LCRC FORM 2

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **99–021**

AN ORDER to repeal NR 409.02 (2) (a) 2. c. Note and (3) Note, 409.09 (1) (a) Note, (b) (intro.) Note, (c) (intro.) Note and (d) 4. Note and (2) (g) 1. b. Note and 409.11 (2) (d); to renumber NR 409.06 (5) (b), 409.09 (1) (a) and 484.11 (1) to (5); to renumber and amend NR 409.12 (4) (a) 11. and 12.; to amend NR 400.02 (3), 409.01 (1) (c), 409.02 (2) (a) 1., (4), (59) (c) and (77) (b) and (c), 409.08 (1) (a), (c) and (d), (2) (b), (3) (b) and (c) and (4) (a), 409.09 (1) (b) (intro.), (c) (intro.) and 1. and (d) 1. and (2) (f) 1. and 3. (intro.) and (g) 1. b., 409.10 (2), 409.11 (1) (a) 2. and 3. and (2) (a) and 409.12 (1) (a), (c), (d) and (e), (3) (c), (4) (a) 10. and (6) (a) 2.; to repeal and recreate NR 409.04, 409.05 and 409.12 (4) (b) and (6) (a) 1.; and to create NR 409.01 (1) (b) 9. and (d), 409.02 (2) (b), (12e), (12j), (12o), (12t), (17m), (20m), (21m), (32h), (32p), (35h), (35p), (39m), (43h), (43p), (46h), (46p), (49m), (51m), (56m), (61m), (67m), (74h), (74p), (76m), (79m), (81m), (88), (89) and (90), 409.055, 409.06 (5) (b), 409.065, 409.08 (1) (a) 2., (b) 9., (c) 2., (d) 2. and (e) and (2) (f), 409.09 (1) (a) 2., 409.12 (1) (g) and (4) (a) 11. and 12., (c) and (d), 439.098, 484.10 (41m) and 484.11 (6) and (7), relating to incorporating federal nitrogen oxides (NOx) emission requirements into the department's air pollution control program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02–10–99 RECEIVED BY LEGISLATIVE COUNCIL.
03–09–99 REPORT SENT TO AGENCY.

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LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☑ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

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CLEARINGHOUSE RULE 99–021

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

GENERAL COMMENT: While s. 227.14 (1m), Stats., allows the format of federal regulations to be used in this rule, many of the comments in this section either are not related directly to the federal format or will assist in clarifying the intent of the rule.

a. Based on a word search, it appears that the terms "alternative contemporaneous annual emission limitation" and "approved clean coal technology demonstration project" are not used in the rule. If this is the case, definitions of these terms should be eliminated.

b. Section NR 409.02 (12e) includes a reference to s. NR 409.06 (4) (g) although the latter section does not exist in the current rule or in the rule-making order. Is this an error?

c. In s. NR 409.02 (12t), the definition of "arch-fired boiler" indicates that it is limited to six specific boilers in the state, but it gives no information about where those boilers are. This seems an inadequate definition. Further, the third sentence of that definition appears to be substantive and so belongs in the text of the rule.

d. In s. NR 409.02 (17m), the note following the definition of "cell burner boiler" appears to be more than merely explanatory material. If the department intends this to have the force of law, it should be incorporated into the preceding definition.

e. The citation at the end of s. NR 409.04 (2) (c) should read "under subs. (1) (a) and (4) (c)." The same comment applies to the references in the middle portion of s. NR 409.04 (5) (a) and at the end of that paragraph.

f. The rule contains many errors with regard to introductory language and following lists. [See s. 1.03 (8), Manual.] In general, an introductory clause should end with, or include, a phrase such as "all of the following" or "any of the following," and each of the following items should end with a period. The first of many provisions that do not follow this rule is s. NR 409.04 (1).

The rule also contains numerous instances in which material that is not introductory in nature is numbered as an introduction. These provisions should be numbered at the same level as those that follow them. For example, s. NR 409.065 (5) (d) 3. (intro.) should be numbered s. NR 409.065 (5) (d) 3. a. and the following provisions should be numbered subd. 3. b. to e. Similarly, s. NR 409.065 (7) (a) (intro.) should be numbered s. NR 409.065 (7) (a) 1. and the following units should be numbered subds. 2. to 8.

In other instances, provisions that should be broken down into an introduction and following list are not. See, for example, s. NR 409.065 (6) (d) 7. and (e) 2.

Two other provisions, s. NR 409.065 (6) (a) and (7) (d), make particularly poor use of the introduction and list format and should be modified as follows:

(1) Section NR 409.065 (6) (a) (intro.) should end with the phrase "all of the following apply:". A new subd. 1. should be inserted which reads: "One of the following:" and subds. 1. to 4. should be numbered subds. 1. a. to d. Subdivision 5. should be numbered subd. 2. Subdivision 6. (intro.) should be numbered subd. 3. (intro.) and end with the phrase "all of the following apply:". Each subunit of this paragraph should end with a period (except those ending with a colon) and should not end with the word "and" or "or."

(2) Section NR 409.065 (7) (d) (intro.) should be numbered s. NR 409.065 (7) (d) 1. (intro.) and should begin with the phrase "Except as provided as in subd. 2.," and end with the phrase "under the plan if all of the following requirements are met:". Subdivision 1. should be numbered subd. 1. a. and subds. 1. a. and b. should be numbered subds. 1. b. and c. Each subdivision paragraph should end with a period and not with the word "and" or "or."

g. The second sentence of s. NR 409.04 (3) (a) 4. belongs in the introduction to par. (a). This could be accomplished by simply adding the words "and the administrator" after the words "the department" in that introduction.

h. Section NR 409.04 (5) (b) includes a cross-reference to nonexistence provisions, sub. (3) (a) 1. c. and d.

i. Section NR 409.05, beginning in the first subsection, uses the term "opt-in source." Is this a term of art? If not, the term should either be defined or replaced by a term or phrase that is understandable on its face.

j. In s. NR 409.05 (3) (b), the word "and" should replace the comma following the notation "40 C.F.R. 72.2 to 72.6."

k. In s. NR 409.05 (4) (a), the word "and" between the terms "sulphur oxide" and "nitrogen oxides" should be replaced by the word "or."

l. In s. NR 409.055 (1) (intro.), the notation "sub." should be replaced by the notation "par." However, sub. (1) (d) should be redrafted as a definition and placed in a separate subsection of that section. (In particular, it does not follow grammatically from the introductory clause of that subsection.)

m. The format of the series of citations and the end of the first sentence of s. NR 409.055 (2) (intro.) is incorrect. It could be corrected by inserting either the word "and" after the word "section" or the notation "40 C.F.R." before the notation "72.10 to 72.13." The same comment applies to the citations at the end of s. NR 409.055 (3) (a) 1.

n. Section NR 409.065 is unnecessarily long, which makes reading it difficult. It could easily be broken down into five or more sections, based on its subsections, which could even be placed in a separate subchapter.

o. In s. NR 409.065 (1) (a), the phrase "the provisions apply to each" should be replaced by the phrase "this section applies to a."

p. Section NR 409.065 (6) (b) should be rewritten in the active voice and in full sentences. Each subdivision should clearly state whose responsibility the described action is, such as the owner or operator or the department.

q. Section NR 409.065 (6) (e) 11., which is referred to in s. NR 409.065 (6) (d) 3., is missing. Should s. NR 409.065 (6) (d) 3. refer instead to subd. 12.? Similarly, should s. NR 409.065 (6) (e) 6. refer to sub. (9) (e), rather than sub. (9) (b)?

r. Use of the word "will" in s. NR 409.065 (6) (f) 1. c. is inappropriate. That sentence could be rewritten as follows: "During the alternative emission limitation demonstration period, a unit may emit at a rate . . . ."

s. In s. NR 409.065 (6) (f) 2. b., the reference to "par. (a)" should be replaced by a reference to "this subd. 2. a."

t. The text of s. NR 409.065 (7) (a) 6. should be incorporated into the description of the term R_{li}. The same applies to s. NR 409.065 (7) (d) 2. b.

u. In s. NR 409.065 (7) (b) 1., the notation "pars." should be replaced by the notation "par."

v. In s. NR 409.065 (7) (d) 2. (intro.), the reference to "subpar. a." should be replaced by a reference to "this subd. 2. a."

w. Section NR 409.065 (7) (d) 2. c. should be renumbered as a separate subdivision.

x. SECTION 19 uses the amendment format to renumber s. NR 409.08 (1) (a). Instead, it should use the renumbering format. The same comment applies to SECTIONS 21 and 23.

y. Since s. NR 409.08 (1) (b) 9. is stated in the past tense and only describes history, should it be placed in a note rather than a substantive provision? Similarly, what is the significance of the date specified in s. NR 409.11 (1) (a) 2., since that date is now past?

z. In s. NR 409.08 (2) (f) 3., the notation "i.e." should be replaced by the word "including," and the final two occurrences of the notation "s. NR" should be deleted.

aa. In s. NR 439.098 (4) (a) and (c), the material beginning with "e.g.," should be placed in a note. [See, also, s. NR 409.065 (6) (d) 2.]

