

“(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 Repealed.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

practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8341 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

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, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(c) Temporary exemption based upon use of innovative technologies

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, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(d) Temporary exemption for units to be retired

(1) 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 an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) (other than paragraph (1)(B)) of this title.

(2) Notwithstanding any other provision of this chapter, an exemption under this part may not be granted for any powerplant once an exemption under this subsection has been granted for such powerplant.

(e) Temporary public interest exemption

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this chapter.

(f) Temporary exemption for peakload 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 an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) Temporary exemption for powerplants where necessary to maintain reliability of service

(1) 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 an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this chapter, an exemption under this part (other than a permanent exemption under section 8352(f) of this title for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) Duration of temporary exemptions

(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) of this section for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

(Pub. L. 95-620, title III, §311, Nov. 9, 1978, 92 Stat. 3307; Pub. L. 100-42, §1(c)(10), (11), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d)(2), (e), and (g)(2), 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, §1(c)(10), (11), struck out "or installation" after "powerplant" in introductory provisions and in pars. (1) and (2) and struck out "or 8342" after "section 8341" in par. (3).

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

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.

§ 8352. Permanent exemptions**(a) Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements**

(1) 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 natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels 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 practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant;

(B) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) of this section may not be granted an exemption under this subsection.

(b) Permanent exemption due to certain State or local 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 may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this part could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain fuel mixtures containing natural gas or petroleum

(1) 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, if he finds that the petitioner has demonstrated that—

(A) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) Repealed. Pub. L. 100-42, §1(c)(12)(A), May 21, 1987, 101 Stat. 313.

(3) The Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) Permanent exemption for emergency purposes

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, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).