any leap year).

B. Compliance Determination

Today's proposed revisions also change how excess emissions are determined at a unit at the end of a

[2] EPA also expressed concern that designated representatives might need time between the allowance transfer deadline and March 1 to complete and submit excess emission offset plans. 56 63002, 63050 (1991). However, no utility has yet had to submit an offset plan. Further, under part 77, as amended, any offset plan would simply state that allowances are to be immediately deducted, except in an extraordinary case when it could be shown that immediate deduction would interfere with electric reliability. *See* 61 FR 68340, 68363 (1996).

[3] Under § 72.90, the annual compliance certification report is required to be submitted within 60 days after the end of the calendar year.

compliance year. The proposed revisions would effectively reduce the number of tons of excess emissions a unit would otherwise have after deductions for compliance are made under § 73.35(b)(2) by allowing up to a certain number of allowances for that unit to be deducted from the compliance subaccounts of other units at the same source that have unused allowances.

EPA is proposing these revisions because of concern that (even with an extended allowance transfer deadline) inadvertent, minor accounting mistakes by utilities, which under the proposed revision would have no significant environmental impact, could lead to excessively high excess emissions penalty payments. Currently, the excess emissions penalty of $2000, adjusted for inflation since 1990 (i.e., over $2500), per ton is more than 10 times the current market value of an allowance and applies to all excess emissions at a unit even if they result from inadvertent, minor errors. As a result, companies have the potential of making enormous excess emissions penalty payments (i.e., the excess emissions penalty times excess emissions) for what may be unintentional, minor mistakes when performing their end-of-year accounting of emissions and allowances. Under the circumstances in which the proposed revisions would apply, imposition of such penalty payments does not seem necessary or desirable, given the nature of such potential mistakes. For example, a company may have acquired enough allowances to cover all the emissions at a source, but distributed them erroneously among the units at the source because of a mistake in determining how many allowances were needed in each unit's account or in designating the amounts transferred among the units' accounts. In light of the potential for such mistakes, especially in Phase II when the number of units subject to the allowance holding requirement will more than quadruple, the Agency believes that the proposed revisions offer a more reasonable approach than the existing rule for ensuring that allowance holding requirements under the Acid Rain Program are met.

The major revisions for carrying out the proposed new approach are to the compliance provisions of § 73.35. Among other things, the proposed revisions to § 73.35 adjust the application of the ''Acid Rain emissions limitation for sulfur dioxide'' when used to determine a unit's excess emissions. The term ''excess emissions'' is defined in § 72.2 as ''[a]ny tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the Acid Rain emissions limitation for sulfur dioxide for the unit''. The adjustment in § 73.35 of the application of the Acid Rain emissions limitation for sulfur dioxide has the effect of adjusting the definition of excess emissions.

To make this adjustment, the key provision that has been added is proposed § 73.35(b)(3).[4] This new provision requires that, after completing the annual compliance deductions in § 73.35(b)(2) for all affected units at the same source, the Administrator may deduct, for a unit that would otherwise have excess emissions, up to a certain amount of allowances from the compliance subaccounts of other units at the same source that would otherwise have unused allowances. This second deduction of allowances would reduce the number of excess emissions at the unit by an equivalent amount. The owners and operators of such unit would still be subject to the excess emissions penalty and offset requirements, but for only the excess emissions remaining for the unit after the second deduction.

The Agency considered allowing a unit that would otherwise have excess emissions to use the unused allowances at other units at the same source to completely eliminate all excess emissions without any penalty. It rejected that approach, however, because of the Act's pervasive unit-by-unit orientation, particularly with regard to SO_2 emissions. For example, under sections 402 (e.g., the definitions of ''existing unit'' and ''utility unit''), 403(b), 403(e), 404(a), and 405, the applicability of title IV is determined on a unit-by-unit basis. Further, section 403(a)(1) requires allocation of allowances to, and sections 403(e), 404, 405, 406, 409, and 410 set annual SO_2 emission limitations for, individual units, and not sources. Under section 411(a), excess emissions and penalties are determined for each individual unit. Moreover, section 412(a) requires unit-by-unit monitoring of emissions. Allowing in all cases the use of allowances from other unit compliance subaccounts to completely eliminate a unit's excess emissions would effectively change the unit allowance holding requirement to a source allowance holding requirement. Therefore, balancing, on one hand, the goal of retaining in the regulations the general unit-by-unit orientation to compliance reflected in title IV and, on the other hand, the perceived need for some compliance flexibility to account for inadvertent, minor errors, EPA proposes to allow a large portion (but not all) of the allowances required to be deducted to come from subaccounts of other units at the source. This approach would provide some flexibility but also maintain a strong incentive for owners and operators to hold a sufficient number of allowances in each unit compliance subaccount. EPA is also open to comment on other ways of implementing this objective.