4. Adequacy of References to Related Statutes, Rules and Forms

The rule contains numerous references to placing information in a prescribed format. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 409.02 (12o), it appears that the word "the" should be inserted before the phrase "U.S. environmental protection agency."

b. In s. NR 409.02 (32p), it appears that the word "of" should be inserted following the word "time."

c. Section NR 409.02 (35h) defines the term "dry bottom." The term is used in the rule as an adjective, but its definition is not in that form. The definition should be modified to read "having a furnace bottom temperature below the ash melting point and bottom ash removal as a solid." The same comment applies to the definition of "wet bottom."

d. In s. NR 409.02 (39m), the definition of "flue gas" refers to all combustion products which would include ash. Should the definition be limited to gaseous combustion products?

e. In s. NR 409.02 (43h), the definition of "group 1 boiler" should be "a tangentially-fired boiler or a dry bottom wall-fired boiler that is not a cell burner boiler."

f. In s. NR 409.02 (74p), it appears that a comma should be inserted following the word "and."

g. Section NR 409.02 (90) states that "wet bottom boiler" includes arch-fired boilers. However, the definition of the latter term states that arch-fired boilers are dry bottom boilers. Which is correct?

h. The titles of s. NR 409.04 (2) and (3) do not describe the content of those provisions well. More descriptive titles might be "Exemptions for Nonallocated Units" and "Exemptions for Allocated Units," or some other titles.

i. The references to "sub. (1)" in s. NR 409.04 (6) (a) 1. and (c) 2. appear to be incorrect, since sub. (1) does not include any requirements.

j. In s. NR 409.05 (2) (b), it appears that the parenthetical notation following the number "72" should be deleted.

k. The title of s. NR 409.055 refers to "industrial utility-units," while the applicability provisions in sub. (1) of that section refer to "non-cogeneration, utility units." These should be reconciled. Also, sub. (1) (intro.) and (a) indicate that that section applies to utility units that are not owned by or affiliated with a utility, an obvious contradiction. These, too, should be reconciled.

l. In s. NR 409.055 (1) (a), it appears that the comma after the word "thereafter" should be deleted and that a comma should be inserted following the word "thereof."

m. Section NR 409.055 (4) (d) 2. is essentially a definition of the term "successor agreement." However, the term is not used in that paragraph and its relation to that paragraph, titled "Loss of Exemption," is not made clear. This definition should be moved to a separate subsection at the beginning of the section.

n. In s. NR 409.065 (2) (e), it appears that a comma should be inserted before the phrase "is exempt."

o. In s. NR 409.065 (6) (e) 8., the phrase "U.S. EPA" should be replaced by the phrase "U.S. environmental protection agency."

p. Section NR 409.065 (6) (f) 1. e. should indicate the time frame in which the unit could not demonstrate meeting the requirements, presumably the alternative emission limitation demonstration period.

q. The distinction between s. NR 409.065 (6) (g) 1. b. and f. should be made clearer. Subdivision 1. b. applies during the demonstration period, and subd. 1. f. presumably applies at any time after the demonstration period, although it does state as much. Also, there are subtle differences between the two provisions. For example, subd. 1. b. refers to upgrades while subd. 1. f. does not. Unless it is intended that these provisions to be interpreted differently, they should be worded identically.

r. In s. NR 409.08 (1) (e), the phrase ", in its sole discretion," is unnecessary and should be deleted.

s. Section NR 439.098 (1) (intro.) should more specifically identify the subject of the sentence, i.e., the owner or operator of an affected unit subject to the requirements of s. NR 409.065. The same comment applies to s. NR 439.098 (2) (intro.).

t. In s. NR 439.098 (2) (f), the second sentence should not be written in the imperative form.

u. Section NR 484.11 (6) (intro.) and (7) (intro.) both should conclude with a colon.

JUL 20 REC'D

State of Wisconsin
Department of Natural Resources

NOTICE TO PRESIDING OFFICERS

OF PROPOSED RULEMAKING

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. AM-58-98

Legislative Council Rules Clearinghouse Number 99-021

Subject of Rules Incorporating federal nitrogen oxides (NO_x) emissions requirements into the department's air pollution control program

Date of Transmittal to Presiding Officers July 19, 1999

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster

266-1959

REPORT TO LEGISLATURE

NR 409 and 439, Wis. Adm. Code
Incorporating federal nitrogen oxides (NO_x) emissions requirements
Into the department's air pollution control program

Board Order No. AM-58-98
Clearinghouse Rule No. 99-021

Statement of Need

Following finalization of the federal acid rain rules with respect to nitrogen oxides (NO_x) emission limitations and related requirements, U.S. EPA required states to adopt these new federal regulations as state regulations. The proposed revisions to the state acid rain permitting program incorporate the NO_x provisions as well as additional revisions to the sulfur dioxide (SO_2) provisions of primarily 40 CFR Parts 72 and 76 into the Wisconsin Administrative Code.

The most significant change to the existing state acid rain rules would be the creation of s. NR 409.065 to incorporate the new NO_x provisions of the federal acid rain program into ch. NR 409. The new provisions encompass emission limitations to existing utility fossil fuel-fired units, monitoring requirements, permitting procedures, as well as compliance definitions.

Modifications as a Result of Public Hearing

Only minor modifications have been made as a result of comments by the U.S. EPA and the Rules Clearinghouse.

Appearances at the Public Hearing and Their Position

In support – none
In opposition – none

As interest may appear:

Kerry Nicholls, WI Dept. of Military Affairs, Madison, WI
Connie Killian, 3713 East Karstens Drive, #3, Madison, WI 53704
Sally Jenkins, Public Service Commission, P.O. Box 7854, Madison, WI 53707-7854

Response to Legislative Council Rules Clearinghouse Report

See attached Response to Comments

Final Regulatory Flexibility Analysis

Small businesses will be unaffected by the proposed changes to the state acid rain rules because the regulations only apply to electric utilities.

Intro list problem p. 31+44.
also 29+46
also 34+35

Draft #7
1/26/99

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 409.02(2)(a)2.c. Note and (3) Note, 409.09(1)(a) Note and (b)(intro.) Note and (c)(intro.) Note and (d)4. Note and (2)(g)1.b. Note and 409.11(2)(d); to renumber NR 409.06(5)(b), 409.09(1)(a) and 484.11(1) to (5); to renumber and amend NR 409.12(4)(a)11. and 12.; to amend NR 400.02(3), 409.01(1)(c), 409.02(2)(a)1., (4), (59)(c) and (77)(b) and (c), 409.08(1)(a), (c) and (d), (2)(b), (3)(b) and (c) and (4)(a), 409.09(1)(b)(intro.), (c)(intro.) and 1. and (d)1., (2)(f)1. and 3.(intro.) and (g)1.b., 409.10(2), 409.11(1)(a)2. and 3. and (2)(a), 409.12(1)(a), (c), (d) and (e), (3)(c), (4)(a)10. and (6)(a)2.; to repeal and recreate NR 409.04, 409.05, 409.12(4)(b) and (6)(a)1.; and to create NR 409.01(1)(b)9., 409.01(1)(d), 409.02(2)(b), (12e), (12j), (12o), (12t), (17m), (20m), (21m), (32h), (32p), (35h), (35p), (39m), (43h), (43p), (46h), (46p), (49m), (51m), (56m), (61m), (67m), (74h), (74p), (76m), (79m), (81m), (88), (89) and (90), 409.055, 409.06(5)(b), 409.065, 409.08(1)(a)2., (b)9., (c)2., (d)2. and (e), and (2)(f), 409.09(1)(a)2., 409.12(1)(g), (4)(a)11. and 12., (c) and (d), 439.098, 484.10(41m) and 484.11(6) and (7) relating to incorporating federal nitrogen oxides (NO_x) emission requirements into the department's air pollution control program.

AM-58-98

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2)(a) and 285.11(1), Stats.

Statutes interpreted: s. 285.11(6), Stats. The State Implementation Plan developed under that provision is revised.

Following finalization of the federal acid rain rules with respect to nitrogen oxides (NO_x) emission limitations and related requirements, U.S. EPA required states to adopt these new federal regulations into state regulations. The proposed revisions to the state acid rain permitting program incorporate the NO_x provisions as well as additional revisions to the sulfur dioxide (SO_2) provisions of primarily 40 CFR Parts 72 and 76 into the Wisconsin Administrative Code. Except for the conversion of the federal text into state numbering and writing style (including terminology), federal formating is followed pursuant to s. 227.14(1m), Stats., and the proposed provisions of the state acid rain program are identical to the corresponding federal rule language. In this way the state version of the acid rain program is neither more stringent nor less stringent than the federal acid rain program.

The most significant change to the existing state acid rain rules is the proposed creation of a new section, NR 409.065 NITROGEN OXIDES REQUIREMENTS, to incorporate the new NO_x provisions of the federal acid rain program into ch. NR 409. The proposed s. NR 409.065 includes all of the elements of and is identical to U.S. EPA's model state rule for 40 CFR part 76 (the federal NO_x regulation for the federal acid rain program), except that test methods and procedures are proposed to be included in a created s. NR 439.098.

