

Chapter NR 409**ACID RAIN PORTION OF OPERATION PERMITS**

NR 409.01	Applicability; purpose; and scope	NR 409.09	Acid rain compliance plan and compliance options
NR 409.02	Definitions	NR 409.10	Acid rain portion of an operation permit
NR 409.04	New units exemption	NR 409.11	Acid rain portion of an operation permit issuance procedures
NR 409.05	Retired units exemption	NR 409.12	Revisions of acid rain provisions
NR 409.06	Standard requirements	NR 409.13	Compliance certification
NR 409.07	Designated representative		
NR 409.08	Application for the acid rain portion of an operation permit		

~~(1) "Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with s. NR 409.09 or regulations implementing section 407 of the act (42 USC 7651f).~~

~~(2) "Acid rain emissions limitation" means:~~

~~(a) For the purposes of sulfur dioxide emissions:~~

~~1. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404 (a) (1) and (3) of the act (42 USC 7651c) or the basic phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year;~~

~~2. As adjusted:~~

~~a. By allowances allocated by the administrator pursuant to sections 403 (42 USC 7651b), 405 (a) (2) and (3), (b) (2), (c) (4), (d) (3) and (h) (2) (42 USC 7651d) and 406 of the act (42 USC 7651e);~~

~~b. By allowances allocated by the administrator pursuant to subpart D of 40 CFR part 72; and thereafter~~

~~c. By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34 (c).~~

~~Note: Nitrogen oxides emissions will also be included in the definition of acid rain emissions limitations. However, those limitations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). At a later date, this definition will be revised.~~

~~(3) "Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.~~

~~Note: Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). Nitrogen oxides requirements will be added to this chapter at a later date.~~

~~(4) "Acid rain portion of an operation permit" means the legally binding written document, or portion of an operation permit, issued by the department following opportunity for appeal pursuant to 40 CFR part 78, s. NR 409.11 (2) or procedures in ss. 144.31, 144.403 and 227.40 to 227.60, Stats., including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.~~

~~(5) "Actual SO₂ emissions rate" means the annual average sulfur dioxide emissions rate for the unit, expressed in lb/mmBtu, for the specified calendar year; provided that, if the unit is listed in the national allowance database (NADB), the "1985 actual SO₂ emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."~~

~~(6) "Affiliate" means the following:~~

~~(a) Any person that directly or indirectly owns, controls or holds with power to vote, 5% or more of the outstanding voting securities of the specified company.~~

~~NR 409.02 Definitions: The definitions contained in chs. NR 400, 406 and 407 and title IV of the act (42 USC 7651 to 7651o) apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:~~

below the unit's baseline, where the reduction subjects the unit to the requirement to file a reduced utilization plan under 40 CFR 72.43.

(71) "Reduced utilization plan" means a compliance plan submitted by the designated representative under 40 CFR 72.43 for the purpose of identifying an affected unit's method of complying with the applicable sulfur dioxide and nitrogen oxides emission limitations.

(72) "Repowering extension plan" means a compliance plan submitted by the designated representative under 40 CFR 72.44 for the purpose of identifying an affected unit's method of complying with the applicable sulfur dioxide emission limitations.

(73) "Schedule of compliance" means an enforceable sequence of actions, measures or operations designed to achieve or maintain compliance or correct non-compliance, with an applicable requirement of the acid rain program, including any applicable acid rain portion of an operation permit requirement.

(74) "Secretary of energy" means the secretary of the United States department of energy or the secretary's duly authorized representative.

(75) "Simple cycle combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 to 1987 and does not use auxiliary firing at any time after November 15, 1990.

(76) "Solid waste incinerator" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public, including single and multiple residences, hotels and motels. The term does not include incinerators or other units required to have a permit under 42 USC 6925. The term solid waste incinerator does not include:

(a) Materials recovery facilities, including primary or secondary smelters which combust waste for the primary purpose of recovering metals.

(b) Qualifying small power production facilities or qualifying cogeneration facilities which burn homogeneous waste, such as units which burn tires or used oil, but not including refuse-derived fuel, for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy, such as heat, which are used for industrial, commercial, heating or cooling purposes.

(c) Air curtain incinerators provided that the incinerators only burn wood wastes, yard wastes and clean lumber and that air curtain incinerators comply with opacity limitations established by the department and the administrator by rule.

(77) "Submit" or "serve" means to send or transmit a document, information or correspondence to the person specified in accordance with the applicable regulation in one of the following ways:

(a) In person.

(b) By United States postal service certified mail with the official postmark or, if service is by the administrator or the department, by any other mail service by the United States postal service.

(c) By other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission", "service" or "mailing" deadline shall be determined by the date of dispatch, transmission or mailing and not the date of receipt.

(78) "Substitution plan" means a compliance plan submitted by the designated representative under 40 CFR 72.41 for the purpose of identifying an affected unit's method of complying with the applicable sulfur dioxide emission limitations.