The number of allowances that could be deducted under proposed § 73.35(b)(3) would be related to the average price of an allowance. The average allowance price is defined in § 73.35(b)(3) as the average price paid for a spot allowance at the auction held under § 73.70 during the year for which compliance is being determined. The Agency proposes using the average price paid for a spot allowance at the auction to determine the average price of allowances at the time that compliance is being determined because a spot allowance is usable in the year it is auctioned and the auction is an annual event authorized under the Clean Air Act and results in allowance prices that are generally available to the public. Advance allowances, which are also auctioned, are not usable for 7 years. The Agency will publish the average price paid for a spot allowance (as defined in § 73.35(b)(3)) in the **Federal Register** by October 15 of each compliance year.

The formula for determining the number of allowances that can be deducted from other unit accounts is proposed in § 73.35(b)(3) and incorporates the average price of an allowance as follows:

Maximum deduction from other units = Excess emissions if no deduction from other units − [Excess emissions if no deduction from other units × 3 (Average allowance price)/Excess emissions penalty][5]

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[4] In addition, the definitions of ''allowance transfer deadline,'' ''compliance subaccount,'' and ''current year subaccount'' are revised to be consistent with proposed § 73.35(b)(3).

[5] ''Maximum deduction from other units'' is the maximum number of allowances that may be deducted for the year for which compliance is being established, for a unit otherwise having excess emissions from the compliance subaccounts of other units at the same source, rounded to the nearest allowance. ''Excess emissions if no deduction from other units'' is the tons of excess emissions that a unit would otherwise have if no allowances were deducted for the unit from other units under proposed § 73.35(b)(3). ''Excess emissions penalty'' is the applicable dollar amount of the penalty for one ton of excess emissions of sulfur dioxide under § 77.6(b). ''Average allowance price'' is a dollar amount (which the Administrator will publish in the **Federal Register** by October 15 of each year) equaling the total proceeds from the spot allowance auction (including EPA Reserve

The formula applies to any unit that would otherwise have excess emissions under the existing rule, with two exceptions. First, if the amount calculated is less than zero, the maximum allowance deduction from other units equals zero (i.e., a negative number of allowances cannot be deducted). Second, if the amount calculated results in less than 10 tons of excess emissions, the amount that can be deducted from other accounts must be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other unit accounts, whichever is less, remain for the unit. This provision ensures that any unit that would have excess emissions under the existing rule would continue to have some excess emissions under the proposed rule.

For all other cases, the formula in proposed § 73.35(b)(3) would apply if a unit fails to hold enough allowances in its unit subaccount to cover its emissions. Using the formula, the number of allowances that could be deducted from other unit compliance subaccounts at the same source would equal the tons of excess emissions that a unit would otherwise have without applying § 73.35(b)(3) minus a calculated value. The calculated value (i.e., the term after the ''−'' sign in the formula) represents [6] the number of tons emitted by a unit which cannot be offset by allowances from other unit accounts.[7] This value also represents, assuming the maximum allowances under the formula are deducted from other units' accounts, the tons of excess emissions at the unit. These excess emissions would be subject to the excess emissions penalty ($2000 in 1990 dollars per ton of excess emissions, adjusted for inflation each year).[8] Because there are fewer tons subject to the penalty (i.e., because the tons for which allowances were deducted from other unit accounts are not subject to the penalty), the total penalty payment would be less than the total penalty payment under the existing rule. EPA proposes that the maximum allowance deduction be based on three times the allowance price (with a 10 ton minimum for excess emissions) because the Agency believes the resulting penalty would provide adequate incentive for compliance while reducing the penalty payment for inadvertent, minor errors.

In general, the extent to which the total penalty payment is reduced as a result of the revisions depends on the average market price of an allowance and the excess emissions per ton penalty. For instance, if three times the average market price of an allowance is 14 percent of the per ton excess emissions penalty, then the total penalty payment for the unit would be about [9] 14 percent of the payment that would have resulted without the revisions. An exception is where three times the average market price of an allowance is equal to or greater than the per ton excess emissions penalty, in which case no allowances would be deducted from other unit accounts and the total penalty payment would be the same as under the existing rule. A second exception is where three times the market price of an allowance, when used in the formula, results in less than 10 tons of excess emissions. In that case, the allowable allowance deduction from other unit accounts would be adjusted so that the lesser of 10 tons of excess emissions or the number of tons of excess emissions that would result if no allowances could be deducted from other units would remain for the unit.