SECTION 1. NR 400.02(3), as affected by Clearinghouse Rule 98-181, is amended to read:

NR 400.02(3) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with title IV of the act (42 USC 7651 to 7651o), 40 CFR parts 72~~, 73, 75, 77 and~~ to 78, and regulations implementing sections 407 and 410 of the act (42 USC 7651f and 7651i).

SECTION 2. NR 409.01(1)(b)9. is created to read:

NR 409.01(1)(b)9. A unit for which an exemption under s. NR 409.04, 409.05 or 409.055 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of s. NR 409.04, 409.05 or 409.055, as applicable to the exemption.

SECTION 3. NR 409.01(1)(c) is amended to read:

NR 409.01(1)(c) For a determination of applicability, a responsible official or an owner or operator of any unit may petition the administrator under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

SECTION 4. NR 409.01(1)(d) is created to read:

NR 409.01(1)(d) All references to 40 CFR part 72, 40 CFR part 73, 40 CFR part 74, 40 CFR part 75, 40 CFR part 76, 40 CFR part 77 and 40 CFR part 78 in this chapter mean those parts of the code of federal regulations as in effect on July 1, 1998, except that in the case of CFR appendices incorporated by reference in ch. NR 484, if a more recent date is specified in the applicable section of ch. NR 484, that date shall apply.

SECTION 5. NR 409.02(2)(b) is created to read:

NR 409.02(2)(b) For purposes of nitrogen oxides emissions, the

applicable limitation under s. NR 409.065.

SECTION 6. NR 409.02(2)(a)2.c. Note and (3) Note are repealed.

SECTION 7. NR 409.02(4) is amended to read:

NR 409.02(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. 285.13, 285.81 and 227.40 to 227.60, Stats., including any permit revisions, specifying~~ which specifies 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.

SECTION 8. NR 409.02 (12e), (12j), (12o), (12t), (17m), (20m), (21m), (32h), (32p), (35h), (35p), (39m), (43h), (43p), (46h), (46p), (49m), (51m), and (56m) are created to read:

NR 409.02(12e) "Alternative contemporaneous annual emission limitation" means the maximum allowable NO_x emission rate (on a pound per million BTU, annual average basis) assigned to an individual unit in a NO_x emissions averaging plan pursuant to ~~s. NR 409.06(4)(g).~~

(12j) "Alternative technology" means a control technology for reducing NO_x emissions that is outside the scope of the definition of low NO_x burner technology. Alternative technology does not include overfire air as applied to wall-fired boilers or separated overfire air as applied to tangentially fired boilers.

(12o) "Approved clean coal technology demonstration project" means a project using funds appropriated under the U.S. department of energy's "Clean Coal Technology Demonstration Program," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. environmental protection agency. The federal contribution for a qualifying project shall be at least 20% of the

total cost of the demonstration project.

(12t) "Arch-fired boiler" means a dry bottom boiler with circular burners, or coal and air pipes, oriented downward and mounted on waterwalls that are at an angle significantly different from the horizontal axis and the vertical axis. This definition shall include only the following units: Holtwood unit 17, Hunlock unit 6, and Sunbury units 1A, 1B, 2A and 2B. For the purposes of the acid rain program, all arch-fired boilers owned and operated by Wisconsin Electric Power Company are deemed to be "wall-fired units." This definition shall exclude dry bottom turbo-fired boilers.

(17m) "Cell burner boiler" means a wall-fired boiler that utilizes 2 or 3 circular burners combined into a single vertically oriented assembly that results in a compact, intense flame.

Note: Any low NO_x retrofit of a cell burner boiler that reuses the existing cell burner, close-coupled wall opening configuration would not change the designation of the unit as a cell burner boiler.

(20m) "Coal-fired utility unit" means a utility unit in which the combustion of coal (or any coal-derived fuel) on a Btu basis exceeds 50.0% of its annual heat input during the following calendar year: for Phase I units, in calendar year 1990; and, for Phase II units, in calendar year 1995 or, for a Phase II unit that did not combust any fuel that resulted in the generation of electricity in calendar year 1995, in any calendar year during the period 1990-1995. For the purposes of s. NR 409.065, this definition shall apply notwithstanding the definition of "coal-fired" in sub. (20).

(21m) "Combustion controls" means technology that minimizes NO_x formation by staging fuel and combustion air flows in a boiler. This definition shall include low NO_x burners, overfire air or low NO_x burners with overfire air.

(32h) "Cyclone boiler" means a boiler with one or more water-cooled horizontal cylindrical chambers in which coal combustion takes place. The horizontal cylindrical chamber or chambers are attached to the bottom of the furnace. One or more cylindrical chambers are arranged either on one furnace wall or on 2 opposed furnace walls. Gaseous combustion products exiting from

the chamber or chambers turn 90 degrees to go up through the boiler while coal ash exits the bottom of the boiler as a molten slag.

(32p) "Demonstration period" means a period of time not less than 15 months, approved under s. NR 409.06(4)(f), for demonstrating that the affected unit cannot meet the applicable emission limitation under s. NR 409.06(4)(b), (c) or (d) and establishing the minimum NO_x emission rate that the unit can achieve during long-term load dispatch operation.

(35h) "Dry bottom" means ~~the boiler has~~ having a furnace bottom temperature below the ash melting point and ~~the~~ bottom ash ~~is~~ removed as a solid.

(35p) "Economizer" means the lowest temperature heat exchange section of a utility boiler where boiler feed water is heated by the flue gas.

(39m) "Flue gas" means the combustion products arising from the combustion of fossil fuel in a utility boiler.

(43h) "Group 1 boiler" means a tangentially-fired boiler or a dry bottom wall-fired boiler ~~other than a unit applying cell burner technology.~~ that is not a cell burner boiler

(43p) "Group 2 boiler" means a wet bottom wall-fired boiler, a cyclone boiler, a boiler applying cell burner technology, a vertically fired boiler, an arch-fired boiler or any other type of utility boiler, such as a fluidized bed or stoker boiler, that is not a Group 1 boiler.

(46h) "Low NO_x burners" or "low NO_x burner technology" means commercially available combustion modification NO_x controls that minimize NO_x formation by introducing coal and its associated combustion air into a boiler such that initial combustion occurs in a manner that promotes rapid coal devolatilization in a fuel-rich (i.e., oxygen deficient) environment and introduces additional air to achieve a final fuel-lean (i.e., oxygen rich) environment to complete the combustion process. This definition shall include the staging of any portion of the combustion air using air nozzles or registers located inside any waterwall hole that includes a burner. This definition shall exclude the staging of any portion of the combustion air using air nozzles or ports located outside any waterwall hole that includes a burner (commonly referred to as NO_x ports or separated overfire air ports).

(46p) "Maximum continuous steam flow at 100% of load" means the maximum

capacity of a boiler as reported in item 3 (Maximum Continuous Steam Flow at 100% Load in thousand pounds per hour), Section C (design parameters), Part III (boiler information) of the U.S. department of energy's Form EIA-767 for 1995.

Note: Copies of DOE's Form EIA-767 may be obtained for personal use from:

DOE/EIA
Office of Coal, Nuclear, Electric and Alternative Fuels
Electric Power Division
1000 Independence Avenue SW
Washington, DC 20585-0650

(49m) "Non-plug-in combustion controls" means the replacement, in a cell burner boiler, of the portions of the waterwalls containing the cell burners by new portions of the waterwalls containing low NO_x burners or low NO_x burners with overfire air.

(51m) "Operating period" means a period of time of not less than 3 consecutive months and that occurs not more than one month prior to applying for an alternative emission limitation demonstration period under s. NR 409.06(4)(f), during which the owner or operator of an affected unit that cannot meet the applicable emission limitation:

(a) Operates the installed NO_x emission controls in accordance with primary vendor specifications and procedures, with the unit operating under normal conditions; and

(b) Records and reports quality-assured continuous emission monitoring (CEM) and unit operating data according to the methods and procedures in 40 CFR part 75.

(56m) "Plug-in combustion controls" means the replacement, in a cell burner boiler, of existing cell burners by low NO_x burners or low NO_x burners with overfire air.

SECTION 9. NR 409.02(59)(c) is amended to read:

NR 409.02(59)(c) A letter of intent or similar instrument committing to purchase power, either actual electrical output or generator output capacity, from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, ~~1992~~ 1993 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, ~~1992~~ 1993.

SECTION 10. NR 409.02(61m), (67m), (74h), (74p), and (76m) are created to read:

NR 409.02(61m) "Primary vendor" means the vendor of the NO_x emission control system who has primary responsibility for providing the equipment, service and technical expertise necessary for detailed design, installation and operation of the controls, including process data, mechanical drawings, operating manuals or any combination thereof.

(67m) "Reburning" means reducing the coal and combustion air to the main burners and injecting a reburn fuel (such as gas or oil) to create a fuel-rich secondary combustion zone above the main burner zone and final combustion air to create a fuel-lean burnout zone; the formation of NO_x is inhibited in the main burner zone due to the reduced combustion intensity, and NO_x is destroyed in the fuel-rich secondary combustion zone by conversion to molecular nitrogen.

(74h) "Selective catalytic reduction" means a noncombustion control technology that destroys NO_x by injecting a reducing agent (e.g., ammonia) into the flue gas that, in the presence of a catalyst (e.g., vanadium, titanium or zeolite), converts NO_x into molecular nitrogen and water.

