

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

**(c) Applicability to base load powerplants**

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

**(d) Self-certification**

(1) In order to meet the requirement of subsection (a) of this section, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction, or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b) of this section. Such certification shall be effective to establish compliance with the requirement of subsection (a) of this section as of the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the Federal Register a notice reciting that the certification has been filed.

(2) The Secretary, within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

(Pub. L. 95-620, title II, §201, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100-42, §1(c)(4)(A), May 21, 1987, 101 Stat. 311.)

AMENDMENTS

1987—Pub. L. 100-42 substituted “Coal capability of new electric powerplants; certification of compliance” for “New electric powerplants” in section catchline and amended text generally. Prior to amendment, text read as follows: “Except to such extent as may be authorized under part B—

“(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

“(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source.”

**§ 8312. Repealed. Pub. L. 100-42, § 1(a)(1), May 21, 1987, 101 Stat. 310**

Section, Pub. L. 95-620, title II, §202, Nov. 9, 1978, 92 Stat. 3298, prohibited, except to extent authorized under part B, use of natural gas or petroleum as primary energy source in new major fuel-burning installation consisting of a boiler, and authorized Secretary to prohibit nonboilers from using natural gas or petroleum.

PART B—EXEMPTIONS

**§ 8321. Temporary exemptions**

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

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, 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 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 cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source;

(2) one or more site limitations exist which would not<sup>1</sup> permit the location or operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8311 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 for a powerplant from the prohibitions of part A, 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—

(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 8324(b) of this title.

**(c), (d) Repealed. Pub. L. 100-42, § 1(c)(5)(E), May 21, 1987, 101 Stat. 312**

**(e) Duration of temporary exemptions**

(1) Except as provided in paragraph (2), 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) An exemption under subsection (b) of this section may be extended beyond the 5-year limit

<sup>1</sup> So in original. Probably should be “not”.

under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant before the powerplant is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

(Pub. L. 95-620, title II, §211, Nov. 9, 1978, 92 Stat. 3299; Pub. L. 100-42, §1(c)(5), May 21, 1987, 101 Stat. 312.)

#### AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(5)(A)-(D), substituted "from" for "or installation from one or more of" in introductory provisions, substituted "the fuel that would be used" for "using imported petroleum" and struck out "or installation" after "powerplant" in par. (1), struck out "or installation" after "powerplant" in par. (2), and struck out "or 8312" after "8311" in par. (3).

Subsec. (b). Pub. L. 100-42, §1(c)(5)(A), substituted "from" for "or installation from one or more of".

Subsec. (c). Pub. L. 100-42, §1(c)(5)(E), struck out subsec. (c) which read as follows: "After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, 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 would be in the public interest and would be consistent with the purposes of this chapter."

Subsec. (d). Pub. L. 100-42, §1(c)(5)(E), struck out subsec. (d) which read as follows: "After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 8312 of this title for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitions [sic] for an exemption under this subsection, see section 902(b)."

Subsec. (e)(1), (3). Pub. L. 100-42, §1(c)(5)(B), struck out "or installation" after "powerplant" wherever appearing.

#### EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SUBSECTION (d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

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

### § 8322. Permanent exemptions

#### (a) Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or adequate capital

(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to

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 fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant, or (ii) will not be available 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 the fuel that would be used as a primary energy source during the useful life of the powerplant involved;

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

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

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall be made with respect to the site of such powerplant and reasonable alternative sites.

#### (b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D) of this section; 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 with respect to natural gas or petroleum, 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.