This approach would reduce the total excess emissions penalty payment owed for the unit while still ensuring, as intended by Congress, that compliance would be always cheaper than emitting more pollution than lawfully permitted.[10] It would also encourage use of the proposed provisions only in extraordinary or extenuating circumstances and not as a matter of course. EPA is soliciting comment on the formula in proposed § 73.35(b)(3) and on any alternative formulas that could be used to determine the number of allowances that could be deducted from other unit compliance subaccounts at the same source. Comment is specifically requested concerning: whether the limit (in the proposed formula) on the number of allowances used from other units should be based on three times the market price of an allowance (and incorporate a 10 ton minimum); whether the limit should be raised or lowered; and whether, with the limit, there would continue to be appropriate incentives for compliance.

The allowances deducted under proposed § 73.35(b)(3) are limited to those that are in the compliance subaccounts of other units at the same source as the unit with excess emissions. This same-source limitation ensures that only one designated representative is involved in the deduction of allowances from other unit compliance subaccounts and that changes necessary to existing contracts involving allowance agreements among different owners of units are minimized. This approach also limits the extent of deviation from title IV's general unit-by-unit orientation by allowing a unit to use only allowances held for other units that are at the same geographic location, i.e., at the same plant.

In § 73.35(b)(3)(i), EPA proposes two options for implementing the provisions allowing, for a unit with excess emissions, deductions of allowances from the compliance subaccounts of other units at the source. EPA would implement only one of the two options. The options are described below.

1. Option 1

Under Option 1, deductions from other unit compliance subaccounts are automatic unless the authorized account representative requests that no such deductions be made. This would allow the Agency to make these deductions immediately after all other compliance deductions are made and would reduce the risk of delay of final compliance determinations. The proposed provision also specifies the order of unit compliance subaccounts for which allowances would be deducted from other unit compliance subaccounts and the order of the other unit compliance subaccounts from which the allowances would be deducted, allowing authorized account representatives to know in advance the sequence of deduction. The sequence is based on the Allowance Tracking System account numbers of the units involved. Allowances would be deducted first *for* the unit that has the lowest account number of the units at the source and then for each subsequent unit, in order of increasing account number and ending with the unit with the highest account number at the source. Likewise, allowances would be deducted *from* the unit with unused allowances that has the lowest account number at the source and then for each unit that has unused allowances, in

allowances and any privately offered allowances) held under § 73.70 during the year divided by the number of allowances sold at such auction, rounded to the nearest dollar.

[6] When actually applying the formula, the term (without rounding to the nearest ton) is subtracted from the ''tons of excess emissions if no allowance deduction from other units'; rounding takes place afterwards.

[7] When this number is subtracted from the tons of excess emissions the unit would otherwise have if no allowances could be deducted from other units, the result is the maximum number of allowances that can be deducted from other units.

[8] For 1998, the inflation-adjusted penalty is $2,581 per ton of excess emissions.

[9] The relationship is approximate because the formula requires rounding to the nearest allowance.

[10] *See* Senate Rep. No. 101–228 at 336, December 20, 1989, (explaining that ''[t]he [excess emissions] fee, adjusted annually to keep pace with inflation, is designed to be high enough that pollution control options [e.g., acquiring allowances] will always be cheaper than continuing to emit more pollution than lawfully permitted.''

order of increasing account numbers at that source. Under this ordering scheme, alphabetical characters would have values increasing in alphabetical order and lower values than all numeric characters, and the sort would begin on the left-most character and end on the right-most character of each 12 character account number. This order is consistent with how alphabetical and numeric characters are internally represented and sorted in the Agency's mainframe computer that runs the Allowance Tracking System, making this a cost effective approach for handling the deductions. An example of the order of unit compliance subaccounts from which (or for which) allowances would be deducted is as follows: 00038700PFLG, 00038700PFL4, 000387004GT2. Within a compliance subaccount, allowances would be deducted under § 73.35(b)(3) on a first-in, first-out (FIFO) accounting basis.

EPA considered that, under this approach in Option 1, authorized account representatives would not have the discretion to choose the order of the compliance subaccounts for which and from which allowances are to be deducted. This may be a concern especially where the owners or their ownership shares are different for different units at a source. If, however, an authorized account representative objects to the order described above (which is set forth in proposed § 73.35(b)(3)), a notification may be submitted at any time by the allowance transfer deadline that identifies the units for which § 73.35(b)(3) is not to be applied. If such notification is submitted for a unit and the unit fails to meet the unit allowance holding requirement reflected in § 73.35(b)(1) and (2), none of the allowances from other unit compliance subaccounts would be used to reduce the total amount of excess emissions at the unit. If no notification is submitted, the Agency would automatically make the deductions from the other units at the source, and the tons of excess emissions would be reduced.