(79) "Substitution unit" means an affected unit, other than a unit under section 410 of the act (42 USC 7651i), that is designated as a phase I unit in a substitution plan under 40 CFR 72.41.

(80) "Total installed net output capacity" means the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

(81) "Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

(82) "Unit" means a fossil fuel-fired combustion device.

(83) "Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

(84) "Utility" means any person that sells electricity.

(85) "Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility or independent power production facility may be regarded as having been "selected" in the solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

(86) "Utility regulatory authority" means an authority, board, commission or other entity, limited to the local, state or federal level, whenever so specified, responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

(87) "Utility unit" means a unit owned or operated by a utility that serves a generator that produces electricity for sale or that, during 1985, served a generator that produced electricity for sale, except as provided in pars. (a) and (b):

(a) A unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the acid rain program.

NR 409.02

~~(b) A unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.~~

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; r. and recr., renum. from NR 407.02 (6) to (12), (14), (15), (18), (19), (21), (23) to (30), (33), (34) to be (10), (11), (15), (19), (22), (26), (28), (29), (37), (38), (47), (48), (50), (55), (56), (64), (66), (69) to (72), (78), (79) and am. (72), (78), (79), Register, April, 1995, No. 472, eff. 5-1-95; am. (76) (intro.), Register, December, 1995, No. 480, eff. 1-1-96.

~~NR 409.025 Permit requirement. History: Renum. from NR 164.055 (1) (intro.) and am. Register, September, 1986, No. 369, eff. 10-1-86; am. Register, May, 1992, No. 437, eff. 6-1-92; am. Register, December, 1993, No. 456, eff. 1-1-94; renum. to NR 406.15 (3), Register, April, 1995, No. 472, eff.~~

NR 409.06 Standard requirements. (1) ~~PERMIT REQUIREMENTS.~~ ~~(a) The designated representative of each affected source and each affected unit at the source shall:~~

~~1. Except for a phase I acid rain permit to be issued by EPA, submit a complete acid rain portion of an operation permit application under this chapter in accordance with the deadlines specified in s. NR 409.08 (1);~~

4. Copies of all documents used to complete an acid rain portion of an operation permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of this chapter and the acid rain program.

(b) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under s. NR 409.13 and 40 CFR part 75.

(7) ~~LIABILITY.~~ (a) Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain portion of an operation permit application, an acid rain portion of an operation permit or a written exemption under s. NR 409.04 or 409.05, shall be subject to enforcement by the department pursuant to ch. NR 494 and ss. 144.423 and 144.426, Stats.

(b) Any person who knowingly makes a false, material statement in any record, submission or report under the acid rain program shall be subject to criminal enforcement by the department pursuant to ch. NR 494 and ss. 144.423 and 144.426, Stats.

(c) No permit revision may excuse any violation of the requirements of this chapter and the acid rain program that occurs prior to the date that the revision takes effect.

(d) Each affected source and each affected unit shall meet the requirements of this chapter and the acid rain program.

(e) Any provision of the acid rain program that applies to an affected source, including a provision applicable to the designated representative of an affected source, shall also apply to the owners and operators of the source and of the affected units at the source.

(f) Any provision of the acid rain program that applies to an affected unit, including a provision applicable to the designated representative of an affected unit, shall also apply to the owners and operators of the unit. Except as provided under s. NR 409.09 (2), section 407 of the act (42 USC 7651f) and regulations implementing section 407 of the act, and except with regard to the requirements applicable to units with a common stack under 40 CFR part 75, including 40 CFR 75.16, 75.17 and 75.18, the owners and operators and the designated representative of one affected unit are not liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(g) Each violation of a provision of this chapter and 40 CFR parts 72, 73, 75, 77 and 78 and regulations implementing sections 407 and 410 of the act (42 USC 7651f and 7651i) by an affected source or affected unit, or by an owner or operator or designated representative of the source or unit, shall be a separate violation.

(8) ~~EFFECT ON OTHER AUTHORITIES.~~ No provision of the acid rain program, an acid rain portion of an operation permit application, an acid rain portion of an operation permit or a written exemption under s. NR 409.04 or 409.05 may be construed as:

(a) Except as expressly provided in title IV of the act (42 USC 7651 to 7651o), exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the act, including the provisions of title I of the act relating to applicable national ambient air quality standards or state implementation plans;

(b) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit may not affect the source's obligation to comply with any other provisions of the act;

(c) Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding the state regulation, or limiting the state regulation, including any prudence review requirements under state law;

(d) Modifying the federal power act (16 USC 791a et seq.) or affecting the authority of the federal energy regulatory commission under the federal power act; or

(e) Interfering with or impairing any program for competitive bidding for power supply in a state in which the program is established.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (8) (d), Register, December, 1995, No. 480, eff. 1-1-96.