

**WAC 173-406-104 New units exemption.** (1) Applicability. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of twenty-five MWe or less and burns only fuels with a sulfur content of five hundredths of one percent or less by weight, as determined in accordance with subsection (4) (a) of this section.

(2) Petition for written exemption. The designated representative, authorized in accordance with subpart B of 40 C.F.R. part 72, of a source that includes a unit under subsection (1) of this section may petition the permitting authority for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program. The petition shall be submitted on a form approved by the permitting authority which includes the following elements:

(a) Identification of the unit.

(b) The nameplate capacity of each generator served by the unit.

(c) A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection (1) of this section.

(d) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

(e) The special provisions in subsection (4) of this section.

(f) The name of the designated representative, his or her signature, and the date of signature.

(3) The permitting authority's action.

(a) (i) The permitting authority will issue, for any unit meeting the requirements of subsections (1) and (2) of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 C.F.R. 72.2 through 72.7, and 40 C.F.R. 72.10 through 72.13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 C.F.R. 72.7 (c) (1) (i) and (d) (1).

(ii) The exemption shall take effect on January 1st of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subsection (3) (b) of this section; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

(b) The permitting authority will consider and either issue or deny a written exemption under subsection (3) (a) of this section by applying the procedures for acid rain permit issuance in WAC 173-406-600 as if the petition for written exemption were a permit application, with regard to completeness determination, draft written exemption, administrative record, statement of basis, public notice and comment period, public hearing, proposed written exemption, written exemption issuance, exemption revision and appeal procedures as provided by WAC 173-406-600 and 173-406-700. No provision under WAC 173-406-600 concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

(c) A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subsection (4)(c) of this section.

(4) Special provisions.

(a) The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

(i) For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90.

(ii) For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be documented to be five hundredths of one percent or less by weight.

(iii) For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92; provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90.

(b) The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under (a)(i) and (iii) of this subsection, a copy of documentation produced under (a)(ii) of this subsection, and a copy of the purchase agreements for the fuel under (a) of this subsection, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

(c) On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of five hundredths of one percent by weight (as determined in accordance with (a) of this subsection), or twenty-four months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of twenty-five MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:

(i) Notwithstanding WAC 173-406-301 (2) and (3), the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this section.

(ii) For purposes of applying monitoring requirements under 40 C.F.R. part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection (1) of this section.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-23-127 (Order 94-23), § 173-406-104, filed 11/23/94, effective 12/24/94.]