2. Option 2

EPA is also proposing a second option for deducting allowances from other units at the sources. Under Option 2, the authorized account representative would be allowed to submit for a unit, within 15 days of receiving notice from the Agency of a unit's failure to hold sufficient allowances in its unit account, the identification of the serial numbers of the allowances (held in compliance subaccounts of other units at the source) that are to be deducted under § 73.35(b)(3) and the compliance subaccounts from which those allowances would be deducted. Like the first alternative, the authorized account representative could choose not to have allowances deducted from other compliance subaccounts. A disadvantage of this alternative is that it would likely delay the Agency's end of year compliance determination and extend the allowance freeze by at least two weeks because of the time it would take to mail notification and wait for a response. The Agency is soliciting comment on both Option 1 and Option 2.

The changes in today's proposal allowing allowances to be deducted for a unit from other unit accounts are consistent with the provisions in title IV governing excess emissions, i.e., sections 403(g), 411(a) and (b), and 414 of the Act. Section 403(g) is a general prohibition barring an affected unit from emitting sulfur dioxide in excess of the number of allowances ''held for that unit for that year by the owner or operator of the unit'' (42 U.S.C. 7651b(g)), section 411(a) establishes the owner or operator's liability for an excess emissions penalty and offset if sulfur dioxide is emitted at a unit in excess of the allowances ''the owner or operator holds for use for the unit for that calendar year'' (42 U.S.C. 7651j(a)), and section 414 states that the operation of an affected unit to emit sulfur dioxide in excess of allowances ''held for the unit'' is deemed a violation of the Act and that each ton emitted in excess of allowances held constitutes a separate violation (42 U.S.C. 7651m). In all three provisions, the Act refers to holding allowances ''for'' a unit but does not specifically dictate the account in which those allowances must be held. *See also* 42 U.S.C. 7651b(f) and 7651j(b).

Under the January 11, 1993 Acid Rain core rules, these statutory provisions were generally interpreted to mean allowances for a unit could be held only in the compliance subaccount of the unit for which allowances were being deducted. The Agency, however, believes this interpretation should be reconsidered and revised to provide some compliance flexibility while balancing the need for compliance flexibility with the general unit-by-unit orientation of title IV. Because of the multiple references to allowances held ''for'' a unit, the Agency believes the language is broad enough to support today's proposed interpretation, which allows most (but not all) of the allowances to be deducted from the compliance subaccount of other units at the same source and thus establishes a limited departure from the general unit-by-unit orientation for compliance.

Allowing a unit to use allowances from the compliance subaccounts of other units at the same source is consistent with the limited exception to unit-by-unit compliance currently allowed for units sharing a common stack but not individually monitoring emissions under part 75. Under existing § 73.35(e), the authorized account representative for affected units that share a common stack and lack individual-unit monitoring may arbitrarily assign a percentage of allowances to be deducted from the compliance subaccount for each unit. This assignment, which can be submitted as late as 60 days after the end of the year when the annual compliance report is due, can result in 100 percent of the required allowance deduction coming from the compliance subaccount of only one of the units sharing the common stack. Such a single deduction would not necessarily represent the emissions from each unit, because each unit sharing the common stack may have discharged some portion of the emissions measured. Thus, under the existing regulations, allowances already can be deducted, under limited circumstances, from the compliance subaccounts of other units at the same source. This limited exception to unit-by-unit compliance is allowed in order to avoid requiring monitoring of the ducts of each common stack unit, which may not be physically possible, and to minimize the need for redesigning stack and duct configurations to make individual-unit monitoring possible. *See, e.g.,* Docket # A–90–51, Response to Public Comment on the Core Rules of the Acid Rain Program, Volume III at p. M–393 (October 1992). Although there are a number of affected units under the Acid Rain Program that are subject to the common stack provision (i.e., 23 percent of the affected units operating in 1996 reported SO_2 or NO_X data that included the emissions from two or more units), EPA has seen no adverse effects on the functioning of the Acid Rain Program during the first three years of compliance determinations.

Like the common stack provisions, today's revisions would permit allowances to be deducted for a unit that would otherwise have excess emissions from the compliance subaccounts of other units at the same source even though the emissions involved did not come from those other units. However, unlike the common stack provision, the proposed revisions would limit the number of allowances that could be deducted from the compliance subaccounts of other units. The reason for this difference is that the

common stack provisions address primarily situations where it may not be feasible to monitor the emissions from individual units sharing a common stack. In contrast, today's revisions would address primarily cases where feasibility of monitoring is not at issue, but because of inadvertent, minor errors in accounting for emissions or in handling allowances, a unit fails to hold enough allowances in its compliance subaccount at the end of the year. Because today's revisions apply to units that, absent inadvertent, minor errors, could have complied with the individual unit allowance holding requirement, the Agency believes it is appropriate to strike a balance between, on one hand, compliance flexibility to reduce total excess emission penalty payments for failing to hold enough allowances because of inadvertent, minor errors and, on the other hand, maintenance of the general unit-by-unit orientation of title IV. Today's proposed revision reflects this balancing of objectives by allowing deductions of allowances from other units but limiting the extent of such deductions so that significant excess emissions penalty payments would still result from failing to hold sufficient allowances in the unit's own compliance subaccount. This approach would ensure that utilities would continue to strive to meet the unit allowance holding requirement.

Today's proposed changes, while designed primarily to address the consequences of making inadvertent, minor errors, would apply to all allowance holding violations and would not require a demonstration concerning the nature of the error. The Agency maintains that it would be difficult, and costly in terms of time and resources, to investigate and determine why a unit compliance subaccount failed to hold sufficient allowances and to distinguish between unintentional, minor errors and other errors. Since the proposed allowance deduction flexibility is not limited to inadvertent, minor errors, that is an additional reason for limiting that flexibility, i.e., by limiting the number of allowances that can be deducted from other units at a source. This limitation would provide an incentive to avoid any errors and would minimize any abuse of this flexibility. EPA believes that generally the total amount of excess emissions penalty payment (i.e., which, at the 1997 auction price of an allowance, would be about 14 percent of the penalty payments under the existing rule) that would remain even if unused allowances were available from other units at the source would deter companies from using this provision except in extraordinary situations.

In sum, the adjustment to the allowance holding requirement in today's proposal addresses the potential for inadvertent, minor errors by utilities regulated under the Acid Rain Program and provides a reasonable approach for addressing such errors. EPA requests comment on all aspects of this proposed revision, including the options presented concerning notification by the authorized account representative and the effect, if any, of the revision on the auction or market price of allowances traded during the year or on trading behavior. EPA also requests comment on how Option 1 and Option 2 would apply to a source that has two authorized account representatives under § 74.4(c) (i.e., one for the utility units, and one for the opt-in units, at the same source).

C. Signature Requirement for Transfer Requests

Under the current rule, § 73.50(b)(1) requires authorized account representatives seeking recordation of an allowance transfer to submit a request for the transfer that contains, among other things, signatures of the authorized account representatives for both the transferor and the transferee accounts. The Agency proposes to add § 73.50(b)(2) to clarify that the authorized account representative for a transferee account can meet the signature requirement by submitting, along with or in advance of a transfer request from the authorized account representative for any transferor account, a signed statement identifying the accounts into which any transfer of allowances, on or after the date of EPA's receipt of the statement, is authorized. The signed statement would state that, upon receipt by the Administrator, the authorization is binding on the authorized account representative and on any new authorized account representative [11] for all such allowance transfers into the specified accounts until such time as EPA receives a signed statement from the authorized account representative retracting the authorization. Proposed § 73.50(b)(2) sets forth the specific language that would be included in the statement. Under existing §§ 72.23 (a) and (b), any new authorized account representative would, in fact, be bound by such a statement. Once the statement is received and an allowance transfer request is received and processed, EPA would still send both authorized account representatives transfer confirmation reports of any recorded transfer so that the authorized account representatives of both accounts have the opportunity to review the transfer after it has been recorded.

The Agency believes the existing rules already allow for this approach. Existing § 73.50(b)(1) allows the Administrator to specify a format for submitting a transfer request, which means the Administrator can already allow information from each authorized account representative to come in separately. Further, under existing § 73.50(b)(1), the transferee authorized account representative certifies the transfer by attesting to the language in the allowance transfer form, which is also set forth in § 72.21(b). This is the same language to which he or she would attest when authorizing transfers in advance. Moreover, existing § 73.50(b)(1)(iii) through (v) specifies the information (i.e., the signatures and identification numbers of the authorized account representatives and the date of the signatures) that must be submitted by both authorized account representatives, but does not require the information from both individuals to come in simultaneously. Therefore, the Administrator is not precluded from accepting a signature from an authorized account representative for the transferee account that is submitted prior to the submission of the signature of the authorized account representative for the transferor account. In light of the minimal, if any, protection that simultaneously submitted signatures would provide to the parties,[12] it is unnecessary for both signatures to come in at the same time. Hence, under the existing regulations, EPA can allow a signature of the transferee authorized account representative to be submitted prior to the signature of the transferor authorized account representative. Nevertheless, EPA believes that clarifying, through specific rule language, that this approach can be used would be helpful to authorized account representatives who wish to authorize, in advance, future transfers into an account and reduce their burden by eliminating the need for each party to the transfer to see and sign the allowance transfer form. Proposed

[11] Binding future authorized account representatives to the statement ensures that the reduced burden resulting from submitting a signature in advance is not lost automatically when an authorized account representative changes.