(74p) "Selective noncatalytic reduction" means a noncombustion control

technology that destroys NO_x by injecting a reducing agent (e.g., ammonia, urea or cyanuric acid) into the flue gas, downstream of the combustion zone that converts NO_x to molecular nitrogen, water, and when urea or cyanuric acid are used, to carbon dioxide (CO_2).

(76m) "Stoker boiler" means a boiler that burns solid fuel in a bed, on a stationary or moving grate, that is located at the bottom of the furnace.

SECTION 11. NR 409.02(77)(b)and (c) are amended to read:

NR 409.02(77)(b) By the 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 equivalent 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.

SECTION 12. NR 409.02(79m), (81m), (88), (89), and (90) are created to read:

NR 409.02(79m) "Tangentially fired boiler" means a boiler that has coal and air nozzles mounted in each corner of the furnace where the vertical furnace walls meet. Both pulverized coal and air are directed from the furnace corners along a line tangential to a circle lying in a horizontal plane of the furnace.

(81m) "Turbo-fired boiler" means a pulverized coal, wall-fired boiler with burners arranged on walls so that the individual flames extend down toward the furnace bottom and then turn back up through the center of the furnace.

(88) "Vertically fired boiler" means a dry bottom boiler with circular

burners, or coal and air pipes, oriented downward and mounted on waterwalls that are horizontal or at an angle. This definition shall include dry bottom roof-fired boilers and dry bottom top-fired boilers, and shall exclude dry bottom arch-fired boilers and dry bottom turbo-fired boilers.

(89) "Wall-fired boiler" means a boiler that has pulverized coal burners arranged on the walls of the furnace. The burners have discrete, individual flames that extend perpendicularly into the furnace area.

(90) "Wet bottom" means that the ash is removed from the furnace in a molten state. The term "wet bottom boiler" shall include: wet bottom wall-fired boilers, including wet bottom turbo-fired boilers; and wet bottom boilers otherwise meeting the definition of vertically fired boilers, including wet bottom arch-fired boilers, wet bottom roof-fired boilers, and wet bottom top-fired boilers. The term "wet bottom boiler" shall exclude cyclone boilers and tangentially fired boilers.

SECTION 13. NR 409.04 is repealed and recreated to read:

NR 409.04 NEW UNITS EXEMPTION. (1) APPLICABILITY. This section applies to any new utility unit that has not previously lost an exemption under sub. (6)(d) and that, in each year starting with the first year for which the unit is to be exempt:

(a) Serves during the entire year, except for any period before the unit commenced commercial operation, one or more generators with total nameplate capacity of 25 MWe or less;

(b) Burns fuel that does not include any coal or coal-derived fuel, except coal-derived gaseous fuel with a total sulfur content no greater than natural gas; and

(c) Burns gaseous fuel with an annual average sulfur content of 0.05% or less by weight, as determined under sub. (4) and nongaseous fuel with an

annual average sulfur content of 0.05% or less by weight, as determined under sub. (4).

(2) SUBMISSION OF UNIT IDENTIFICATION STATEMENT. (a) Any new utility unit that meets the requirements of sub. (1) and that is not allocated any allowances under 40 CFR part 73 shall be exempt from this chapter, except for the provisions of this section, 40 CFR 72.2 to 72.6, and 40 CFR 72.10 to 72.13.

(b) The exemption under par. (a) shall be effective on January 1 of the first full calendar year for which the unit meets the requirements of sub. (1). By December 31 of the first year for which the unit is to be exempt under this section, a statement signed by the designated representative of each owner of the unit shall be submitted to the department. The statement shall be submitted in a format prescribed by the administrator, shall identify the unit, state the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight, and state that the owners and operators of the unit will comply with sub. (6).

(c) After receipt of the statement under par. (b), the department shall revise under s. NR 409.12 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under subs. (1) par. (a), and subs. (4) and (6).

(3) SUBMISSION OF ALLOWANCES COMPLIANCE STATEMENT. (a) Any new utility unit that meets the requirements of sub. (1) and that is allocated one or more allowances under 40 CFR part 73 shall be exempt from this chapter, except for the provisions of this section, 40 CFR 72.2 to 72.6, and 40 CFR 72.10 to 72.13, if the designated representative of each owner of the unit submits to the department and the administrator a statement, in a format prescribed by the administrator, that:

1. Identifies the unit and states the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be

burned by the unit and their sulfur content by weight;

2. States that the owners and operators of the unit will comply with sub. (6);

3. Surrenders allowances equal in number to, and with the same or earlier compliance use date as, all of those allocated to the unit under 40 CFR part 73 for the first year that the unit is to be exempt under this section and for each subsequent year; and

4. Surrenders any proceeds for allowances under subd. 3. withheld from the unit under 40 CFR 73.10. A copy of the statement shall be submitted to the administrator.

(b) The exemption under par. (a) shall be effective on January 1 of the first full calendar year for which the requirements of sub. (1) and par. (a) are met. After notification by the administrator under 40 CFR 72.7(c)(1)(ii) the department shall revise under s. NR 409.12 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under sub. (1), par. (a), and subs. (4) and (6).

(4) COMPLIANCE DEMONSTRATION. Compliance with the requirement that fuel burned during the year have an annual average sulfur content of 0.05% by weight or less shall be determined as follows using a method of determining sulfur content that provides information with reasonable precision, reliability, accessibility, and timeliness:

(a) For gaseous fuel burned during the year, if natural gas is the only gaseous fuel burned, the requirement is assumed to be met;

(b) For gaseous fuel burned during the year where other gas in addition to or besides natural gas is burned, the requirement is met if the annual average sulfur content is equal to or less than 0.05% by weight. The annual average sulfur content, as a percentage by weight, for the gaseous fuel burned shall be calculated as follows:

$$\%S_{annual} = \frac{\sum_{n=1}^{last} \%S_n \; V_n \; d_n}{\sum_{n=1}^{last} V_n \; d_n}$$

where:

$\%S_{annual}$ is the annual average sulfur content of the fuel burned during the year by the unit, as a percentage by weight

$\%S_n$ is the sulfur content of the nth sample of the fuel delivered during the year to the unit, as a percentage by weight

V_n is the volume of the fuel in a delivery during the year to the unit of which the nth sample is taken, in standard cubic feet; or, for fuel delivered during the year to the unit continuously by pipeline, volume of the fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in standard cubic feet

d_n is the density of the nth sample of the fuel delivered during the year to the unit, in lb per standard cubic foot

n is each sample taken of the fuel delivered during the year to the unit, taken at least once for each delivery; or, for fuel that is delivered during the year to the unit continuously by pipeline, at least once each quarter during which the fuel is delivered.

(c) For nongaseous fuel burned during the year, the requirement is met if the annual average sulfur content is equal to or less than 0.05% by weight. The annual average sulfur content, as a percentage by weight, shall be calculated using the equation in par. (b). In lieu of the factor, volume times density, $V_n d_n$, in the equation, the factor, mass M_n, may be used, where M_n is: mass of the nongaseous fuel in a delivery during the year to the unit

of which the nth sample is taken, in pounds; or, for fuel delivered during the year to the unit continuously by pipeline, mass of the nongaseous fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in pounds.

(5) PERMIT REVISION. (a) A utility unit that was issued a written exemption under this section and that meets the requirements of sub. (1) shall be exempt from this chapter, except for the provisions of this section, 40 CFR 72.2 to 72.6 and 40 CFR 72.10 to 72.13, and shall be subject to the requirements of subs. (1), and (4) par. (b), and sub. (6) in lieu of the requirements set forth in the written exemption. The department shall revise under s. NR 409.12 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph and subs. (1) and (4), par. (b) and sub. (6).

(b) If a utility unit under par. (a) is allocated one or more allowances under 40 CFR part 73, the designated representative of each owner of the unit shall submit to the permitting authority that issued the written exemption a statement, in a format prescribed by the administrator, meeting the requirements of sub. (3)(a)1.(c. and d.) – don't exist

Note: The statement was to have been submitted to the permitting authority by June 30, 1998 and, if the administrator was not the permitting authority, a copy was to have been submitted to the administrator.

(6) SPECIAL PROVISIONS. (a) Duty to comply. The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall:

no requirements – is an applicability provision!

1. Comply with the requirements of sub. (1) for all periods for which the unit is exempt under this section; and

also p. 14

2. Comply with the requirements of this chapter concerning all periods for which the exemption is not in effect, even if such requirements arise, or

must be complied with, after the exemption takes effect.

(b) Scope of exemption. For any period for which a unit is exempt under this section, the unit is not an affected unit under this chapter and ch. NR 407 and is not eligible under 40 CFR part 74. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements in ch. NR 407.

(c) Recordkeeping. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of sub. (1) are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the administrator or the department.

1. Records shall include, for each delivery of fuel to the unit or for fuel delivered to the unit continuously by pipeline, the type of fuel, the sulfur content and the sulfur content of each sample taken.

2. The owners and operators bear the burden of proof that the requirements of sub. (1) are met.

(d) Loss of exemption. 1. On the earliest of the following dates, a unit exempt under sub. (2), (3) or (5) shall lose its exemption and become an affected unit under this chapter and ch. NR 407:

a. The date on which the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe;

b. The date on which the unit burns any coal or coal-derived fuel except for coal-derived gaseous fuel with a total sulfur content no greater than natural gas; or

c. January 1 of the year following the year in which the annual average sulfur content for gaseous fuel burned at the unit exceeds 0.05% by weight, as determined under sub. (4), or for nongaseous fuel burned at the unit exceeds

0.05% by weight, as determined under sub. (4).

2. Notwithstanding s. NR 409.08(1)(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete acid rain portion of an operation permit application no later than 60 days after the first date on which the unit is no longer exempt.

3. For the purpose of applying monitoring requirements under 40 CFR part 75, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.

SECTION 14. NR 409.05 is repealed and recreated to read:

NR 409.05 RETIRED UNITS EXEMPTION. (1) APPLICABILITY. This section applies to any affected unit, except for an opt-in source, that is permanently retired.

(2) SOURCE OBLIGATIONS. (a) Scope of exemption. Any affected unit, except for an opt-in source, that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 to 72.6, 72.10 to 72.13, and subpart B of 40 CFR part 73.

(b) Submissions. The exemption under par.(a) shall become effective on January 1 of the first full calendar year during which that the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative, authorized in accordance with subpart B of 40 CFR part 72, or, if no designated representative has been authorized, a certifying official of each owner of the unit, shall submit a statement to the department. A copy of the statement shall also be submitted to the administrator. The statement shall state, in a format prescribed by the administrator, that the unit is permanently retired and will comply with the requirements of sub. (4).

(3) DEPARTMENT'S ACTION. (a) After receipt of the notice under sub. (2)(b), the department shall amend under s. NR 409.12(4) the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under subs. (2)(a) and (4).

(b) A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 to 72.6 and 72.10 to 72.13 and subpart B of 40 CFR part 73, and shall be subject to the requirements of sub. (4) in lieu of the requirements in the written exemption. The department shall amend under s. NR 409.12(4) the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this subsection and sub. (4).

(4) SPECIAL PROVISIONS. (a) Allowance allocations. A unit exempt under this section may not emit any sulfur dioxide or nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of 40 CFR part 73. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of 40 CFR part 72 and an annual certification report in accordance with 40 CFR 72.90 to 72.92 and is subject to 40 CFR 72.95 and 72.96.

(b) Resumption of operation. A unit exempt under this section may not resume operation unless the designated representative of the source that includes the unit submits a complete acid rain portion of an operation permit application under s. NR 409.08(2) for the unit not less than 24 months prior to the later of January 1, 2000 or the date on which the unit is first to resume operation.

(c) Duty to comply. The owners and operators and, to the extent

applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the acid rain program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(d) Scope of exemption. For any period for which a unit is exempt under this section, the unit is not an affected unit under the acid rain program and 40 CFR parts 70 and 71 and is not eligible to be an opt-in source under 40 CFR part 74. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under 40 CFR parts 70 and 72.

(e) Recordkeeping. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the administrator or the department. The owners and operators bear the burden of proof that the unit is permanently retired.

(f) Loss of exemption. 1. On the earlier of the following dates, a unit exempt under sub. (2) or (3) shall lose its exemption and become an affected unit under the acid rain program and 40 CFR parts 70 and 71:

a. The date on which the designated representative submits an acid rain portion of an operation permit application under par. (b); or

b. The date on which the designated representative is required under par. (b) to submit an acid rain portion of an operation permit application.

2. For the purpose of applying monitoring requirements under 40 CFR part 75, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

SECTION 15. NR 409.055 is created to read:

NR 409.055 ~~INDUSTRIAL UTILITY-UNITS~~ EXEMPTION. (1) APPLICABILITY. This section applies to any ~~non-cogeneration, utility~~ unit that has not previously lost an exemption under sub. (d) and that meets the following criteria:

(a) Starting on the date of the signing of the interconnection agreement under par. (b) and thereafter, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission or distribution of electricity or that is a public utility under the jurisdiction of a state or local utility regulatory authority;

(b) On or before March 23, 1993, the owners or operators of the unit entered into an interconnection agreement and any related power purchase agreement with a person whose principal business is the sale, transmission or distribution of electricity or that is a public utility under the jurisdiction of a state or local utility regulatory authority, requiring the generator or generators served by the unit to produce electricity for sale only for incidental electricity sales to such person.

(c) The unit served or serves one or more generators that, in 1985 or any year thereafter, actually produced electricity for sale only for incidental electricity sales required under the interconnection agreement and any related power purchase agreement under par. (b) or a successor agreement under sub. (4)(d)2.; ~~and~~

(d) Incidental electricity sales, under this section, are total annual sales of electricity produced by a generator that do not exceed 10% of the nameplate capacity of that generator times 8,760 hours per year and do not exceed 10% of the actual annual electric output of that generator.

(2) PETITION FOR EXEMPTION. The designated representative, authorized in accordance with subpart B of 40 CFR part 72, of a unit under sub. (1) may

submit to the department a complete petition for an exemption for the unit from the requirements of the acid rain program, except for the provisions of this section, and 40 CFR 72.2 to 72.6 (or: 40 CFR) and 72.10 to 72.13. A copy of the petition shall also be submitted to the administrator. A complete petition shall include the following elements in a format prescribed by the administrator:

(a) Identification of the unit;

(b) A statement that the unit is not a cogeneration unit;

(c) A list of the current owners and operators of the unit and any other owners and operators of the unit, starting on the date of the signing of the interconnection agreement under sub. (1)(b), and a statement that, starting on that date, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission or distribution of electricity or that is a public utility under the jurisdiction of a state or local utility regulatory authority;

(d) A summary of the terms of the interconnection agreement and any related power purchase agreement under sub. (1)(b) and any successor agreement under sub. (4)(d)2., including the date on which the agreement was signed, the amount of electricity that may be required to be produced for sale by each generator served by the unit, and the provisions for expiration or termination of the agreement;

(e) A copy of the interconnection agreement and any related power purchase agreement under sub. (1)(b) and any successor agreement under sub. (4)(d)2.;

(f) The nameplate capacity of each generator served by the unit;

(g) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and

any related power purchase agreement under sub. (1)(b) or any successor agreement under sub. (4)(d)2.;

(h) A statement that each generator served by the unit actually produced electricity for sale only for incidental electricity sales, in accordance with sub. (1)(d), required under the interconnection agreement and any related power purchase agreement under sub. (1)(b) or any successor agreement under sub. (4)(d)2.; and

(i) The special provisions of sub. (4).

(3) DEPARTMENT'S ACTION. (a) 1. For any unit meeting the requirements of subs. (1) and (2), the department shall issue an exemption from the requirements of the acid rain program, except for the provisions of this section, 40 CFR 72.2 to 72.6 and 72.10 to 72.13.

2. If a petition for exemption is submitted for a unit but the designated representative fails to demonstrate that the requirements of sub. (1) are met, the department shall deny an exemption under this section.

(b) In issuing or denying an exemption under par. (a), the department shall treat the petition for exemption as a permit application and apply the procedures used for issuing or denying the draft, proposed and final acid rain portion of operation permits.

(c) An exemption issued under par. (a)1. shall become effective on January 1 of the first full year the unit meets the requirements of sub. (1).

(d) An exemption issued under par. (a)1. shall be effective until the date on which the unit loses the exemption under sub. (4)(d).

(e) After issuance of the exemption under pars. (a) and (b), the department shall amend under s. NR 409.12(4) the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under par. (a)1. and sub. (4).

(4) SPECIAL PROVISIONS. (a) Duty to comply. The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the acid rain program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(b) Scope of exemption. For any period for which a unit is exempt under this section, the unit is not an affected unit under the acid rain program and 40 CFR parts 70 and 71 and is not eligible to be an opt-in source under 40 CFR part 74. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under 40 CFR parts 70 and 71.

(c) Recordkeeping. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of sub. (1) are met. The owners and operators bear the burden of proof that the requirements of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the administrator or the department. Such records shall include the following information:

1. A copy of the interconnection agreement and any related power purchase agreement under sub. (1)(b) and any successor agreement under par. (d)2.;

2. The nameplate capacity of each generator served by the unit; and

3. For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under sub. (1)(b) or any successor agreement under par. (d)2.

(d) Loss of exemption. 1. On the earliest of the following dates, a unit exempt under this section shall lose its exemption and become an affected unit under the acid rain program and 40 CFR parts 70 and 71:

a. The first date on which there is an owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof, whose principal business is the sale, transmission or distribution of electricity or that is a public utility under the jurisdiction of a state or local utility regulatory authority.

b. If any generator served by the unit actually produces any electricity for sale other than for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under sub. (1)(b) or a successor agreement under subd. 2., then the day after the date on which the electricity is sold.

c. If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under sub. (1)(b) or a successor agreement under subd. 2. where the sale is not required under that interconnection agreement or related power purchase agreement or successor agreement or where such sale will result in total sales for a calendar year exceeding 10% of the nameplate capacity of that generator times 8,769 hours per year, then the day after the date on which such sale is made.

d. If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or related power purchase agreement under sub. (1)(b) or a successor agreement under subd. 2. where the sale results in total sales for a calendar year exceeding 10% of the actual electric output of the generator for that year, then January 1 of the year after such year.

e. If the interconnection agreement or related power purchase agreement under sub. (1)(b) expires or is terminated, no successor agreement under subd. 2. is in effect, and any generator served by the unit actually produces any

electricity for sale, then the day after the date on which such electricity is sold.

