

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 prohibitions of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or<sup>1</sup> 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 II, §214, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100-42, §1(c)(8), May 21, 1987, 101 Stat. 312.)

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 III—EXISTING FACILITIES

PART A—PROHIBITIONS

**§ 8341. Existing electric powerplants**

**(a) Certification by powerplants of coal capability**

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b) of this section—

(1) whether or not such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) whether or not it is financially feasible to use coal or another alternate fuel as a primary energy source in such a powerplant.

**(b) Authority of Secretary to prohibit where coal or alternate fuel capability exists**

The Secretary may prohibit, in accordance with section 8343(a) or (b) of this title, the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if an affirmative certification under subsection (a)(1), (2), and (3) of this section is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification.

**(c) Authority of Secretary to prohibit excessive use in mixtures**

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary for purposes of this subsection whether or not it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source in that powerplant. If an affirmative certification under this subsection is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification, the Secretary may prohibit, in accordance with section 8343(a) of this title, the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

**(d) Amendment of subsection (a) and (c) certifications**

The owner or operator of any such powerplant may at any time amend any certification under subsection (a) or (c) of this section in order to take into account changes in relevant facts and circumstances; except that no such amendment to such a certification may be made after the date of any final prohibition under subsection (b) or (c) of this section based on that certification.

(Pub. L. 95-620, title III, §301, as added Pub. L. 97-35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.)

PRIOR PROVISIONS

A prior section 8341, Pub. L. 95-620, title III, §301, Nov. 9, 1978, 92 Stat. 3305, related to existing electric powerplants, prior to repeal by Pub. L. 97-35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

VALIDITY OF ORDERS UNDER FORMER PROVISIONS OF THIS SECTION

Pub. L. 97-35, title X, §1022, Aug. 13, 1981, 95 Stat. 616, provided that:

"(a) The amendments made by section 1021 to section 301(b) and (c) of the Powerplant and Industrial Fuel Use Act of 1978 [subsecs. (b) and (c) of this section] shall not apply to any electric powerplant for which a final order was issued pursuant to section 301(b) or (c) of such Act before the date of the enactment of this Act [Aug. 13, 1981].

<sup>1</sup> So in original. Probably should be "for".

“(b) Any electric powerplant issued a proposed order under section 301(b) or (c) of such Act which is pending on the date of the enactment of this Act may elect not to have the amendments made by section 1021 to such section 301(b) or (c) apply with respect to that powerplant. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary of Energy shall, within 45 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary of Energy prescribes the form and manner of making such election.

“(c)(1) The amendments made by section 1021 shall not affect the validity of any final order issued under section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 before the date of the enactment of this Act.

“(2) The validity of any proposed order issued under such section 301(b) or (c) shall not be affected in the case of powerplants covered by elections made under subsection (b).

“(3) The authority of the Secretary of Energy to amend, repeal, rescind, modify, or enforce any order referred to in paragraph (1) or (2), or rules applicable thereto, shall remain in effect notwithstanding any such amendments.”

**§ 8342. Repealed. Pub. L. 100-42, § 1(a)(2), May 21, 1987, 101 Stat. 310**

Section, Pub. L. 95-620, title III, §302, Nov. 9, 1978, 92 Stat. 3306, authorized Secretary to prohibit use of petroleum or natural gas as primary energy source in existing major fuel-burning installations having coal or alternate fuel capability and, in installations in which mixtures of petroleum or natural gas and coal or other alternate fuels are found feasible, to prohibit excessive use of petroleum or natural gas in such mixtures.

**§ 8343. Rules relating to case-by-case and category prohibitions**

**(a) Case-by-case prohibitions**

(1) Except to the extent authorized by subsection (b) of this section, the Secretary shall prohibit any powerplant from using natural gas or petroleum under the authority granted him under section 8341(b) or (c) of this title only by means of a final order issued by him which shall be limited to the particular powerplant involved.

(2) The Secretary may issue such a final order only with respect to a powerplant which is not, at the time the proposed order is issued, covered by a final rule issued under subsection (b) of this section.

**(b) Prohibitions applicable to categories of facilities**

(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 8341(b) of this title in existing electric powerplants.

(2) Each powerplant to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 8411(b) of this title.

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants (such as the intermittent use, size, age, or geographic location of such powerplants). Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.

(Pub. L. 95-620, title III, §303, Nov. 9, 1978, 92 Stat. 3306; Pub. L. 100-42, §1(c)(9), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-42, §1(c)(9)(A), (B), struck out “or installation” after “powerplant” in two places and “or 8342” after “section 8341(b) or (c)”.

Subsec. (a)(2). Pub. L. 100-42, §1(c)(9)(A), struck out “or installation” after “powerplant”.

Subsec. (a)(3). Pub. L. 100-42, §1(c)(9)(C), struck out par. (3) which read as follows:

“(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant if it is demonstrated that such powerplant would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) of this section rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

“(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 8354(a) of this title) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.”

Subsec. (b)(1). Pub. L. 100-42, §1(c)(9)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 8341(b) or 8342(a) of this title—

“(A) in the case of any category of existing electric powerplants identified in such rule; and

“(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu’s per hour or greater which are identified in such rule.”

Subsec. (b)(2). Pub. L. 100-42, §1(c)(9)(A), struck out “or installation” after “powerplant”.

Subsec. (b)(3). Pub. L. 100-42, §1(c)(9)(A), (E), struck out “or installations” after “powerplants” in two places in introductory provisions, and amended last sentence generally. Prior to amendment, last sentence read as follows: “Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.”

PART B—EXEMPTIONS

**§ 8351. Temporary exemptions**

**(a) Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements**

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 such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best