[12] The two-signature requirement, required in section 403(b) of the Act, was apparently intended to protect the transferor and transferee during the transfer process, but it is the parties' private agreement, not the allowance transfer form submitted to EPA, that protects the transferor and transferee.

§ 73.50(b)(2) is added to make this clarification.

Today's clarification is spurred by a desire to put in place a system that allows for submitting transfer requests electronically to the Agency. According to comments received from both industry and environmental organizations, such a system would increase efficiency, reduce personnel requirements, reduce data entry errors and paperwork, make the Allowance Tracking System more attractive to users, and result in a more vibrant and active market. *See, e.g.,* Docket # A–91–43, Response to Public Comment on the Core Rules of the Acid Rain Program, Volume I at p. A–27. In response, the Agency has been working with utility representatives in an effort to put in place Electronic Data Interchange (EDI) technology, a uniform standard set by the American National Standards Institute for electronic interchange of business transactions, to address this issue. Comments by experts familiar with established protocols for EDI have indicated that requiring two signatures on the same submission makes implementation of the EDI technology much more difficult. Proposed § 73.50(b)(2) would make it clear to utilities that they have the option of submitting a signature in advance, which would remove this obstacle and make it easier to use EDI.[13] In the meantime, in light of the Agency's existing authority to do so, the Agency has begun to accept signature statements from authorized account representatives who want to take advantage of this option immediately for transfer requests submitted either in hard copy or electronically.

The streamlining benefit of having the signature of the authorized account representative for the transferee account submitted prior to any specific transfer request is consistent with the general purposes of section 403(d) of the statute. This provision requires that the Administrator specify ''all necessary procedures and requirements for an orderly and competitive functioning of the allowance system.'' 42 U.S.C. 7651b(d). Because an advance signature authorization from the authorized account representative for the transferee account would make subsequent allowance transfers less burdensome (both EDI-initiated and hard copy-initiated transfers), it would enhance the operation of the Allowance Tracking System and the allowance market as a whole.

For the above reasons, the Agency has added § 73.50(b)(2) to clarify that a signature statement from the authorized account representative for the transferee account can be submitted prior to the signature of the authorized account representative for the transferor account.

D. Impacts of Revisions on Acid Rain Permits

Today's proposed revisions are designed so that the contents of existing acid rain permits and the State regulations required to issue acid rain permits would not have to be changed in order for the revisions to become effective. With the exception of changes in the definitions of ''allowance transfer deadline,'' ''compliance subaccount,'' and ''current year subaccount,'' all of today's revisions are made in 40 CFR part 73. Forty CFR part 73 governs EPA's operation of the Allowance Tracking System and does not contain any requirements for permitting or any other activities for which State permitting authorities are responsible. For this reason, 40 CFR part 73 has not been, and is not required to be, adopted by State permitting authorities under § 72.72. Thus, it would be unnecessary for State permitting authorities to revise the acid rain permits they have issued or regulations they have adopted to reflect today's proposed changes to 40 CFR part 73.

Similarly, the proposed changes could go into effect without State permitting authorities revising acid rain permits or regulations to reflect the two revised definitions in 40 CFR part 72. Under existing § 72.50(b), each Acid Rain permit is deemed to incorporate the definitions in § 72.2. Consequently, even if an acid rain permit would be issued before the proposed changes to the § 72.2 definitions would be adopted and become effective, the Agency would propose to apply the final revised definitions to the units covered by the permit in determining end-of-year compliance for all calendar years for which the existing allowance transfer deadline (January 30) is on or after the effective date of the revised definitions. Moreover, the revised definitions would not affect the permitting activities of State permitting authorities under 40 CFR part 72 and would be adopted in the federal rules to implement changes made in EPA's operation of the Allowance Tracking System under 40 CFR part 73.

While the final revised definitions in § 72.2 would be applied for any calendar year ending on or after the effective date of the federal rule revision, State permitting authorities should revise their own regulations to reflect such new definitions after they are finalized. This would avoid any potential confusion on the part of regulated entities and the public as to how end-of-year compliance would be determined.

