

**§72.71**

**40 CFR Ch. I (7-1-03 Edition)**

program, and the requirements with which State permitting authorities with accepted programs shall comply, and with which the Administrator will comply in the absence of an accepted State program, to issue Phase II Acid Rain permits.

(b) *Relationship to operating permit program.* Each State permitting authority with an affected source shall act in accordance with this part and parts 70, 74, 76, and 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit. To the extent that this part or part 74, 76, or 78 of this chapter is inconsistent with the requirements of part 70 of this chapter, this part and parts 74, 76, and 78 of this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain portion of an operating permit.

[62 FR 55482, Oct. 24, 1997, as amended at 66 FR 12978, Mar. 1, 2001]

**§72.71 Acceptance of State Acid Rain programs—general.**

(a) Each State shall submit, to the Administrator for review and acceptance, a State Acid Rain program meeting the requirements of §§72.72 and 72.73.

(b) The Administrator will review each State Acid Rain program or portion of a State Acid Rain program and accept, by notice in the FEDERAL REGISTER, all or a portion of such program to the extent that it meets the requirements of §§72.72 and 72.73. At his or her discretion, the Administrator may accept, with conditions and by notice in the FEDERAL REGISTER, all or a portion of such program despite the failure to meet requirements of §§72.72 and 72.73. On the later of the date of publication of such notice in the FEDERAL REGISTER or the date on which the State operating permit program is approved under part 70 of this chapter, the State Acid Rain program accepted by the Administrator will become a portion of the approved State operating permit program. Before accepting or rejecting all or a portion of a State Acid Rain Program, the Administrator will provide notice and opportunity for public

comment on such acceptance or rejection.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Administrator will issue all Acid Rain permits for Phase I. The Administrator reserves the right to delegate the remaining administration and enforcement of Acid Rain permits for Phase I to approved State operating permit programs.

(2) The State permitting authority will issue an opt-in permit for a combustion or process source subject to its jurisdiction if, on the date on which the combustion or process source submits an opt-in permit application, the State permitting authority has opt-in regulations accepted under paragraph (b) of this section and an approved operating permits program under part 70 of this chapter.

[62 FR 55482, Oct. 24, 1997]

**§72.72 Criteria for State operating permit program.**

A State operating permit program (including a State Acid Rain program) shall meet the following criteria. Any aspect of a State operating permits program or any implementation of a State operating permit program that fails to meet these criteria shall be grounds for nonacceptance or withdrawal of all or part of the Acid Rain portion of an approved State operating permit program by the Administrator or for disapproval or withdrawal of approval of the State operating permit program by the Administrator.

(a) *Non-Interference with Acid Rain Program.* The State operating permit program shall not include or implement any measures that would interfere with the Acid Rain Program. In particular, the State program shall not restrict or interfere with allowance trading and shall not interfere with the Administrator's decision on an offset plan. Aspects and implementation of the State program that would constitute interference with the Acid Rain Program, and are thus prohibited, include but are not limited to:

(1) Prohibitions, inconsistent with the Acid Rain Program, on the acquisition or transfer of allowances by an affected unit under the jurisdiction of the State permitting authority;

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(2) Restrictions, inconsistent with the Acid Rain Program, on an affected unit's ability to sell or otherwise obligate its allowances;

(3) Requirements that an affected unit maintain a balance of allowances in excess of the level determined to be prudent by any utility regulatory authority with jurisdiction over the owners of the affected unit;

(4) Failing to notify the Administrator of any State administrative or judicial appeals of, or decisions covering, Acid Rain permit provisions that might affect Acid Rain Program requirements;

(5) Issuing an order, inconsistent with the Acid Rain Program, interpreting Acid Rain Program requirements as not applicable to an affected source or an affected unit in whole or in part or otherwise adjusting the requirements;

(6) Withholding approval of any compliance option that meets the requirements of the Acid Rain Program; or

(7) Any other aspect of implementation that the Administrator determines would hinder the operation of the Acid Rain Program.

(b) The State operating permit program shall require the following provisions, which are adopted to the extent that this paragraph (b) is incorporated by reference or is otherwise included in the State operating permit program.

(1) *Acid Rain Permit Issuance.* Issuance or denial of Acid Rain permits shall follow the procedures under this part, part 70 of this chapter, and, for combustion or process sources, part 74, including:

(i) *Permit application—(A) Requirement to comply.* (1) The owners and operators and the designated representative for each affected source, except for combustion or process sources, under jurisdiction of the State permitting authority shall be required to comply with subparts B, C, and D of this part.

(2) The owners and operators and the designated representative for each combustion or process source under jurisdiction of the State permitting authority shall be required to comply with subpart B of this part and subparts B, C, D, and E of part 74 of this chapter.

(B) *Effect of an Acid Rain permit application.* A complete Acid Rain permit application, except for a permit application for a combustion or process source, shall be binding on the owners and operators and the designated representative of the affected source, all affected units at the source, and any other unit governed by the permit application and shall be enforceable as an Acid Rain permit, from the date of submission of the permit application until the issuance or denial of the Acid Rain permit under paragraph (b)(1)(vii) of this section.

(ii) *Draft Permit.* (A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

(B) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

(iii) *Public Notice and Comment Period.* Public notice of the issuance or denial of the draft Acid Rain permit and the opportunity to comment and request a public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO<sub>x</sub> under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the State permitting authority may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication.

(iv) *Proposed permit.* The State permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with

subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a proposed Acid Rain permit.

(v) *Direct proposed procedures.* The State permitting authority may, in its discretion, issue, as a single document, a draft Acid Rain permit in accordance with paragraph (b)(1)(ii) of this section and a proposed Acid Rain permit and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with paragraph (b)(1)(iii) of this section. The State permitting authority may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the proposed Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, a proposed Acid Rain permit or denial of a proposed Acid Rain permit will be issued in accordance with paragraph (b)(1)(iv) of this section. Any notice provided under this paragraph (b)(1)(v) shall include a description of the procedure in the prior sentence.

(vi) *Acid Rain Permit Issuance.* Following the Administrator's review of the proposed Acid Rain permit, the State permitting authority shall or, under part 70 of this chapter, the Administrator will, incorporate any required changes and issue or deny the Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter.

(vii) *New Owners.* An Acid Rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(viii) Each Acid Rain permit (including a draft or proposed permit) shall contain all applicable Acid Rain requirements, shall be a complete and segregable portion of the operating permit, and shall not incorporate information contained in any other documents, other than documents that are readily available.

(ix) No Acid Rain permit (including a draft or proposed permit) shall be issued unless the Administrator has re-

ceived a certificate of representation for the designated representative of the source in accordance with subpart B of this part.

(x) Except as provided in § 72.73(b) and, with regard to combustion or process sources, in § 74.14(c)(6) of this chapter, the State permitting authority shall issue or deny an Acid Rain permit within 18 months of receiving a complete Acid Rain permit application submitted in accordance with § 72.21 or such lesser time approved under part 70 of this chapter.

(2) *Permit Revisions.* In acting on any Acid Rain permit revision, the State permitting authority shall follow the provisions and procedures set forth at subpart H of this part.

(3) *Permit Renewal.* The renewal of an Acid Rain permit for an affected source shall be subject to all the requirements of this subpart pertaining to the issuance of permits.

(4) *Acid Rain Program Forms.* In developing the Acid Rain portion of the operating permit, the permitting authority shall use the applicable forms or other formats prescribed by the Administrator under the Acid Rain Program; *provided* that the Administrator may waive this requirement in whole or in part.

(5) *Acid Rain Appeal Procedures.* (i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part or part 73, 74, 75, 76, 77, or 78 of this chapter shall be conducted according to procedures established by the State in accordance with part 70 of this chapter. Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under part 78 of this chapter and section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(ii) [Reserved]

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(iii) The State permitting authority shall serve written notice on the Administrator of any State administrative or judicial appeal concerning as Acid Rain provision of any operating permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.

(iv) Any State administrative permit appeals procedures shall ensure that the Administrator may intervene as a matter of right in any permit appeal involving an Acid Rain permit provision or denial of an Acid Rain permit.

(v) The State permitting authority shall serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit.

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1) or, with regard to combustion or process sources, § 74.14(b)(6) of this chapter shall be ground for filing an appeal.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 62 FR 55482, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001]

### § 72.73 State issuance of Phase II permits.

(a) *State Permit Issuance.* (1) A State that is authorized to administer and enforce an operating permit program under part 70 of this chapter and that has a State Acid Rain program accepted by the Administrator under § 72.71 shall be responsible for administering and enforcing Acid Rain permits effective in Phase II for all affected sources:

(i) That are located in the geographic area covered by the operating permits program; and

(ii) To the extent that the accepted State Acid Rain program is applicable.

(2) In administering and enforcing Acid Rain permits, the State permitting authority shall comply with the procedures for issuance, revision, renewal, and appeal of Acid Rain permits under this subpart.

(b) *Permit Issuance Deadline.* (1) A State, to the extent that it is responsible under paragraph (a) of this section as of December 31, 1997 (or such later date as the Administrator may

establish) for administering and enforcing Acid Rain permits, shall:

(i) On or before December 31, 1997, issue an Acid Rain permit for Phase II covering the affected units (other than opt-in sources) at each source in the geographic area for which the program is approved; *provided* that the designated representative of the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21.

(ii) On or before January 1, 1999, for each unit subject to an Acid Rain NO<sub>x</sub> emissions limitation, amend the Acid Rain permit under § 72.83 and add any NO<sub>x</sub> early election plan that was approved by the Administrator under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit and add any other Acid Rain Program nitrogen oxides requirements; *provided* that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(2) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date; *provided* that, at the discretion of the permitting authority, the first Acid Rain permit for Phase II issued to a source may have a term of less than 5 years where necessary to coordinate the term of such permit with the term of an operating permit to be issued to the source under a State operating permit program. Each Acid Rain permit issued in accordance with paragraph (b)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under § 72.6(a)(3) of this part, the deadline for monitor certification under part 75 of this chapter.

[62 FR 55483, Oct. 24, 1997]

### § 72.74 Federal issuance of Phase II permits.

(a)(1) The Administrator will be responsible for administering and enforcing Acid Rain permits for Phase II for any affected sources to the extent that a State permitting authority is not responsible, as of January 1, 1997 or such later date as the Administrator may