

**§ 503.35**

**10 CFR Ch. II (1-1-06 Edition)**

provides the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of its ability to meet applicable standards and criteria when using both the proposed fuel and the alternate fuel(s) which would provide the basis for the exemption. All such analysis must be based on accepted analytical techniques, such as air quality modeling, and reflect current conditions of the area which would be affected by the facility. The petitioner is responsible for obtaining the necessary data to accurately characterize these conditions. Environmental compliance must be examined in the context of available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain: (i) Requests for bids and other inquiries made and responses received by the petitioner concerning the availability and performance of pollution control equipment; or (ii) other comparable evidence such as technical studies documenting the efficacy of equipment to meet applicable requirements;

(6) An examination of any regulatory options available to the petitioner in seeking to achieve environmental compliance (such as offsets, variances and State Implementation Plan (SIP) revisions); and

(7) Any other documentation which demonstrates an inability to comply with applicable environmental requirements;

(8) No alternate power supply exists as required under § 503.8 of these regulations;

(9) Use of mixtures is not feasible, as required under § 503.9 of these regulations;

(10) Alternative sites are not available, as required under § 503.11 of these regulations;

(11) Environmental impact analysis, as required under § 503.13 of these regulations; and

(12) Fuels search, as required under § 503.14 of these regulations.

(d) *Certification alternative.* (1) To qualify for this exemption, in lieu of meeting the evidentiary requirements of paragraph (c) of this section, a petitioner may certify that:

(i) The site for the facility is or will be located in a Class I area or Class II area in which the allowable increment established by law has been consumed, as defined in part C of the Clean Air Act; the use of an alternate fuel will cause or contribute to concentrations of pollutants which would exceed the maximum allowable increases in a Class I or Class II area even with the application of best available control technology; the site for the facility is or will be located in a non-attainment area as defined in part D of the Clean Air Act for any pollutant which would be emitted by the facility; or, even with the application of the lowest achievable emission rate, the use of an alternate fuel will cause or contribute to concentrations in an air quality control region of a pollutant for which any national ambient air quality standard is or would be exceeded;

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

(iii) Alternative sites are not available, as required under § 503.11 of these regulations; and

(iv) Use of mixtures is not feasible, as required under § 503.19 of these regulations.

(2) A petition by certification under this paragraph must include:

(i) Duly executed certifications required under paragraph (d)(1) of this section;

(ii) Exhibits containing the basis for the certifications required under paragraph (d)(1) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(iii) Environmental impact analysis, as required under § 503.13 of these regulations; and

(iv) Fuels search, as required under § 503.14 of these regulations.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52895, Dec. 22, 1989]

**§ 503.35 Inability to obtain adequate capital.**

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify, a petitioner must certify that:

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(1) Despite good faith efforts the petitioner will be unable to comply with the applicable prohibitions imposed by the Act because the additional capital required for an alternate fuel-capable unit beyond that required for the proposed unit cannot be raised;

(2) The additional capital cannot be raised:

(i) Due to specific restrictions (e.g., covenants on existing bonds) which constrain management's ability to raise debt or equity capital;

(ii) Without a substantial dilution of shareholder equity;

(iii) Without an unreasonably adverse affect on the utility's credit rating; or

(iv) In the case of non-investor-owned public utilities, without jeopardizing the utility's ability to recover its capital investment, through tariffs, without unreasonably adverse economic effect on its service area (such as adverse impacts on local industry or undue hardship to ratepayers).

(3) No alternative power supply exists, as required under §503.8 of these regulations;

(4) Use of mixtures is not feasible, as required under §503.9 of these regulations; and

(5) Alternative sites are not available, as required under §503.11 of these regulations.

(b) *Evidence required in support of a petition.* A petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(3) Environmental impact analysis, as required under §503.13 of these regulations; and

(4) Fuels search, as required under §503.14 of these regulations.

[46 FR 59903, Dec. 7, 1981, as amended at 47 FR 15315, Apr. 9, 1982; 54 FR 52895, Dec. 22, 1989]

### § 503.36 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for an exemption due to certain State or local requirements. To qualify a petitioner must certify that:

(1) With respect to the proposed site of the unit, the operation or construction of the new unit using an alternate fuel is infeasible because of a State or local requirement other than a building code, nuisance, or zoning law;

(2) The petitioner has made a good faith effort to obtain a variance from the State or local requirement but has been unable to do so or has demonstrated why none is available;

(3) The granting of the exemption would be in the public interest and would be consistent with the purposes of the Act;

(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;

(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;

(6) No alternate power supply exists, as required under §503.8 of these regulations; and

(7) Use of mixtures is not feasible, as required under §503.9 of these regulations.

(b) *Evidence required in support of a petition.* The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials