

WAC 173-406-103 Applicability. (1) The provisions of this chapter apply in all areas of the state of Washington. An authority may enforce this chapter and may also adopt more stringent standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations. Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

(a) A unit listed in Table 1 of 40 C.F.R. 73.10(a).

(b) An existing unit that is identified in Table 2 or 3 of 40 C.F.R. 73.10 and any other existing utility unit, except a unit under subsection (2) of this section.

(c) A utility unit, except a unit under subsection (2) of this section, that:

(i) Is a new unit;

(ii) Did not serve a generator with a nameplate capacity greater than twenty-five MWe on November 15, 1990, but serves such a generator after November 15, 1990;

(iii) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;

(iv) Was an exempt cogeneration facility under subsection (2)(d) of this section but during any three calendar year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs (i.e., twenty-five MWe times eight thousand seven hundred sixty hours) electric output, on a gross basis;

(v) Was an exempt qualifying facility under subsection (2)(e) of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(vi) Was an exempt independent power production facility under subsection (2)(f) of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(vii) Was an exempt solid waste incinerator under subsection (2)(g) of this section but during any three calendar year period after November 15, 1990, consumes twenty percent or more (on a Btu basis) fossil fuel.

(2) The following types of units are not affected units, and are not subject to the requirements of the acid rain program:

(a) A simple combustion turbine that commenced operation before November 15, 1990.

(b) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than twenty-five MWe.

(c) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(d) A cogeneration facility which:

(i) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal

to or less than two hundred nineteen thousand MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

(ii) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

(e) A qualifying facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least fifteen percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding one hundred thirty percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

(f) An independent power production facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least fifteen percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding one hundred thirty percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

(g) A solid waste incinerator, if more than eighty percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than eighty percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than eighty percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes twenty percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.

(h) A nonutility unit which is not a utility unit as defined at WAC 173-406-101.

(3) A certifying official of any unit may petition the administrator for a determination of applicability under 40 C.F.R. 72.6(c).

The administrator's determination of applicability shall be binding upon the permitting authority, unless the petition is found to have contained significant errors or omissions.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-23-127 (Order 94-23), § 173-406-103, filed 11/23/94, effective 12/24/94.]