

(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D388-92, Standard Classification of Coals by Rank for § 72.2 of this chapter.

(2) ASTM D396-90a, Standard Specification for Fuel Oils, for § 72.2 of this chapter.

(3) ASTM D975-91, Standard Specification for Diesel Fuel Oils, for § 72.2 of this chapter.

(4) ASTM D2880-90a, Standard Specification for Gas Turbine Fuel Oils, for § 72.2 of this part.

(b) [Reserved]

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 26526, May 17, 1995; 62 FR 55478, Oct. 24, 1997]

§ 72.14 Industrial utility-units exemption.

(a) *Applicability.* This section applies to any non-cogeneration, utility unit that has not previously lost an exemption under paragraph (d)(4) of this section and that meets the following criteria:

(1) Starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section 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;

(2) 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;

(3) 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 paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section; and

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

(b) *Petition for exemption.* The designated representative (authorized in accordance with subpart B of this part) of a unit under paragraph (a) of this section may submit to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a complete petition for an exemption for the unit from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13. If the Administrator is not the permitting authority, a copy of the petition shall be submitted to the Administrator. A complete petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit;

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

(3) 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 paragraph (a)(2) of this section, 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;

(4) A summary of the terms of the interconnection agreement and any related power purchase agreement under

paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section, 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;

(5) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;

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

(7) 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 paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section;

(8) A statement that each generator served by the unit actually produced electricity for sale only for incidental electricity sales (in accordance with paragraph (a)(4) of this section) required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section; and

(9) The special provisions of paragraph (d) of this section.

(c) *Permitting Authority's Action.* (1) (i) For any unit meeting the requirements of paragraphs (a) and (b) of this section, the permitting authority shall issue an exemption from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6 and §§ 72.10 through 72.13.

(ii) If a petition for exemption is submitted for a unit but the designated representative fails to demonstrate that the requirements of paragraph (a) of this section are met, the permitting authority shall deny an exemption under this section.

(2) In issuing or denying an exemption under paragraph (c)(1) of this section, the permitting authority shall treat the petition for exemption as a permit application and apply the procedures used for issuing or denying draft, proposed (if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit), and final Acid Rain permits.

(3) An exemption issued under paragraph (c)(1)(i) of this section shall become effective on January 1 of the first full year the unit meets the requirements of paragraph (a) of this section.

(4) An exemption issued under paragraph (c)(1)(i) of this section shall be effective until the date on which the unit loses the exemption under paragraph (d)(4) of this section.

(5) After issuance of the exemption under paragraphs (c)(1) and (2) of this section, the permitting authority shall amend under § 72.83 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 paragraphs (c)(1)(i) and (d) of this section.

(d) *Special Provisions.* (1) 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.

(2) 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 parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) 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 paragraph (a) of this section are met. The owners and operators bear

Environmental Protection Agency

§ 72.14

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 permitting authority. Such records shall include the following information:

(i) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;

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

(iii) 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 paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section.

(4) Loss of exemption. (i) 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 parts 70 and 71 of this chapter:

(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 paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section, then the day after the date on which such 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 agree-

ment or any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such 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 percent 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 paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale results in total sales for a calendar year exceeding 10 percent 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 paragraph (a)(2) of this section expires or is terminated, no successor agreement under paragraph (d)(4)(ii) of this section 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.

(ii) A "successor agreement" is an agreement that:

(A) Modifies, replaces or supersedes the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section;

(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 paragraph (d)(4)(ii)(B) of this section and only for incidental electricity sales, such that the total amount of electricity that

§ 72.20

such 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 shall not exceed the total amount of electricity that such generator was required to produce for sale under the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section.

(iii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.

(iv) For the purpose of applying monitoring requirements under part 75 of this chapter, 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.

[62 FR 55478, Oct. 24, 1997]

Subpart B—Designated Representative

§ 72.20 Authorization and responsibilities of the designated representative.

(a) Except as provided under § 72.22, each affected source, including all affected units at the source, shall have one and only one designated representative, with regard to all matters under the Acid Rain Program concerning the source or any affected unit at the source.

(b) Upon receipt by the Administrator of a complete certificate of representation, the designated representative of the source shall represent and, by his or her actions, inactions, or submissions, legally bind each owner and operator of the affected source represented and each affected unit at the source in all matters pertaining to the Acid Rain Program, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators shall be bound by any order issued to the designated representative by the Administrator, the permitting authority, or a court.

(c) The designated representative shall be selected and act in accordance with the certifications set forth in § 72.24(a) (4), (5), (7), and (9).

(d) No Acid Rain permit shall be issued to an affected source, nor shall any allowance transfer be recorded for an Allowance Tracking System account of an affected unit at a source, until the Administrator has received a complete certificate of representation for the designated representative of the source and the affected units at the source.

§ 72.21 Submissions.

(a) Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

(b) In each submission under the Acid Rain Program, the designated representative shall certify, by his or her signature:

(1) The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

(2) The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(c) The Administrator and the permitting authority shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with paragraphs (a) and (b) of this section.