2. A "successor agreement" is an agreement that:

a. Modifies, replaces or supersedes the interconnection agreement or related power purchase agreement under sub. (1)(b);

b. Is between the owners and operators of the unit and a person that is contractually obligated to sell electricity to the owners and operators of the unit and either whose principal business is the sale, transmission or distribution of electricity or that is a public utility under the jurisdiction of a state or local utility regulatory authority; and

c. Requires the generator served by the unit to produce electricity for sale to the person under subd. 2.b. and only for incidental electricity sales, such that the total amount of electricity that the generator is required to produce for sale under the interconnection agreement or related power purchase agreement, to the extent they are still in effect, and the successor agreement may not exceed the total amount of electricity that the generator was required to produce for sale under the interconnection agreement or related power purchase agreement under sub. (1)(b).

3. Notwithstanding 40 CFR 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete acid rain portion of an operation permit application no later than 60 days after the first date on which the unit is no longer exempt.

4. For the purpose of applying monitoring requirements under 40 CFR part 75, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.

SECTION 16. NR 409.06(5)(b) is renumbered NR 409.06(5)(c).

SECTION 17. NR 409.06(5)(b) is created to read:

NR 409.06(5)(b) If one or more affected units governed by an approved NO_x averaging plan under s. NR 409.065(7) fail, after applying s. NR 409.065(7)(d)2.c., to meet their respective alternative contemporaneous emission limitations or annual heat input limits, then excess emissions of nitrogen oxides occur during the year at each affected unit. The sum of the excess emissions of nitrogen oxides of affected units shall equal the amount determined under s. NR 409.065(8)(b). The owners and operators of affected units shall pay an excess emissions penalty based on the sum of the excess emissions of nitrogen oxides of affected units.

break into multiple sections, maybe a subchapter (2)

SECTION 18. NR 409.065 is created to read:

this section applies (2)

NR 409.065 NITROGEN OXIDES REQUIREMENTS. (1) APPLICABILITY. (a) Except as provided in pars. (b) to (d), the provisions apply to a coal-fired utility unit that is subject to an acid rain emissions limitation or reduction requirement for SO_2 under Phase I or Phase II pursuant to section 404, 405 or 409 of the act (42 USC 7651c, 7651d or 7651h).

(b) The emission limitations for NO_x under this section apply to each affected coal-fired utility unit subject to section 404(d) or 409(b) of the act on the date the unit is required to meet the acid rain emissions reduction requirement for SO_2.

(c) The provisions of this section apply to each coal-fired substitution unit or compensating unit, designated and approved by U.S. EPA as a Phase I unit pursuant to 40 CFR 72.41 or 72.43 as follows:

1. A coal-fired substitution unit that is designated in a substitution plan that is approved by U.S. EPA and active as of January 1, 1995 shall be treated as a Phase I coal-fired utility unit for purposes of this section. In

the event the designation of the unit as a substitution unit is terminated after December 31, 1995, pursuant to 40 CFR 72.41 and the unit is no longer required to meet Phase I SO_2 emissions limitations, the provisions of this section will continue to apply.

2. A coal-fired substitution unit that is designated in a substitution plan that is not approved by U.S. EPA or not active as of January 1, 1995, or a coal-fired compensating unit, shall be treated as a Phase II coal-fired utility unit for purposes of this section.

(d) The provisions of this section for Phase I units apply to each coal-fired transfer unit governed by a Phase I extension plan, approved pursuant to 40 CFR 72.42, on January 1, 1997. Notwithstanding the preceding sentence, a coal-fired transfer unit was subject to the acid rain emissions limitations for nitrogen oxides beginning on January 1, 1996 if, for that year, a transfer unit was allocated fewer Phase I extension reserve allowances than the maximum amount that the designated representative could have requested in accordance with 40 CFR 72.42(c)(5), as adjusted under 40 CFR 72.42(d), unless the transfer unit was the last unit allocated Phase I extension reserve allowances under the plan.

(2) NITROGEN OXIDES EMISSION LIMITATIONS FOR GROUP 1, PHASE I BOILERS. (a) Beginning January 1, 1996, or for a unit subject to section 404(d) of the act, the date on which the unit is required to meet acid rain emission reduction requirements for SO_2, the owner or operator of a Phase I coal-fired utility unit with a tangentially fired boiler or a dry bottom wall-fired boiler, other than units applying cell burner technology, may not discharge, or allow to be discharged, emissions of NO_x to the atmosphere in excess of the following limits, except as provided in par. (c) or (e) or in sub. (6) or (7):

1. 0.45 pound per million Btu of heat input on an annual average basis for tangentially fired boilers.

2. 0.50 pound per million Btu of heat input on an annual average basis for dry bottom wall-fired boilers other than units applying cell burner

technology.

(b) The owner or operator shall determine the annual average NO_x emission rate, in pound per million Btu, using the methods and procedures specified in 40 CFR part 75.

(c) Unless the unit meets the early election requirement of sub. (5), the owner or operator of a coal-fired substitution unit with a tangentially fired boiler or a dry bottom wall-fired boiler, other than units applying cell burner technology, that satisfies the requirements of sub. (1)(c)2., shall comply with the NO_x emission limitations that apply to Group 1, Phase II boilers.

(d) The owner or operator of a Phase I unit with a cell burner boiler that converts to a conventional wall-fired boiler on or before January 1, 1995 or, for a unit subject to section 404(d) of the act, the date the unit is required to meet acid rain emissions reduction requirements for SO_2 shall comply, by the respective date or January 1, 1996, whichever is later, with the NO_x emissions limitation applicable to dry bottom wall-fired boilers under par. (a), except as provided in par. (c) or (e) or in sub. (6) or (7).

(e) The owner or operator of a Phase I unit with a Group 1 boiler that converts to a fluidized bed or other type of utility boiler not included in Group 1 boilers on or before January 1, 1995 or, for a unit subject to section 404(d) of the act, the date the unit is required to meet acid rain emissions reduction requirements for SO_2 is exempt from the NO_x emissions limitations specified in par. (a), but shall comply with the NO_x emission limitations for Group 2 boilers under sub. (3).

(f) Except as provided in sub. (5) and in par. (c), each unit subject to the requirements of this section is not subject to the requirements of sub. (4).

(3) NITROGEN OXIDES EMISSION LIMITATIONS FOR GROUP 2 BOILERS. (a) Beginning January 1, 2000 or, for a unit subject to section 409(b) of the act,

the date on which the unit is required to meet acid rain emission reduction requirements for SO_2, the owner or operator of a Group 2 coal-fired boiler with a cell burner boiler, cyclone boiler, a wet bottom boiler or a vertically fired boiler may not discharge, or allow to be discharged, emissions of NO_x to the atmosphere in excess of the following limits, except as provided in sub. (6) or (7):

1. 0.68 pound per million Btu of heat input on an annual average basis for cell burner boilers. The NO_x emission control technology on which the emission limitation is based is plug-in combustion controls or non-plug-in combustion controls. Except as provided in sub. (2)(d), the owner or operator of a unit with a cell burner boiler that installs non-plug-in combustion controls after November 15, 1990 shall comply with the emission limitation applicable to cell burner boilers. The owner or operator of a unit with a cell burner that installs non-plug-in combustion controls on or before November 15, 1990 shall comply with the applicable emission limitation for dry bottom wall-fired boilers.

2. 0.86 pound per million Btu of heat input on an annual average basis for cyclone boilers with a maximum continuous steam flow at 100% of load of greater than 1060, in thousands of pounds per hour. The NO_x emission control technology on which the emission limitation is based is natural gas reburning or selective catalytic reduction.

3. 0.84 pound per million Btu of heat input on an annual average basis for wet bottom boilers, with a maximum continuous steam flow at 100% of load of greater than 450, in thousands of pounds per hour. The NO_x emission control technology on which the emission limitation is based is natural gas reburning or selective catalytic reduction.

4. 0.80 pound per million Btu of heat input on an annual average basis for vertically-fired boilers. The NO_x emission control technology on which the emission limitation is based is combustion controls.

(b) The owner or operator shall determine the annual average NO_x

emission rate, in pounds per million Btu, using the methods and procedures specified in 40 CFR part 75.

(4) NITROGEN OXIDES EMISSION LIMITATIONS FOR GROUP 1, PHASE II BOILERS. (a) Beginning January 1, 2000, the owner or operator of a Group 1, Phase II coal-fired utility unit with a tangentially-fired boiler or a dry bottom wall-fired boiler may not discharge, or allow to be discharged, emissions of NO_x to the atmosphere in excess of the following limits, except as provided in sub. (5), (6) or (7):

1. 0.40 pound per million Btu of heat input on an annual average basis for tangentially-fired boilers.

2. 0.46 pound per million Btu of heat input on an annual average basis for dry bottom wall-fired boilers other than units applying cell burner technology.