IV. Administrative Requirements

A. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

[13] EPA considered completely eliminating the signature requirement for the authorized account representative for the transferee account; however, the Agency is constrained from doing so by statutory language in section 403(b) of the Act, which states that ''[t]ransfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator.'' 42 U.S.C. 7651b(b).

analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because the proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The proposed revisions to parts 72 and 73 will potentially reduce the burden on regulated entities by streamlining the allowance transfer process, extending the allowance transfer deadline, and providing more flexible allowance holding requirements. The revisions will not otherwise have any significant impact on State, local, and tribal governments.

C. Paperwork Reduction Act

This action proposing revisions to parts 72 and 73 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). In fact, if anything, the revisions reduce burden by clarifying that the signature of the authorized account representative for a transferee account can be submitted in advance of an allowance transfer form, eliminating the need for that authorized account representative to see and sign future allowance transfer forms. To the extent any new information will be required by proposed revisions concerning the holding of allowances in other units' compliance subaccounts, the Agency projects that less than ten companies per year will be affected by those revisions. Overall, the revisions will result in no material change in the type or amount of information collected under the existing ICR. OMB has previously approved the relevant information collection requirements contained in parts 72 and 73 under the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060–0258. 58 FR 3590, 3650 (1993).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564–2740. Include the ICR and/or OMB number in any correspondence.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

This proposed rule would not have a significant impact on a substantial number of small entities. As discussed above, the revisions would reduce the burden on regulated entities by streamlining and adding flexibility to the regulations. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Applicability of Executive Order 13045: Children's Health Protection

This proposed rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885 (1997)), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Parts 72 and 73

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

Dated: July 28, 1998.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

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

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

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

§ 72.2 [Amended]

2. Section 72.2 is amended by:

i. Removing from the definition of ''Allowance transfer deadline'' the words ''January 30 or, if January 30'' and adding, in their place, the words ''March 1 (or February 29 in any leap year) or, if such day''; and removing the word ''unit's'', after the words ''meeting the'';

ii. Removing from the definition of ''Compliance subaccount'' the word ''unit's'', after the words ''meeting the''; and

iii. Adding to the definition of ''Current year subaccount'' the words '', or any other affected unit at the same source to the extent provided under § 73.35(b)(3),'' after the words ''for use by the unit'' and removing from the same definition the word ''its'' and adding, in its place, the word ''the''.

3. Section 72.40 is amended by adding to paragraph (a)(1) the words '', or in the compliance subaccount of another affected unit at the same source

to the extent provided in § 73.35(b)(3),'' after the words ''under § 73.34(c) of this chapter)''.

PART 73—[AMENDED]

4. The authority citation for part 73 continues to read as follows:

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

§ 73.34 [Amended]

5. Section 73.34 is amended by removing from paragraph (c)(4) the words ''or direct sale pursuant to subpart E of this part''.

6. Section 73.35 is amended by revising paragraph (a)(2) and adding paragraph (b)(3) to read as follows:

§ 73.35 Compliance.

(a) * * *

(2) Such allowance is:

(i) Recorded in the unit's compliance subaccount; or

(ii) Transferred to the unit's compliance subaccount, with the transfer submitted correctly pursuant to subpart D for recordation in the compliance subaccount for the unit by not later than the allowance transfer deadline of the calendar year following the year for which compliance is being established in accordance with subpart D of this part; or

(iii) Held in the compliance subaccount of another affected unit at the same source in accordance with paragraph (b)(3) of this section.

Option 1

(b) * * *

(3)(i) If, after the Administrator completes the deductions under paragraph (b)(2) of this section for all affected units at the same source, a unit would otherwise have excess emissions and one or more other affected units at the source would otherwise have unused allowances in their compliance subaccounts and available for such other units under paragraphs (a)(1) and (a)(2)(i) and (ii) of this section for the year for which compliance is being established, the Administrator will deduct such allowances from the compliance subaccounts of the units otherwise having unused allowances, and reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated as follows:

Maximum deduction from other units = Excess emissions if no deduction from other units – [Excess emissions if no deduction from other units × 3 (Average allowance price) / Excess emissions penalty]

Where:

''Maximum deduction from other units'' is the maximum number of allowances that may be deducted, for the year for which compliance is being established, for a unit otherwise having excess emissions from the compliance subaccounts of other units at the same source, rounded to the nearest allowance.

''Excess emissions if no deduction from other units'' is the tons of excess emissions that a unit would otherwise have if no allowances were deducted for the unit from other units under this paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section. ''Excess emissions penalty'' is the applicable dollar amount of the penalty for one ton of excess emissions of sulfur dioxide for the year under § 77.6(b) of this chapter.

''Average allowance price'' is a dollar amount (which the Administrator will publish in the **Federal Register** by October 15 of each year) equaling the total proceeds from the spot allowance auction (including EPA Reserve allowances and any privately offered allowances) held under § 73.70 during the year divided by the number of allowances sold at such auction, rounded to the nearest dollar.

