

emption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 8341 of this title and prohibitions established by final rules or orders issued before January 1, 1990.

(i) Permanent exemption for use of LNG by certain powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(Pub. L. 95-620, title III, §312, Nov. 9, 1978, 92 Stat. 3309; Pub. L. 100-42, §1(c)(10), (12), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3), was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsecs. (a)(1), (b), (d)(1). Pub. L. 100-42, §1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (d)(2). Pub. L. 100-42, §1(c)(12)(A), struck out par. (2) which read as follows: "In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent."

Subsec. (d)(3). Pub. L. 100-42, §1(c)(12)(B), substituted "The" for "In the case of an existing electric powerplant, the".

Subsec. (e). Pub. L. 100-42, §1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (j). Pub. L. 100-42, §1(c)(12)(C), struck out subsec. (j) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas for installations served by international pipelines.

Subsec. (k). Pub. L. 100-42, §1(c)(12)(C), struck out subsec. (k) which related to granting, by Secretary of

Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (l). Pub. L. 100-42, §1(c)(12)(C), struck out subsec. (l) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8353. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8352(b), (f), or (i) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 8352(b) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) No alternative power supply in case of a powerplant

(1) In the case of an exemption under section 8352(b) or (g) of this title, the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95-620, title III, §313, Nov. 9, 1978, 92 Stat. 3313; Pub. L. 100-42, §1(c)(10), (13), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(13), struck out "or installation" after "powerplant" in introductory provisions.

Pub. L. 100-42, §1(c)(10), which directed the substitution of "or (i)" for "(i), or (j)" was executed by making the substitution for "(i) or (j)" to reflect the probable intent of Congress.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8354. Terms and conditions; compliance plans**(a) Terms and conditions generally**

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95-620, title III, §314, Nov. 9, 1978, 92 Stat. 3314; Pub. L. 100-42, §1(c)(10), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1)(A), was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42 struck out "or installation" after "powerplant".

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

§§ 8371, 8372. Repealed. Pub. L. 100-42, §1(a)(3), (4), May 21, 1987, 101 Stat. 310

Section 8371, Pub. L. 95-620, title IV, §401, Nov. 9, 1978, 92 Stat. 3314, authorized Secretary to prohibit by order the use of natural gas as primary energy source in existing boilers used for space heating purposes which consume 300 Mcf or more natural gas per day and have capability to use petroleum as primary energy source, and in new boilers to be used for space heating purposes which would be capable of consuming 300 Mcf or more of natural gas per day.

Section 8372, Pub. L. 95-620, title IV, §402, Nov. 9, 1978, 92 Stat. 3315; Pub. L. 97-35, title X, §1024, Aug. 13, 1981, 95 Stat. 617, prohibited installation of outdoor lighting fixtures using natural gas before Nov. 9, 1978, phased

out distribution of natural gas to be used in outdoor lighting other than that installed for residential use before Nov. 9, 1978, and required distributors of natural gas to disseminate information to customers to discourage use of natural gas for outdoor lighting.

§ 8373. Conservation in Federal facilities, contracts, and financial assistance programs**(a) Federal facilities**

(1) Each Federal agency owning or operating any electric powerplant shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this chapter, to the same extent as would be the case if such powerplant were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review.

(b) Federal contracts and financial assistance

(1) In order to implement the purposes of this chapter, the President shall, not later than 30 days after the effective date of this chapter, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this chapter relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The Presi-