(b) The owner or operator shall determine the annual average NO_x emission rate, in pounds per million Btu, using the methods and procedures specified in 40 CFR part 75.

new section?

(5) EARLY ELECTION FOR GROUP 1, PHASE II BOILERS. (a) General provisions. 1. The owner or operator of a Phase II coal-fired utility unit with a Group 1 boiler may elect to have the unit become subject to the applicable emissions limitation for NO_x under sub. (2), starting no later than January 1, 1997.

2. The owner or operator of a Phase II coal-fired utility unit with a Group 1 boiler that elects to become subject to the applicable emission limitation under sub. (2) may not be subject to sub. (4) until January 1, 2008, provided the designated representative demonstrates that the unit is in compliance with the limitation under sub. (2), using the methods and procedures specified in 40 CFR part 75, for the period beginning January 1 of the year in which the early election takes effect, but not later than January 1, 1997, and ending December 31, 2007.

3. The owner or operator of any Phase II unit with a cell burner boiler that converts to conventional burner technology may elect to become subject to the applicable emissions limitation under sub. (2) for dry bottom wall-fired boilers, provided the owner or operator complies with the provisions in subd. 2.

4. The owner or operator of a Phase II unit approved for early election may not submit an application for an alternative emissions limitation demonstration period under sub. (6) until the earlier of:

a. January 1, 2008; or

b. Early election is terminated pursuant to par. (d)3.

5. The owner or operator of a Phase II unit approved for early election may not incorporate the unit into an averaging plan prior to January 1, 2000. On or after January 1, 2000, for purposes of the averaging plan, the early election unit will be treated as subject to the applicable emissions limitation for NO_x for Phase II units with Group 1 boilers under sub. (4).

(b) Submission of plan. In order to obtain early election status, the designated representative of a Phase II unit with a Group 1 boiler shall have submitted an early election plan to U.S. EPA by January 1, 1997, and U.S. EPA shall have approved the plan.

(c) Department's action. Beginning January 1, 2000, the department shall approve any early election plan previously approved by U.S. EPA during Phase I, unless the plan is terminated pursuant to par. (d)3.

(d) Special provisions. 1. 'Nitrogen oxides.' A unit that is governed by an approved early election plan shall be subject to an emissions limitation for NO_x as provided under par. (a)2. except as provided under subd. 3.c.

2. 'Liability.' The owners and operators of an unit governed by an approved early election plan shall be liable for any violation of the plan or this section at that unit. The owners and operators shall be liable,

beginning January 1, 2000, for fulfilling the obligations specified in 40 CFR part 77.

3. 'Termination.' An approved early election plan shall be in effect only until the earlier of January 1, 2008 or January 1 of the calendar year for which a termination of the plan takes effect.

a. If the designated representative of the unit under an approved early election plan fails to demonstrate compliance with the applicable emissions limitation under sub. (2) for any year during the period beginning January 1 of the first year the early election takes effect and ending December 31, 2007, the department shall terminate the plan. The termination shall take effect beginning January 1 of the year after the year for which there is a failure to demonstrate compliance, and the designated representative may not submit a new early election plan.

b. The designated representative of the unit under an approved early election plan may terminate the plan any year prior to 2008 but may not submit a new early election plan. In order to terminate the plan, the designated representative shall submit a notice under s. NR 409.09(1)(d) by January 1 of the year for which the termination is to take effect.

c. If an early election plan is terminated any year prior to 2000, the unit shall meet, beginning January 1, 2000, the applicable emissions limitation for NO_x for Phase II units with Group 1 boilers under sub. (4).

d. If an early election plan is terminated in or after 2000, the unit shall meet, beginning on the effective date of the termination, the applicable emissions limitation for NO_x for Phase II units with Group 1 boilers under sub. (4).

(6) ALTERNATIVE EMISSION LIMITATIONS. (a) General provisions. The designated representative of an affected unit that is not an early election unit pursuant to sub. (5) and cannot meet the applicable emission limitation in sub. (2), (3) or (4) using, for Group 1 boilers, either low NO_x burner

technology or an alternative technology in accordance with par. (e)11., or, for tangentially-fired boilers, separated overfire air, or, for Group 2 boilers, the technology on which the applicable emission limitation is based may petition the department for an alternative emission limitation less stringent than the applicable emission limitation. In order for the unit to qualify for an alternative emission limitation, the designated representative shall demonstrate that the affected unit cannot meet the applicable emission limitation in sub. (2), (3) or (4) based on a showing, to the satisfaction of U.S. EPA that: all of the following apply

1. one of the following:

a. For a tangentially-fired boiler, the owner or operator has either properly installed low NO_x burner technology or properly installed separated overfire air; or

b. For a dry bottom wall-fired boiler, other than a unit applying cell burner technology, the owner or operator has properly installed low NO_x burner technology; or

c. For a Group 1 boiler, the owner or operator has properly installed an alternative technology, including but not limited to reburning, selective noncatalytic reduction or selective catalytic reduction, that achieves NO_x emission reductions demonstrated in accordance with par. (e)11.; or

d. For a Group 2 boiler, the owner or operator has properly installed the appropriate NO_x emission control technology on which the applicable emission limitation in sub. (3) is based; and

2. The installed NO_x emission control system has been designed to meet the applicable emission limitation in sub. (2), (3) or (4); and

3. For a demonstration period of at least 15 months or other period of time, as provided in par. (d)1., all of the following apply:

a. The NO_x emission control system has been properly installed and properly operated according to specifications and procedures designed to minimize the emissions of NO_x to the atmosphere;

b. Unit operating data as specified in this section show that the unit and NO_x emission control system were operated in accordance with the bid and design specifications on which the design of the NO_x emission control system was based; and

c. Unit operating data as specified in this section, continuous emission monitoring data obtained pursuant to 40 CFR part 75, and the test data specific to the NO_x emission control system show that the unit could not meet the applicable emission limitation in sub. (2), (3) or (4).

(b) Petitioning process. The petitioning process for an alternative emission limitation shall consist of the following steps:

rewrite in active voice and full sentence

1. Operation during a period of at least 3 months, following the installation of the NO_x emission control system, that shows that the specific unit and the NO_x emission control system was unable to meet the applicable emissions limitation under sub. (2), (3) or (4) and was operated in accordance with the operating conditions upon which the design of the NO_x emission control system was based and with vendor specifications and procedures;

2. Submission of a petition for an alternative emission limitation demonstration period as specified in par. (d);

3. Operation during a demonstration period of at least 15 months, or other period of time as provided in par. (f)1., that demonstrates the inability of the specific unit to meet the applicable emissions limitation under sub. (2), (3) or (4) and the minimum NO_x emissions rate that the specific unit can achieve during long-term load dispatch operation; and

4. Submission of a petition for a final alternative emission limitation as specified in par. (e).

(c) Deadlines. 1. 'Petition for an alternative emission limitation demonstration period.' The designated representative of the unit shall submit a petition for an alternative emission limitation demonstration period to the department after the unit has been operated for at least 3 months after

installation of the NO_x emission control system required under par. (a) and not later than:

a. 120 days after January 1 of the calendar year in which the alternative emission limitation demonstration period is to begin, or

b. 120 days after startup of the NO_x emission control system if the unit is not operating at the beginning of that calendar year.

2. 'Petition for a final alternative emission limitation.' Not later than 90 days after the end of an approved alternative emission limitation demonstration period for the unit, the designated representative of the unit may submit a petition for an alternative emission limitation to the department.

3. 'Renewal of an alternative emission limitation.' In order to request continuation of an alternative emission limitation, the designated representative shall submit a petition to renew the alternative emission limitation on the date that the application for renewal of the source's acid rain portion of an operation permit containing the alternative emission limitation is due.

(d) Contents of petition for an alternative emission limitation demonstration period. The designated representative of an affected unit that has met the minimum criteria under par. (a) and that has been operated for a period of at least 3 months following the installation of the required NO_x emission control system may submit to the department a petition for an alternative emission limitation demonstration period. In the petition, the designated representative shall provide the following information in a format prescribed by the department:

1. Identification of the unit;

2. The type of NO_x control technology installed, e.g., low NO_x burner technology, selective noncatalytic reduction, selective catalytic reduction, reburning;

3. If an alternative technology is installed, the time period, not less than 6 consecutive months, prior to installation of the technology to be used for the demonstration required in par. (e)11.

4. Documentation as set forth in sub. (9)(b)1. showing that the installed NO_x emission control system has been designed to meet the applicable emission limitation in sub. (2), (3) or (4) and that the system has been properly installed according to procedures and specifications designed to minimize the emissions of NO_x to the atmosphere;

5. The date the unit commenced operation following the installation of the NO_x emission control system or the date the specific unit became subject to the emission limitations of sub. (2), (3) or (4), whichever is later;

6. The dates of the operating period, which shall be at least 3 months long;

7. Certification by the designated representative that the owner or owners or operator operated the unit and the NO_x emission control system during the operating period in accordance with: specifications and procedures designed to achieve the maximum NO_x reduction possible with the installed NO_x emission control system or the applicable emission limitation in sub. (2), (3) or (4); the operating conditions upon which the design of the NO_x emission control system was based; and vendor specifications and procedures;

8. A brief statement describing the reason or reasons why the unit cannot achieve the applicable emission limitation in sub. (2), (3) or (4);

9. A demonstration period plan, as set forth in sub. (9)(b)2.;

10. Unit operating data and quality-assured continuous emission monitoring data, including the specific data items listed in sub. (9)(b)3., collected in accordance with 40 CFR part 75 during the operating period and demonstrating the inability of the specific unit to meet the applicable emission limitation in sub. (2), (3) or (4) on an annual average basis while operating as certified under subd. 7.;

11. An interim alternative emission limitation, in pounds per million Btu, that the unit can achieve during a demonstration period of at least 15 months. The interim alternative emission limitation shall be derived from the data specified in subd. 10. using methods and procedures satisfactory to U.S. EPA;

12. The proposed dates of the demonstration period, which shall be at least 15 months long;

13. A report which outlines the testing and procedures to be taken during the demonstration period in order to determine the maximum NO_x emission reduction obtainable with the installed system. The report shall include the reasons for the NO_x emission control system's failure to meet the applicable emission limitation, and the tests and procedures that will be followed to optimize the NO_x emission control system's performance. Tests and procedures may include those identified in s. NR 439.098 as appropriate.

14. The special provisions at par. (g)1.

(e) Contents of petition for a final alternative emission limitation. After the approved demonstration period, the designated representative of the unit may petition the department for an alternative emission limitation. The petition shall include the following elements in a format prescribed by the department:

1. Identification of the unit;

2. Certification that the owner or owners or operator operated the affected unit and the NO_x emission control system during the demonstration period in accordance with: specifications and procedures designed to achieve the maximum NO_x reduction possible with the installed NO_x emission control system or the applicable emissions limitation in sub. (2), (3) or (4); the operating conditions including load dispatch conditions upon which the design of the NO_x emission control system was based; and vendor specifications and procedures.

subd. par.

3. Certification that the owner or owners or operator have installed in the affected unit all NO_x emission control systems, made any operational modifications, and completed any planned upgrades and maintenance to equipment specified in the approved demonstration period plan for optimizing NO_x emission reduction performance, consistent with the demonstration period plan and the proper operation of the installed NO_x emission control system. The certification shall explain any differences between the installed NO_x emission control system and the equipment configuration described in the approved demonstration period plan.

4. A clear description of each step or modification taken during the demonstration period to improve or optimize the performance of the installed NO_x emission control system.

5. Engineering design calculations and drawings that show the technical specifications for installation of any additional operational or emission control modifications installed during the demonstration period.

6. Unit operating and quality-assured continuous emission monitoring data, including the specific data listed in sub. (9)(b), collected in accordance with 40 CFR part 75 during the demonstration period and demonstrating the inability of the specific unit to meet the applicable emission limitation in sub. (2), (3) or (4) on an annual average basis while operating in accordance with the certification under subd. 2.

(9)(b)? (2)

7. A report, based on the parametric test requirements in the approved demonstration period plan as identified in par. (d)13., that demonstrates the unit was operated in accordance with the operating conditions upon which the design of the NO_x emission control system was based and describes the reason or reasons for the failure of the installed NO_x emission control system to meet the applicable emission limitation in sub. (2), (3) or (4) on an annual-average basis.

8. The minimum NO_x emission rate, in pounds per million Btu, that the affected unit can achieve on an annual average basis with the installed NO_x

emission control system. This value, which shall be the requested alternative emission limitation, shall be derived from the data specified in this section using methods and procedures satisfactory to U.S. EPA and shall be the lowest annual emission rate the unit can achieve with the installed NO_x emission control system;

9. All supporting data and calculations documenting the determination of the requested alternative emission limitation and its conformance with the methods and procedures satisfactory to U.S. EPA;

10. The special provisions in par. (g)2.

(12) In addition to the other requirements of this section, the owner or operator of an affected unit with a Group 1 boiler that has installed an alternative technology, in addition to or in lieu of low NO_x burner technology, and cannot meet the applicable emission limitation in sub. (2) shall demonstrate, to the satisfaction of U.S. EPA, that the actual percentage reduction in NO_x emissions (pounds per million Btu), on an annual average basis is greater than 65% of the average annual NO_x emissions prior to the installation of the NO_x emission control system. The percentage reduction in NO_x emissions shall be determined using continuous emissions monitoring data for NO_x taken during the time period, under par. (d)3., prior to the installation of the NO_x emission control system and during long-term load dispatch operation of the specific boiler.

(f) Department's action. 1. 'Alternative emission limitation demonstration period.' a. The department may approve an alternative emission limitation demonstration period and demonstration period plan, provided that the requirements of this section are met to the satisfaction of the department. The department shall disapprove a demonstration period if the requirements of par. (a) were not met during the operating period.

b. If the demonstration period is approved, the department shall include, as part of the demonstration period, the 4-month period prior to submission of the application in the demonstration period.

c. The alternative emission limitation demonstration period will authorize the unit to emit at a rate not greater than the interim alternative emission limitation during the demonstration period on or after the applicable date established in sub. (5) or this subsection and until the date that U.S. EPA approves or denies a final alternative emission limitation.

d. After an alternative emission limitation demonstration period is approved, if the designated representative requests an extension of the demonstration period in accordance with par. (g)1.b., the department may extend the demonstration period by administrative revision under s. NR 409.12(4) to the acid rain portion of an operation permit.

e. The department shall deny the demonstration period if the designated representative cannot demonstrate that the unit met the requirements of par. (a). In those cases, the department shall require that the owner or operator operate the unit in compliance with the applicable emission limitation in sub. (2), (3) or (4) for the period preceding the submission of the application for an alternative emission limitation demonstration period, including the operating period, if the periods are after the date on which the unit is subject to the standard limit under sub. (2), (3) or (4).

2. 'Alternative emission limitation.' a. If the department determines that the requirements in this subsection are met, the department shall approve an alternative emission limitation and issue or revise an acid rain portion of an operation permit to apply the approved limitation, in accordance with s. NR 409.11. The permit shall authorize the unit to emit at a rate not greater than the approved alternative emission limitation, starting the date the department revises an acid rain portion of an operation permit to approve an alternative emission limitation.

b. If the department disapproves an alternative emission limitation under par. (a), the owner or operator shall operate the affected unit in compliance with the applicable emission limitation in sub. (2), (3) or (4), unless the unit is participating in an approved averaging plan under sub. (7),

beginning on the date the department revises an acid rain portion of an operation permit to disapprove an alternative emission limitation.

3. 'Alternative emission limitation renewal.' a. If, upon review of a petition to renew an approved alternative emission limitation, the department determines that no changes have been made to the control technology, its operation, the operating conditions on which the alternative emission limitation was based, or the actual NO_x emission rate, the alternative emission limitation shall be renewed.

b. If the department determines that changes have been made to the control technology, its operation, the fuel quality or the operating conditions on which the alternative emission limitation was based, the designated representative shall submit, in order to renew the alternative emission limitation or to obtain a new alternative emission limitation, a petition for an alternative emission limitation demonstration period that meets the requirements of par. (d) using a new demonstration period.

(g) Special provisions. 1. 'Alternative emission limitation demonstration period.' a. Each unit with an approved alternative emission limitation demonstration period shall comply with the interim emission limitation specified in the unit's permit beginning on the effective date of the demonstration period specified in the permit and, if a timely petition for a final alternative emission limitation is submitted, extending until the date on which the department issues or revises an acid rain portion of an operation permit to approve or disapprove an alternative emission limitation. If a timely petition is not submitted, then the unit shall comply with the standard emission limit under sub. (2), (3) or (4) beginning on the date the petition was required to be submitted under par. (c)2.

b. When the owner or operator identifies, during the demonstration period, boiler operating or NO_x emission control system modifications or upgrades that would produce further NO_x emission reductions, enabling the affected unit to comply with or bring its emission rate closer to the

applicable emissions limitation under sub. (2), (3) or (4), the designated representative may submit a request and the department may grant, by administrative revision under s. NR 409.12(4), an extension of the demonstration period for the period of time, not to exceed 12 months, as may be necessary to implement the modifications or upgrades.

c. If the approved interim alternative emission limitation applies to a unit for part, but not all, of a calendar year, the unit shall determine compliance for the calendar year in accordance with the procedures in sub. (8)(a).

d. A unit with an approved alternative emission limitation demonstration period shall be operated under load dispatch conditions consistent with the operating conditions upon which the design of the NO_x emission control system and performance guarantee were based, and in accordance with the demonstration period plan.

e. A unit with an approved alternative emission limitation demonstration period shall install all NO_x emission control systems, make any operational modifications, and complete any upgrades and maintenance to equipment specified in the approved demonstration period plan for optimizing NO_x emission reduction performance.

f. When the owner or operator identifies boiler or NO_x emission control system operating modifications that would produce higher NO_x emission reductions, enabling the affected unit to comply with, or bring its emission rate closer to, the applicable emission limitation under sub. (2), (3) or (4), the designated representative shall submit an administrative revision under s. NR 409.12(4) to revise the unit's acid rain portion of an operation permit and demonstration period plan to include the modifications.

g. A unit with an approved alternative emission limitation demonstration period shall monitor in accordance with 40 CFR part 75 and shall conduct all tests required under the approved demonstration period plan.