(ii) Notwithstanding paragraph (b)(3)(i) of this section,

(A) If the amount calculated is less than or equal to zero, the maximum allowance deduction from other units will equal zero; and

(B) If the amount calculated is greater than zero and results in less than 10 tons of excess emissions, the maximum allowance deduction from other units shall be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other units, whichever is less, remain for the unit.

(iii) Beginning with the unit having the lowest Allowance Tracking System account number and ending with the unit having the highest account number (with account numbers sorted beginning on the left-most character and ending on the right-most character of each 12 character account number and with the letter characters assigned values in alphabetical order and less than all numeric characters), the Administrator will deduct allowances in accordance with paragraphs (b)(3)(i) and (ii) of this section:

(A) For each unit, at the source, otherwise having excess emissions; and

(B) From each unit, at the source, otherwise having unused allowances in its compliance subaccount.

(iv) Allowances in a compliance subaccount will be deducted under paragraphs (b)(3)(i) and (ii) of this section on a first-in, first-out (FIFO) accounting basis in accordance with paragraph (c)(2) of this section.

(v) Notwithstanding paragraphs (b)(3)(i) and (ii) of this section, if the Administrator receives a written notification by the authorized account representative for a source, on or before the allowance transfer deadline for the year for which compliance is being established, that the provisions in paragraphs (b)(3)(i) and (ii) of this section are not to be applied to specified units at the source, the Administrator will not make any deductions under paragraphs (b)(3)(i) and (ii) of this section for the specified units at the source.

Option 2

(b) * * *

(3)(i) If, after the Administrator completes the deductions under paragraph (b)(2) of this section for all affected units at the same source, a unit would otherwise have excess emissions and one or more other affected units at the source would otherwise have unused allowances in their compliance subaccounts and available for such other units under paragraph (a)(1) and (a)(2)(i) and (ii) of this section for the year for which compliance is being established, the Administrator will notify in writing the authorized account representative that he or she may specify which of such allowances are to be deducted from the compliance subaccounts of the units otherwise having unused allowances in order to reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated as follows:

Maximum deduction from other units = Excess emissions if no deduction from other units – [Excess emissions if no deduction from other units × 3 (Average allowance price) / Excess emissions penalty]

Where:

''Maximum deduction from other units'' is the maximum number of allowances that may be deducted for the year for which compliance is being established, for a unit otherwise having excess emissions from the compliance subaccounts of other units at the same source, rounded to the nearest allowance.

''Excess emissions if no deduction from other units'' is the tons of excess emissions that a unit would otherwise have if no allowances were deducted for the unit from other units under this paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section. ''Excess emissions penalty'' is the applicable dollar amount of the penalty for one ton of excess emissions of sulfur dioxide under § 77.6(b) of this chapter.

''Average allowance price'' is a dollar amount (which the Administrator will publish in the **Federal Register** by October 15 of each year) equaling the total proceeds from the spot allowance auction (including EPA Reserve allowances and any privately offered allowances) held under § 73.70 during the year divided by the number of allowances sold at such auction, rounded to the nearest dollar.

(ii) Notwithstanding paragraph (b)(3)(i) of this section,

(A) If the amount calculated is less than or equal to zero, the maximum allowance deduction from other units will equal zero; and

(B) If the amount calculated is greater than zero and results in less than 10 tons of excess emissions, the maximum allowance deduction from other units shall be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other units, whichever is less, remain for the unit.

(iii) If the authorized account representative submits within 15 days of receipt of a notification under paragraph (b)(3)(i) of this section a written request specifying allowances to be deducted in accordance with paragraph (b)(3)(i) of this section, the Administrator will deduct such allowances, and reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated under paragraph (b)(3)(i) of this section.

7. Section 73.50 is amended by redesignating paragraph (b)(2) as (b)(3) and adding new paragraph (b)(2) as follows:

§ 73.50 Scope and submission of transfers.

* * * * *

(b) * * *

(2)(i) The authorized account representative for the transferee account can meet the requirements in paragraphs (b)(1)(ii) and (iii) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement in a format prescribed by the Administrator and signed by the authorized account representative retracting the authorization for the account.

(ii) The statement under paragraph (b)(2)(i) of this section shall include the following: ''By this signature, I authorize any transfer of allowances into each Allowance Tracking System account listed herein, except that I do not waive any remedies under 40 CFR part 73, or any other remedies under State or federal law, to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any authorized account representative for such account unless and until a statement signed by the authorized account representative retracting this authorization for the account is received by the Administrator.''

* * * * *

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